

The Companies Act 1993  
And  
The Co-operative Companies Act 1996

**Constitution**  
**of**  
**Otaki Energy Cooperative Limited**

**Certified true copy of the Constitution**

Adopted by the shareholders by special resolution.

This Constitution contains regulations relating to the conduct of the company's affairs and must be read in conjunction with the Companies Act 1993 and the Co-operative Companies Act 1996.

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# Constitution of Otaki Energy Coop Limited

## PART 1 - PRELIMINARY

### 1. PRINCIPAL ACTIVITIES

**Principal Activities:** Otaki Energy Coop carries on and intends to carry on the following principal activities as co-operative activities. The Co-op is formed to provide the Co-op's consumer shareholders with goods and services, and to support the Co-op's member shareholders in their supply of goods and services to the Co-op. The Co-op aims to achieve these purposes in such a way as to contribute to the well-being of the shareholders and their environment, by:

#### 1.1 Principal Activities:

- 1.1.1 To supply electricity, electrical equipment and related services to its shareholders;
- 1.1.2 To promote and support the generation, distribution and use of renewable electricity; and
- 1.1.3 To supply products and services to its shareholders to enable improved energy efficiency

#### 1.2 **Capacity:** Notwithstanding clause 1.1, Otaki Energy Coop has both within and outside New Zealand:

- 1.2.1 full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
- 1.2.2 for the purposes of paragraph (1.2.1) of this clause, full rights, powers and privileges.

## 2. EFFECT OF CONSTITUTION

- 2.1 **Effect:** The Company, the Board, each director and each shareholder of the Company have the rights, powers, duties and obligations set out in the Companies Act 1993 and the Co-op Company Act 1996 except to the extent that they are negated or modified, in accordance with the Companies Act or the Co-op Company Act, by this Constitution.
- 2.2 **Registration as Co-operative Company:** Otaki Energy Coop is authorised to apply for registration as a co-operative company under the Co-op Company Act.
- 2.3 **Liability of Shareholders:** The liability of shareholders is limited and no shareholder shall be liable for the obligations of the Company.
- 2.4 **Alteration to Constitution:** The shareholders may alter or revoke this Constitution by Special Resolution. Where an alteration or revocation affects more than one Interest Group separate meetings of each Interest Group shall be held.
- 2.5 **Supply Contracts:** Each Shareholder agrees that all of the terms and conditions of the Supply of Services by the Company to Users shall be binding on, and complied with, by each Shareholder.

## 3. INTERPRETATION

- 3.1 **Definitions:** In this Constitution, unless the context otherwise requires:

**“Act”** means the Companies Act 1993. **“s”** means section references in the Act.

**“Board”** means the directors of the Company who number not less than the required quorum acting together as a board of directors.

**“Committee Member”** means a member for the time being of the Management Committee or the Electoral Committee;

**“Constitution”** means this constitution as it may be altered from time to time in accordance with the Act.

**“Co-op Act”** means the Co-operative Companies Act 1996.

**“Director”** means a duly appointed director of the Company.

**“Electoral Committee”** means the electoral committee for the time being constituted pursuant to this Constitution, and shall be the committee appointed by the Board as set out in clause 20 hereof.

**“Management Committee”** means the committee with responsibility for company operations.

**“Otaki Energy Coop”** and **“the Company”** means Otaki Energy Coop Limited.

**“Rebate”** means a distribution by the Company by way of cash, assets or other consideration to a Transacting Shareholder.

**“Services”** means the direct or indirect provision of electricity, the supply of electrical generation and monitoring equipment and any other goods or services provided directly or indirectly by Otaki Energy Coop.

**“solvency test”** means the solvency test in s4 of the Act, as may be modified in accordance with the Act.

**“Transacting Share”** means a share that can only be held by a Transacting Shareholder, and does not include shares of any other share class.

**“Transacting Shareholder”** has the meaning given to that term in section 4 of the Co-operative Companies Act 1996.

3.2 **Construction:** In this Constitution:

3.2.1 References to sections are to sections of the Act and references to clauses are to clauses of this Constitution;

3.2.2 Unless the context requires otherwise:

3.2.2.1 Words importing the singular include the plural and vice versa, and a gender includes all other genders; and

3.2.2.2 Words importing persons include firms, corporations, unincorporated associations and authorities and firm includes partnership;

3.2.3 Powers conferred on the Company, the Board, a director or a shareholder may be exercised at any time and from time to time;

3.2.4 References to any legislation or provision of any legislation are deemed to be references to that legislation or provision as amended, substituted or re-enacted and unless the context requires otherwise include any statutory instruments issued under that legislation or provision;

3.2.5 Clause headings and other headings are for ease of reference only and shall be deemed not to form part of this Constitution nor to affect the construction of this Constitution; and

3.2.6 A reference to a “share” means a share in the Company.

3.3 **Effect of Act on Constitution:** As between the Act and this Constitution:

3.3.1 An expression not defined in this Constitution but defined in the Act or the Co-op Act shall have the same meaning in this Constitution as in the Act or the Co-op Act. Where a conflict arises between those Acts the provisions of the Co-op Act shall prevail.

3.3.2 This Constitution shall have no effect to the extent that it contravenes the Act and/or the Co-op Act. In particular, 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 this Constitution does not contravene or become inconsistent with the Act.

## PART 2 - SHARES

### 4. RIGHTS AND POWERS ATTACHING TO SHARES

4.1 **Transacting Shares:** A Transacting Share confers all of the following on the holder:

4.1.1 the right to a distribution or Rebate in any year in which the Board offers a distribution or Rebate to the holders of Transacting Shares;

4.1.2 the right to one vote on a poll at a meeting of the Company on any resolution;

4.1.2.1 the right to an equal share in the distribution of the surplus assets of the Company.

4.2 The Board may issue Transacting Shares only to a natural person or an organisation who is:

4.2.1 employed by Otaki Energy Coop; or

4.2.2 in the Board's opinion transacts, or intends to transact with Otaki Energy Coop by purchasing goods or services from Otaki Energy Coop.

4.3 The Board may issue only one Transacting Share to each shareholder.

4.4 **Other Classes:** Subject to clause 5.5 any class of share may be issued by the Board at any time, including those which:

4.4.1 Are convertible;

4.4.2 Are redeemable;

4.4.3 Are restricted or limited as to transfer;

4.4.4 Differentiate as to liability;

4.4.5 Confer preferential rights to distributions of capital or income;

4.4.6 Confer special quorum rights;

4.4.7 Confer special, limited or conditional voting rights;

4.4.8 Do not confer voting rights;

4.4.9 Confer the right to appoint or remove a number of directors; or

4.4.10 Possess any combination of two or more of the foregoing characteristics.

### 5. ISSUE OF SHARES

5.1 **Application for Shares:** Each application for the issue of a Share shall:

5.1.1 Be accompanied by payment of the nominal value at that time of that share at the date of such application or;

- 5.1.2 As otherwise required by the Board, or the terms, or terms of issue, of the shares from time to time.

## 5.2 **Share Issues:**

- 5.2.1 The provisions of section 45 of the Act shall not apply.
- 5.2.2 The Board may issue shares, securities that are convertible into shares or options to acquire shares at any time, to any person, in any number, in such classes and on such terms as it thinks fit subject to the provisions of the Act (other than section 45) and this Constitution.
- 5.2.3 The issue of further shares ranking equally with, in priority to, or ranking behind any existing shares, whether as to voting rights, entitlements to rebates and other distributions or otherwise, is expressly permitted and shall not be an action affecting the rights attaching to the existing shares of that class.

- 5.3 **Consideration for Share Issues:** The Board may determine that any shares issued by Otaki Energy Coop have a nominal value. Different classes of shares may have different nominal values as determined by the Board at the time of issue of each class of share. Until otherwise determined, the nominal value of each Transacting Share shall be \$365.

- 5.4 The consideration for which a share is issued may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other securities of the company.

- 5.5 **Other Share Issue Matters:** The Board shall not issue shares or otherwise issue securities that may lead Otaki Energy Coop to cease to be a co-operative company without the prior approval of a Special Resolution of the Company in General Meeting.

- 5.6 **Consolidation and Subdivision of Shares:** The Board may consolidate, divide or subdivide the shares or any class of shares in Otaki Energy Coop into a lesser or greater number of shares.

## 6. **ALTERATION OF SHAREHOLDER RIGHTS**

- 6.1 Otaki Energy Coop may not take action that affects rights attached to shares unless that action has been approved by a special resolution of each interest group of shareholders (being a resolution approved by 75% of the votes of those shareholders entitled to vote and voting on that resolution), including the following rights:

- 6.1.1 The rights, privileges, limitations and conditions attached to the share by this Act or the constitution, including voting rights and rights to distributions;
- 6.1.2 The right to have the procedure set out in s117 and any further procedure required by this constitution for the amendment or alteration of rights, observed by Otaki Energy Coop;



## 7. LIABILITY OF SHAREHOLDERS

- 7.1 **Limited Liability:** The liability of a shareholder to Otaki Energy Coop is limited to any amount unpaid on a share held by the shareholder.
- 7.2 An amount unpaid on a share may comprise all or part of the consideration payable in respect of the issue of the share, or any other liability imposed on its holder by its terms of issue.
- 7.3 **Application of Distributions:** Any dividend or distribution due to the holder of a share may be applied in reduction or satisfaction on any amount unpaid on that share or any other amount presently payable by the shareholder to Otaki Energy Coop.

## 8. CALLS

- 8.1 **Power to Call:** Subject to clause 8.2, the Board may from time to time make such calls as it thinks fit upon the shareholders in respect of all money unpaid on the shares held by them respectively and which is not by the conditions of allotment made payable at fixed times. Each shareholder shall pay the amount of every call so made on him or her to the persons and at the times and places appointed by the Board. A call may be made payable by instalments and may be revoked or postponed as the Board may determine. Where money or other consideration is due at a fixed time to Otaki Energy Coop on shares in accordance with their terms of issue, that amount does not comprise a call and no notice is required to be given to the shareholder (or other person liable under the terms of issue) before Otaki Energy Coop may enforce payment of the amount due.
- 8.2 **Notice and Arrears of Call:** Ten working days' notice of any call shall be given specifying the time and place of payment and the person or persons to whom the call shall be paid.
- 8.3 **Joint Holders:** The joint holders of a share shall be jointly and severally liable to pay all calls.
- 8.4 **Interest:** If the call payable in respect of any share is not paid on or before the day appointed for payment, the holder for the time being of the share shall be liable to pay interest on the same at such rate as the Board may determine from the day appointed for payment to the time of actual payment. The Board may waive payment of that interest wholly or in part.
- 8.5 **Proof of Liability:** In any proceedings for the recovery of any money due for any call, it shall be sufficient to prove that:
- 8.5.1 the name of the shareholder sued is entered in the register of shareholders of Otaki Energy Coop as the holder or one of the holders of the shares in respect of which the debt accrued; and
  - 8.5.2 the resolution making the call is duly recorded in the minute book; and
  - 8.5.3 notice of the call was duly given to the shareholder,
- and it shall not be necessary to prove the appointment or qualification of the directors who made the call nor any other matter whatsoever. Proof of the matters aforesaid shall be conclusive evidence of the debt.

## 9. FORFEITURE AND LIEN

- 9.1 **Existence and Subject Matter of Lien:** Otaki Energy Coop shall have a first and continuing lien on its shares for:
- 9.1.1 Amounts unpaid (whether presently payable or not) on those shares; or
  - 9.1.2 Other amounts presently payable by the then holder of those shares to Otaki Energy Coop on any account whatsoever.
- 9.2 The lien shall extend to all Rebates and distributions from time to time declared in respect of those shares and all proceeds of sale of those shares.
- 9.3 **Power of Sale:** Otaki Energy Coop shall have power to sell, in a manner determined by the Board, any share on which the Company has a lien if:
- 9.3.1 An amount is presently payable to Otaki Energy Coop on that share or by the holder of that share; and
  - 9.3.2 Otaki Energy Coop has demanded the amount in writing, and payment has not been made within 10 working days after the demand.
- 9.4 **Proceeds of Sale:** The proceeds of sale must be applied first, in payment of costs and expenses incurred in enforcing the lien; and second in payment of the amount secured by the lien.
- 9.5 The balance, if any, shall be paid to the former shareholder provided however, if any consideration is payable at a future date in respect of the issue of the share over which the lien existed, the balance may be held in suspense by Otaki Energy Coop to the extent of any such consideration (without any obligation to account for interest), and applied in payment when such consideration is due.
- 9.6 The purchaser need not see to the application of the sale proceeds, nor will the purchaser's title to the shares be affected by any irregularity or invalidity in the enforcement of the lien.
- 9.7 **Forfeiture of Shares:** If a shareholder fails to pay any call on the due date, Otaki Energy Coop may at any time thereafter by written notice to that shareholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by Otaki Energy Coop by reason of such non-payment.
- 9.8 The notice shall specify a further date (not earlier than 10 working days after the date of service of the notice) on or before which the payment is to be made, and shall state that, if payment is not made by the specified date, the share in respect of which the call is due is liable to be forfeited.
- 9.9 If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made, any share in respect of which the notice has been given may be forfeited by a resolution of the Board to that effect. The forfeiture shall include all dividends declared in respect of the forfeited share and not paid before the forfeiture.
- 9.10 When a share has been forfeited, Otaki Energy Coop shall give notice of the resolution to the shareholder in whose name the share stood immediately prior to the forfeiture, and shall enter in the share registered details of the forfeiture.

- 9.11 A forfeiture may be cancelled at any time before the forfeiture comes into effect, on such terms as the Board thinks fit.
- 9.12 The holder of a share which has been forfeited ceases to be a shareholder in respect of the forfeited share, but remains liable to Otaki Energy Coop for all money payable in respect of the forfeited share.

## 10. SHARE REGISTER

- 10.1 **Company to Maintain Share Register:** Otaki Energy Coop must maintain a share register that records the shares issued by the Company.
- 10.2 The share register must state, with respect to each class of shares the following details for the last decade of:
  - 10.2.1 The names, alphabetically arranged, and the latest known address of each person who is a shareholder; and
  - 10.2.2 The number of shares of that class held by each shareholder; and
  - 10.2.3 The date of any issue of shares to or repurchase or redemption of shares from or transfer of shares by or to each shareholder and the name of the person to or from whom the shares were transferred.
- 10.3 An agent may maintain Otaki Energy Coop's share register.
- 10.4 **Share Register as Evidence of Legal Title:** The entry of the name of a person in the share register as holder of the share is prima facie evidence that legal title to the share rests in that person.
- 10.5 Otaki Energy Coop may treat the registered holder of a share as the only person entitled to
  - 10.5.1 Exercise the right to vote attached to the share; and
  - 10.5.2 Receive notices; and
  - 10.5.3 Receive a Rebate or distribution in respect of the share; and
  - 10.5.4 Exercise the other rights and powers attaching to the share.
- 10.6 **Trusts not to be Entered on Register:** No notice of a trust, whether express, implied, or constructive, may be entered on the share register.
- 10.7 **Personal Representative may be Registered:** A personal representative of a deceased person whose name is registered in the share register of Otaki Energy Coop as the holder of a share is entitled to be registered as the holder of that share as personal representative.
- 10.8 The registration of a trustee, executor, or administrator pursuant to clause 10.7 does not constitute notice of a trust.

## 11. TRANSFER OF SHARES

11.1 **Transacting Shares:** Transacting Shares are not transferable except and in the following circumstances and at the discretion of the Board:

11.1.1 where the Transacting Shareholder is transferring the whole of its business to a purchaser who wishes to take a transfer of the Transacting Share held by the vendor shareholder and such purchaser becomes a purchaser of Otaki Energy Coop's Services; or

11.1.2 to a spouse or civil union partner where the member spouse or partner has either died or separated with the other spouse becoming a purchaser of Otaki Energy Coop's Services.

11.2 **Entry on the Register:** A share may be transferred by entry of the name of the transferee on the share register.

11.3 **Form of Transfer:** For the purpose of transferring shares, a form of transfer signed by the present holder of the shares or by its personal representative must be delivered to:

11.3.1 Otaki Energy Coop; or

11.3.2 An agent of Otaki Energy Coop who maintains the share register.

11.4 The form of transfer must be signed by the transferee if registration as holder of the shares imposes a liability to the company on the transferee.

11.5 A transfer shall be an instrument in writing:

11.5.1 In any usual or common form;

11.5.2 In any other form which the Board may approve; or

11.5.3 In the form set out in the First Schedule to the Securities Transfer Act 1991 or amendments thereto.

11.6 On receipt of a form of transfer, Otaki Energy Coop must forthwith enter or cause to be entered the name of the transferee on the share register as holder of the shares, unless:

11.6.1 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; and

11.6.2 Notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the resolution being passed by the Board; and

11.6.3 The Board is permitted by clause 8.6 to refuse or delay registration.

11.7 **Rights to Refuse Transfer:** The Board may refuse to register the transfer of any share if:

11.7.1 Otaki Energy Coop has a lien on the share;

11.7.2 The share is not fully paid;

- 11.7.3 The holder of the share has failed to comply with the terms of any contract with Otaki Energy Coop;
  - 11.7.4 The Board believes effecting the transfer would be a breach of the law;
  - 11.7.5 The transferee does not meet the eligibility criteria defined for the class of share that is being transferred; or
  - 11.7.6 The Board resolves that it is not in the best interests of Otaki Energy Coop to register the transfer.
- 11.8 **Board Decision Final:** The decision of the Board as to whether or not a person is entitled to be or become a shareholder of the Company shall be conclusive and binding on all persons affected by that decision.

## 12. COMPANY MAY ACQUIRE ITS OWN SHARES

- 12.1 **Right to Acquire:** Otaki Energy Coop may purchase or otherwise acquire its own shares if the Board makes an offer to acquire such shares and:
- 12.1.1 The offer is to all shareholders to acquire a proportion of their shares that:
    - 12.1.1.1 would, if accepted, leave unaffected relative voting and distribution rights within each class, and
    - 12.1.1.2 affords a reasonable opportunity to accept the offer, or
  - 12.1.2 The offer is to one or more shareholders, and:
    - 12.1.2.1 All shareholders have consented in writing; or
    - 12.1.2.2 The offer is special and the resolutions and disclosure document referred to in clauses 12.3 and 12.4 have been passed and given respectively.
- 12.2 **Resolutions Required for Offers:** The Board may make an offer to acquire shares issued by Otaki Energy Coop after it has previously resolved that
- 12.2.1 It is satisfied on reasonable grounds that immediately after the purchase or acquisition, Otaki Energy Coop will satisfy the solvency test; and
  - 12.2.2 The acquisition in question is in the best interests of Otaki Energy Coop; and
  - 12.2.3 The terms of the offer and the consideration offered for the shares are fair and reasonable to Otaki Energy Coop; and
  - 12.2.4 It is not aware of any information that will not be disclosed to shareholders:
    - 12.2.4.1 Which is material to an assessment of the value of the shares; and
    - 12.2.4.2 As a result of which the terms of the offer and consideration offered for the shares are unfair to shareholders accepting the offer.

- 12.3 **Further Resolutions Required for Special Offers:** Where the Board makes a special offer to acquire shares to one or more shareholders without the consent in writing of all shareholders, then the Board must also resolve:
- 12.3.1 That the acquisition is of benefit to the remaining shareholders; and
  - 12.3.2 That the terms of the offer and the consideration offered for the shares are fair and reasonable to the remaining shareholders.
- 12.4 **Disclosure Document for Special Offers:** Before an offer is made pursuant to a resolution under clause 12.3, Otaki Energy Coop must send to each shareholder a disclosure document that sets out
- 12.4.1 The nature and terms of the offer, and if made to specified shareholders, to whom it will be made; and
  - 12.4.2 The nature and extent of any relevant interest of any director of Otaki Energy Coop in any shares the subject of the offer; and
  - 12.4.3 The text of the resolutions required by clause 12.3, together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for Otaki Energy Coop and its shareholders of the proposed acquisition.
- 12.5 The offer must be made not less than 10 working days and not more than 12 months after the disclosure document has been sent to each shareholder.
- 12.6 **Resolutions and Certificate:** The resolutions referred to in this clause 12 must set out in full the reasons for the directors' conclusions.
- 12.7 The directors who vote in favour of the resolutions must sign a certificate as to the matters set out therein.
- 12.8 The Board must not make an offer to acquire shares issued by Otaki Energy Coop if, after the passing of the resolutions and before the making of the offer the Board ceases to be satisfied as to the matters resolved.

### 13. COMPANY MAY HOLD TREASURY STOCK

- 13.1 Shares issued by Otaki Energy Coop which are purchased or acquired by it shall be deemed cancelled immediately on acquisition unless
- 13.1.1 The Board resolves that the shares concerned shall be retained as treasury stock; and
  - 13.1.2 The number of shares acquired, when aggregated with shares of the same class held by Otaki Energy Coop at the time of acquisition, does not exceed 5 percent of the shares of that class previously issued by Otaki Energy Coop, excluding shares previously deemed to be cancelled.
- 13.2 The rights and obligations attaching to any treasury stock owned by Otaki Energy Coop shall be suspended during any such period of ownership.
- 13.3 Transfer of treasury stock held by Otaki Energy Coop is deemed to be an issue of new shares.

## 14. REDEMPTION AND SURRENDER OF SHARES

- 14.1 **Right to Issue Redeemable Shares:** Otaki Energy Coop may issue shares which are redeemable:
- 14.1.1 At the option of Otaki Energy Coop; or
  - 14.1.2 At the option of the holder of the shares; or
  - 14.1.3 On a date specified by their terms of issue, for a consideration that is:
    - 14.1.3.1 Specified; or
    - 14.1.3.2 To be calculated by reference to a formula; or
    - 14.1.3.3 Required to be fixed by a suitably qualified person who is not associated with or interested in Otaki Energy Coop.
- 14.2 **Consideration for the surrender of Shares:** Unless otherwise specified in this Constitution, the consideration for the surrender of a Share shall be the lesser of the nominal value of the Share at the date it was issued to the shareholder, or the actual amount paid up on that Share at the surrender date.
- 14.3 **Surrender at option of Shareholder:** Transacting Shares may be redeemed at the option of the Transacting Shareholder in any of the following situations:
- 14.3.1 The shareholder is no longer transacting business with Otaki Energy Coop and has not transacted any business with Otaki Energy Coop during the preceding year; or
  - 14.3.2 The shareholder is no longer in a position to transact business with Otaki Energy Coop.
- 14.4 **Surrender at option of Otaki Energy Coop:** Transacting Shares may be redeemed at the option of Otaki Energy Coop in any of the following situations:
- 14.4.1 The shareholder has not transacted any business with Otaki Energy Coop during the preceding year and, in the opinion of the Board, is not likely to do so in the immediate future; or
  - 14.4.2 The shareholder has failed to comply in a material respect with the requirements relating to transactions with Otaki Energy Coop contained in any contract between Otaki Energy Coop and the shareholder; or
  - 14.4.3 The shareholder has acted or attempted to act in a way that in the opinion of the Board injures the property, or is contrary to the interests of Otaki Energy Coop or a subsidiary of Otaki Energy Coop;
- 14.5 **Solvency Test:** The Board may only accept or enforce the surrender or redemption of a share if the Board is satisfied on reasonable grounds that immediately after the share has been redeemed, the Co-op will satisfy the solvency test.
- 14.6 **Resolutions Required for Redemptions at Option of Company:** Otaki Energy Coop may exercise an option to redeem shares only if the Board has previously resolved that:

- 14.6.1 It is satisfied on reasonable grounds that immediately after the shares have been redeemed, Otaki Energy Coop will satisfy the solvency test; and
  - 14.6.2 The redemption of the shares is in the best interests of Otaki Energy Coop; and
  - 14.6.3 The consideration for the redemption of the shares is fair and reasonable to Otaki Energy Coop.
- 14.7 **Further Resolutions Required for Special Redemptions:** Where Otaki Energy Coop exercises a special option to redeem shares in relation to one or more shareholders without the consent in writing of all shareholders, then the Board must also resolve:
- 14.7.1 That the redemption is of benefit to the remaining shareholders; and
  - 14.7.2 That the consideration for the redemption is fair and reasonable to the remaining shareholders.
- 14.8 **Resolutions and Certificate:** The resolutions referred to in this clause 14 must set out in full the reasons for the directors' conclusions.
- 14.9 The directors who vote in favour of the resolutions must sign a certificate as to the matters set out therein.
- 14.10 Otaki Energy Coop must not exercise an option to redeem shares if, after the passing of the resolutions and before the option is exercised, the Board ceases to be satisfied as to the matters resolved.

## **PART 3 – DISTRIBUTIONS AND REBATES**

### **15. DISTRIBUTIONS TO SHAREHOLDERS**

- 15.1 **Rebates:** The Board may pay a rebate or distribution to any shareholder or other persons entitled thereto. Rebates and distributions shall be paid in accordance with the provisions of this Constitution and the terms of issue of the shares and may be any one or more of the following:
- 15.1.1 Payments;
  - 15.1.2 Shares issued in accordance with section 31 of the Co-op Act 1996 in lieu, wholly or partly, of payments calculated by reference to transactions by those Transacting Shareholders with Otaki Energy Coop;
  - 15.1.3 The offer of shareholder discounts in respect of some or all of the goods and services provided by Otaki Energy Coop;
  - 15.1.4 Vouchers or loyalty points that can be redeemed in transactions with Otaki Energy Coop; or
  - 15.1.5 A credit to the Otaki Energy Coop account of the shareholder entitled to that payment



- 15.1.6 The cancellation or reduction of a shareholder's liability in relation to a share to be acquired or redeemed by Otaki Energy Coop, or as a result of a proposed alteration to this Constitution;
  - 15.1.7 The purchase or acquisition by Otaki Energy Coop of its own shares;
  - 15.1.8 The redemption by Otaki Energy Coop of its shares; and
  - 15.1.9 The giving of financial assistance for the purpose of, or in connection with the purchase of its own shares or the shares of its holding company.
- 15.2 **Calculation of Rebates:** For the purposes of clause 15.1, Rebates may be calculated by reference to the number or value or volume of, or the profit derived by Otaki Energy Coop from, transactions by the Transacting shareholders with Otaki Energy Coop
- 15.3 **Interest:** No distribution or rebate shall bear interest against Otaki Energy Coop.
- 15.4 **Permitted Deductions:** The Board may deduct from any Rebate or distribution payable to any Shareholder entitled to receive Rebates or distributions all such sums of money as may be due from him, her or it to the Company on account of any or all of the following:
- 15.4.1 Calls, instalments, any debt, or liability to Otaki Energy Coop or any Related Company, and;
  - 15.4.2 Debts, liabilities or obligations in respect of which Otaki Energy Coop has a lien over specific Shares in respect of which the distribution is made.
- 15.5 **Unclaimed Distributions:** All distributions and rebates unclaimed for one year after having been declared may be invested or otherwise made use of by the Board for the benefit of Otaki Energy Coop until claimed. All distribution and rebates unclaimed for three years after having been declared may be forfeited by the Board for the benefit of Otaki Energy Coop provided always that the Board may at any time after such forfeiture annul the same and pay the distribution or rebate so forfeited to any person producing evidence that he or she is entitled to the same and shall do so unless in the opinion of the Board such payment would embarrass Otaki Energy Coop.
- 15.6 **Distribution must satisfy Solvency Test:** The power referred to in clause 15.1 must not be exercised unless the Board is satisfied on reasonable grounds that Otaki Energy Coop will, immediately after the exercise of the power, satisfy the solvency test.
- 15.7 **Board to Sign Certificate:** The Directors who vote in favour of the exercise of the power must sign a certificate stating that, in their opinion, Otaki Energy Coop will, after the exercise of the power, satisfy the solvency test. The grounds for that opinion must also be stated in that certificate.

## PART 4 – SHAREHOLDERS

### 16. POWERS OF SHAREHOLDERS

- 16.1 Powers Reserved to Shareholders: Powers reserved to the shareholders by the Act or this Constitution may be exercised only;

- 16.1.1 At an annual or special meeting of the shareholders; or
- 16.1.2 By a resolution in lieu of a meeting.
- 16.2 **Ordinary Resolutions:** An ordinary resolution is a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question.
- 16.3 Unless otherwise specified in the Act or this constitution, a power reserved to shareholders may be exercised by an ordinary resolution.
- 16.4 **Special Resolutions:** A special resolution is a resolution approved by a majority of 75 percent of the votes of those shareholders entitled to vote and voting on the question.
- 16.5 The shareholders must exercise the following powers by special resolution, namely to:
  - 16.5.1 Adopt a constitution, or alter or revoke the Constitution;
  - 16.5.2 Approve a major transaction;
  - 16.5.3 Approve an amalgamation of Otaki Energy Coop;
  - 16.5.4 Appoint a liquidator;
  - 16.5.5 Remove Otaki Energy Coop from the register; or
  - 16.5.6 Transfer the place of incorporation.
- 16.6 **Unanimous Shareholder Agreement:** If all shareholders have agreed or concur, in writing and notwithstanding any other provisions in this Constitution:
  - 16.6.1 A dividend may be authorised otherwise than in accordance with s53;
  - 16.6.2 A discount scheme may be approved otherwise than in accordance with s55;
  - 16.6.3 Shares in Otaki Energy Coop may be acquired otherwise than in accordance with s59 to s65;
  - 16.6.4 Shares in Otaki Energy Coop may be redeemed otherwise than in accordance with s69 to s72;
  - 16.6.5 Financial assistance may be given for the purpose of, or in connection with, the purchase of shares otherwise than in accordance with s76 to s80;
  - 16.6.6 The provision of remuneration and other benefits to directors may be authorised otherwise than in accordance with s161(1);
  - 16.6.7 Shares may be issued otherwise than in accordance with ss42, 44 or 45; and
  - 16.6.8 On Otaki Energy Coop entering into a transaction in which a director is interested, nothing in s140 and s141 shall apply to that transaction;
- 16.7 A power referred to in clause 16.6.1 to 16.6.6 must not be exercised unless the Board is satisfied on reasonable grounds that Otaki Energy Coop will, immediately after the exercise, satisfy the solvency test.

- 16.8 The directors who vote in favour of the exercise of the power must sign a certificate stating that, in their opinion, Otaki Energy Coop will, immediately after the exercise of the power, satisfy the solvency test.
- 16.9 If, after a resolution is passed under clause 16.7 and before the power is exercised, the Board ceases to be satisfied on reasonable grounds that Otaki Energy Coop will, immediately after the power is exercised, satisfy the solvency test, any exercise of the power is deemed not to have been authorised.
- 16.10 **Management Review by Shareholders:** The chairperson of a meeting of shareholders must allow a reasonable opportunity for shareholders at the meeting to question, discuss, or comment on the management.
- 16.11 A meeting of shareholders may pass a resolution relating to the management of Otaki Energy Coop but this should not be binding on the Board, unless expressly required by the resolution.
- 16.12 The provisions of clause 18.1 govern proceedings at meetings of shareholders at which a resolution under clause 16.11 is passed.

## 17. MEETINGS AND RESOLUTIONS

- 17.1 **Annual Meetings of Shareholders:** The annual meeting of Otaki Energy Coop shall be held once in every calendar year, at such time (not being more than six months after the balance date of Otaki Energy Coop, nor more than 15 months after the holding of the last preceding meeting) and place as may be determined from time to time by the Board.
- 17.2 **Business of an Annual Meeting:** The business of the annual meeting shall be:
- 17.2.1 to receive and consider the financial statements, the reports of the Board and of the auditor (if an auditor has been appointed), and any matters incidental thereto;
  - 17.2.2 to elect directors in the place of those retiring subject to any alternative procedures of a postal ballot;
  - 17.2.3 to vote on the appointment of auditors and if so appointed, to authorise the Board to fix their remuneration;
  - 17.2.4 to approve the remuneration of the directors in accordance with clause 23.5
  - 17.2.5 to transact any other business which, by law, may be transacted at an annual meeting.
- 17.3 **Special Meeting:** A special meeting of shareholders entitled to vote on an issue:
- 17.3.1 may be called at any time by the Board; and
  - 17.3.2 must be called by the Board at the written request of shareholders holding shares carrying together not less than 5 per cent of the voting rights entitled to be exercised on the issue.

- 17.4 **Shareholder Request for Special Meeting:** Any request by shareholders to hold a special meeting must specify the issue to be voted on at the meeting and shall be signed by the persons making the same and shall be deposited at the registered office of Otaki Energy Coop. It may consist of several documents in the like form each signed by one or more of the requisitionists.

## 18. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

- 18.1 **Proceedings:** The proceedings of meetings of shareholders shall be governed by Schedule 1 to this Constitution.

## PART 5 – DIRECTORS

### 19. APPOINTMENT AND REMOVAL OF DIRECTORS

- 19.1 **Number of Directors:** The Board should consist of not less than three (3) or no more than eleven (11) persons appointed in accordance with this Constitution.
- 19.2 **Period of Office:** A director holds office until his or her retirement, resignation, disqualification or removal in accordance with this Constitution.
- 19.3 **Election:** A director may be elected by the shareholders by a postal or an electronic ballot in accordance with the procedure set out in clause 21.7.3. Subject to this Constitution, the procedure for electing Directors by postal or electronic ballot will be determined by the Board.
- 19.4 **Rotation of Directors:** At each annual meeting of Otaki Energy Coop:
- 19.4.1 the two directors who have been longest in office; and
  - 19.4.2 any Director appointed by the Board under clause 19.8 (if any) since the previous annual meeting,
- may elect to retire from the Board but shall, subject to clause 19.5, be eligible for re-election.
- 19.5 For the purposes of clause 19.4.1, the order of retirement as between directors who have been in office for the same time may be determined by lot, unless otherwise resolved by the Board.
- 19.6 *(this section deleted)*
- 19.7 The retirement of a director pursuant to the clause 17.4 shall take effect immediately upon election of the new directors at the annual general meeting, or before his or her re-election, as the case may be.

- 19.8 **Disqualification and Removal:** A Director shall cease to hold office if the Director:
- 19.8.1 becomes disqualified from being a director of a company pursuant to section 151 of the Companies Act 1993; or
  - 19.8.2 becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
  - 19.8.3 resigns his or her office as a Director by notice in writing to the Board. The notice of resignation is effective when it is received by the Board or at a later time specified in the notice; or
  - 19.8.4 retires from office pursuant to clause 19.4 and is not re-elected; or
  - 19.8.5 is removed by an ordinary resolution of shareholders, voted on at a special meeting called for that purpose, or for purposes including the removal of the Director.

- 19.9 **Directorship Vacancies and Alternate Directors:** Whenever a vacancy on the Board arises as a result of:

- 19.9.1 a Director ceasing to hold office by virtue of clause 19.7, or
- 19.9.2 subject to clause 19.1, the Board resolving that it is in the interests of Otaki Energy Coop to appoint one or more additional Directors.

the Board may appoint, on a temporary basis, a person as a director.

- 19.9.3 The retirement of a director pursuant to this clause 17.4 shall take effect immediately upon election of the new directors at the annual general meeting, or before his or her re-election, as the case may be.

- 19.10 (this section removed)

- 19.11 Each director may from time to time by written notice to Otaki Energy Coop appoint any person who is not already a director, to act as an alternate director for him or her provided that that person is acceptable to a majority of the other directors excluding the appointing director. The following provisions shall apply to an alternate director:

- 19.11.1 the appointment may at any time be revoked by the appointing director by written notice to Otaki Energy Coop, and is automatically revoked when the director in whose place the alternate director acts vacates office; and
- 19.11.2 unless otherwise provided by the terms of the appointment, the alternate director has the same rights, powers, and privileges (including, without limitation, the power to sign resolutions of directors, and the power to execute documents on behalf of Otaki Energy Coop) as the director in whose place he or she acts.
- 19.12 **Chairperson of Board:** The directors shall appoint a Chairperson and Deputy Chairperson from their number in accordance with clause 1 of Schedule 2 to this Constitution. Any Chairperson and Deputy Chairperson may likewise be removed and another director elected in his or her place.
- 19.13 **Proceedings of Board:** The proceedings of meetings of the Board shall be governed by Schedule 2 to this Constitution.

## 20 THE ELECTORAL COMMITTEE; if recommended by the Board

- 20.1 **Composition of the Electoral Committee:** The Electoral Committee shall consist of three (3) persons appointed as Committee Members of the Electoral Committee by the Board in accordance with this Constitution.
- 20.2 **Qualifications:** In making appointments to the Electoral Committee from time to time, the objective of the Board shall be to seek to ensure that the Electoral Committee comprises:
- 20.2.1 one person familiar with the history, aims and values of Otaki Energy Coop; and
- 20.2.2 two persons who are well versed in the requirements for good governance of commercial organisations and/or co-operative companies.
- 20.3 **Rotation of Authority Members:** Following the conclusion of the first meeting of the Board after each annual meeting of Otaki Energy Coop, one Committee Member will retire from the Electoral Committee but shall be eligible for re-appointment. The Committee Member to retire will be the Committee Member who has been longest in office, since his or her last appointment. The order of retirement as between Committee Members who have been in office for the same time will be determined by lot, unless otherwise resolved by the Board. The retirement of the Committee Member shall take effect immediately upon appointment of a Committee Member in his or her place by the Board at that Board meeting, or before his or her re-appointment by the Board at that Board meeting, as the case may be.
- 20.4 **Reappointment:** A Committee Member may be reappointed for one or more additional terms of office but may not serve more than three consecutive terms without standing down from the Electoral Committee for a minimum period of one year before that person is eligible for re-appointment.
- 20.5 **Remuneration and Expenses:** The Board may determine and authorise payment of remuneration or the provision of other benefits by Otaki Energy Coop to a Committee Member for services as a Committee Member or in any other capacity if the Board is satisfied that to do so is fair to Otaki Energy Coop. The Board shall not authorise the payment of remuneration or the provision of other benefits by Otaki Energy Coop to a Committee Member without the approval of shareholders by ordinary resolution except where the remuneration is paid or benefit is provided in respect of:

- 20.5.1 services provided to Otaki Energy Coop by a Committee Member, other than in his or her capacity as a Committee Member, and
  - 20.5.2 the execution of duties as a Committee Member which are more than ordinarily onerous.
- 20.6 The Committee Members shall be entitled to be paid their reasonable travelling, accommodation and other expenses incurred in consequence of their attendance at Electoral Committee meetings and other expenses incurred in the execution of their duties as Committee Members.
- 20.7 **Restriction on Electoral Committee Members:** No person who is a Director or an employee of Otaki Energy Coop or any of its subsidiaries may, at the same time, be an Electoral Committee Member.
- 20.8 **Disqualification:** A Committee Member shall cease to hold office if the Committee Member:
- 20.8.1 becomes disqualified from being a director of a company pursuant to section 151 of the Companies Act 1993; or
  - 20.8.2 resigns his or her office as a Committee Member by notice in writing to the Board. The notice of resignation is effective when it is received by the Board or at a later time specified in the notice; or
  - 20.8.3 retires from office pursuant to clause 20.3 and is not re-appointed.
- 20.9 **Vacancies:** Whenever a vacancy on the Electoral Committee arises as a result of a Committee Member ceasing to hold office by virtue of clause 20.8, the Board may appoint a new Committee Member having regard to the objectives set out in clause 20.2.
- 20.10 **Chairperson:** The Committee Members shall appoint a Committee Chairperson from their number in accordance with clause 1 of Schedule 3 to this Constitution. Any Committee Chairperson may likewise be removed and another Committee Member elected in his or her place.
- 20.11 **Proceedings of Electoral Committee:** The proceedings of meetings of the Electoral Committee shall be governed by Schedule 3 to this Constitution.

## 21. ELECTION OF DIRECTORS AND ROLE OF ELECTORAL COMMITTEE:

- 21.1 Initial determination by Board: At least 15 weeks prior to the annual meeting of Otaki Energy Coop: The Board shall determine whether the election of Directors at the next Annual General Meeting shall be managed by the Board or whether the election of Directors shall be managed by the Electoral Committee. If the Board determines that the election of Directors shall be managed by the Board then the Board shall appoint two scrutineers who shall be members in good standing who have declared that they will not accept nomination as a Director at the next Annual General Meeting and who shall work together with the Board to manage the election process. In this case there shall be no involvement of the Electoral Committee in the election of Directors. If the Board determines that the election of Directors shall be managed by the Electoral Committee the Board shall advise the Electoral Committee of the number of positions that the Board has resolved will be available on the Board as a consequence of any resignations; and
- 21.1.1 the Board shall determine which of its Directors are due to retire at that annual meeting in accordance with clause 19.4 and shall supply those names to the Electoral Committee;
- 21.1.2 the Board shall advise the Electoral Committee of the number of positions that the Board has resolved will be available on the Board as a consequence of these resignations; and
- 21.1.2 the Electoral Committee shall confer with the Chairperson of the Board to discuss the range of competencies desired within the membership of the Board and the relative emphasis to be placed on those competencies.
- 21.2 **Call for nominations:** At least 13 weeks prior to the annual meeting, the Board shall ensure that notice is given to shareholders, the Committee Members and the auditors (if any) of Otaki Energy Coop. The notice is to:
- 21.2.1 specify the proposed date and place of the annual meeting;
- 21.2.2 describe the process for the election of directors at that meeting, including the number of positions available on the Board;
- 21.2.3 call for nominations for election to the position of director; and
- 21.2.4 specify a date (at least ten weeks prior to the proposed date of the annual meeting) by which nominations for the position of director must be received by Otaki Energy Coop.
- 21.3 **Nominations:** Any person, including an existing director, who is retiring by rotation or is appointed to fill a casual vacancy, may be nominated for election as a director. The nomination must:
- 21.3.1 be made and signed by three current Shareholders of Otaki Energy Coop (excluding the nominee);
- 21.3.2 be approved and signed by the nominee;
- 21.3.3 include a description of the nominee, his or her experience, qualifications and competencies for the position, and contact details;



- 21.3.4 be sent to Otaki Energy Coop and to the auditors of Otaki Energy Coop (on behalf of the Electoral Committee); and
  - 21.3.5 be received by Otaki Energy Coop no later than the closing date specified in the notice calling for nominations.
- 21.4 **Role of Electoral Committee:** Following the closing date for nominations, the Electoral Committee will:
- 21.4.1 Consider the nominations validly received by Otaki Energy Coop and the information accompanying the nominations;
  - 21.4.2 assess the competence and suitability of each of the nominees to become a director; and
  - 21.4.3 match that assessment against the Electoral Committee's assessment of the competencies likely to be required by the Board.

The Electoral Committee may, if it wishes, seek additional information from any of the nominees or seek to verify any information provided to the Electoral Committee, by such means as the Electoral Committee thinks fit.

- 21.5 **Determination of list of nominees:** At least seven weeks before the proposed date of the annual meeting, the Electoral Committee must:

- 21.5.1 determine which of the nominees will be the candidates for the election of directors, being those nominees who, in the Electoral Committee's opinion:
  - 21.5.1.1 provide the competencies likely to be required to provide a balanced range of skills and experience at Board level; and
  - 21.5.1.2 are capable of making a significant and positive contribution to the effective governance of Otaki Energy Coop;
  - 21.5.1.3 can advance Otaki Energy Coop's commercial interests, in a way that is consistent with the observance of its values; and
- 21.5.2 give notice to the Board and the auditors of Otaki Energy Coop of the names of those nominees who will be the candidates for the election of directors.

- 21.6 **Declined nominations:** Having made its determination under clause 21.5, the Electoral Committee will notify any unsuccessful nominee of the Electoral Committee's decision. The Electoral Committee will not be under any obligation to provide any reason for its decision.

- 21.7 **Notice of annual meeting:** At least three weeks before the proposed date of the annual meeting, the Board shall give formal notice of the annual meeting to shareholders. That notice shall include:

- 21.7.1 the list of the nominees determined by the Electoral Committee under clause 21.5 to be candidates for the position of Director;
- 21.7.2 a summary in respect of each of those nominees, stating their experience and qualifications, in a form approved by the Electoral Committee in its sole discretion; and

21.7.3 papers for a postal ballot or instructions for an electronic ballot, carrying a clear instruction that completed ballot papers or electronic votes as the case may be must be received by Otaki Energy Coop or, if the Board so elects, the auditors of Otaki Energy Coop, no later than one week prior to the proposed date of the annual meeting.

21.8 **This clause deleted**

21.9 **Discretion of Electoral Committee:** In carrying out its role, the Electoral Committee shall have an absolute and unfettered discretion. The decision of the Electoral Committee will be final. The Electoral Committee will be under no obligation to give any reasons for its decisions. Each shareholder and each nominee waives all rights to challenge, as a matter of law, the actions, processes or decisions of the Electoral Committee.

## 22 **POWERS OF DIRECTORS**

22.1 **Management of Company:** The business and affairs of Otaki Energy Coop must be managed by, or under the direction or supervision of, the Board.

22.2 The Board has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of Otaki Energy Coop.

## 23 **MANAGING DIRECTOR**

23.1 **Appointment:** The Board may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as the Board thinks fit, and subject to the terms of any agreement entered into in any particular case, may revoke any such appointment.

23.2 The appointment of a managing director is automatically terminated if he or she ceases to be a director.

23.3 **Powers:** Subject to s130 of the Companies Act, the Board may entrust to and confer on a managing director any of the powers exercisable by the Board on such terms and conditions and with such restrictions as the Board may think fit, and may from time to time revoke, withdraw, alter or vary all or any of those powers.

23.4 The Board may loan and borrow funds on terms and conditions at its discretion, provided that the Board acts in the best interests of the Co-op.

23.5 **Remuneration of Directors:** The Board may determine and authorise payment of remuneration or the provision of other benefits by Otaki Energy Coop to a director for services as a director or in any other capacity if the Board is satisfied that to do so is fair to Otaki Energy Coop.

23.6 The Board shall not authorise the payment of remuneration or the provision of other benefits by Otaki Energy Coop to a director without the approval of shareholders by ordinary resolution, except where the remuneration is paid or the benefit is provided in respect of:

23.6.1 services provided to Otaki Energy Coop by a director, other than in his or her capacity as a director;

23.6.2 the execution of duties as a director which are more than ordinarily onerous.

23.7 **Reimbursement of Expenses:** The directors shall be entitled to be paid their reasonable travelling, accommodation and other expenses incurred in consequence of their attendance at Board meetings or otherwise in the execution of their duties as directors.

23.8 **Delegation by Board:** The Board may delegate to a committee of directors, a director, or an employee of Otaki Energy Coop or any other person any one or more

## 24 INDEMNITY AND INSURANCE

24.1 **Indemnity for director or employee:** Otaki Energy Coop may indemnify a director or employee of the Company or a related company for any costs incurred by him or her in any proceeding

24.1.1 That relates to a liability for any act or omission in its capacity as a director or employee; and

24.1.2 in which the judgement is given in its favour, or in which it is acquitted, or which is discontinued.

24.2 Otaki Energy Coop may indemnify a director or employee of the Company or a related company in respect of

24.2.1 Liability to any person other than Otaki Energy Coop or a related company for any act or omission in its capacity as a director or employee; or

24.2.2 Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability, not being criminal liability in respect of a breach in the case of a director, of the duty specified in s131 or, in the case of an employee, of any fiduciary duty owed to Otaki Energy Coop or a related company.

24.3 Insurance for a director or employee: Otaki Energy Coop may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company in respect of

24.3.1 Liability, not being criminal liability, for any act or omission in its capacity as a director or employee; or

24.3.2 Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability; or

24.3.3 Costs incurred by that director or employee in defending any criminal proceedings:

24.3.3.1 That have been brought against the director or employee in relation to any act or omission in its capacity as a director or employee; and

24.3.3.2 In which it is acquitted.

24.4 The directors who vote in favour of authorising insurance under this clause must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to Otaki Energy Coop.

- 24.5 The Board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the Company or a related company, are entered into the interests register.

## **SCHEDULE 1**

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

#### **CHAIRPERSON**

1. If the directors have elected a chairperson of the board, and the chairperson of the board is present at a meeting of the shareholders, he or she must chair the meeting.
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 meeting, the shareholders present may choose one of their number to be chairperson of the meeting.
3. The chairperson may (and if so directed by the meeting must) adjourn the meeting from time to time and from place to place. No business may be transacted at any adjourned meeting except the business which was left unfinished at the meeting which was adjourned.

#### **NOTICE OF MEETINGS**

4. Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to every director and any auditor of the company not less than 10 working days before any Special Meeting and not less than 3 weeks before the Annual General Meeting.
5. The notice must state:
  - 5.1 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;
  - 5.2 The text of any special resolution to be submitted to the meeting.
6. 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.
7. The proceedings of a meeting are not invalidated by the accidental omission to give notice of the meeting to a person who is entitled to receive notice of it, or by non-receipt of the notice by such a person.
8. If a meeting of shareholders is adjourned for less than 20 working days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

## ENTITLEMENT TO NOTICE OF MEETINGS

9. The shareholders who are entitled to receive notice of a meeting of shareholders are:
  - 9.1 If the Board fixes a date for the purpose, those shareholders whose names are registered in the share register on that date; or
  - 9.2 If the Board does not fix a date for the purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.
10. A date must not be fixed under the preceding clause that proceeds by more than 30 working days or less than 10 working days the date on which the meeting is to be held.

## METHODS OF HOLDING MEETINGS

11. A meeting of shareholders may be held either:
  - 11.1 By a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - 11.2 By means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

## QUORUM

12. No business may be transacted at a meeting of shareholders if a quorum is not present.
13. At shareholder meetings, a quorum necessary for the transaction of business shall be 10% of the total number of members if Otaki Energy Coop has 300 or fewer members; or 30 if Otaki Energy Coop has more than 300 members.
14. If a quorum is not present within 30 minutes after the time appointed for the meeting:
  - 14.1 In the case of a meeting called by the Board on the written request of shareholders under s121(b), the meeting is dissolved, and
  - 14.2 In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place or to such other date, time and place as the directors may appoint, and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders or their proxies present are a quorum.

## VOTING

15. In the case of a meeting of shareholders assembled together, unless a poll is demanded, voting shall be by whichever of the following methods is determined by the chairperson of the meeting:
  - 15.1 Voting by voice; or
  - 15.2 Voting by show of hands.

16. In the case of a meeting of shareholders held by means of audio, or audio and visual communication, unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.
17. 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.
18. At a meeting of shareholders a poll may be demanded by:
  - 18.1 Not less than 5 shareholders having the right to vote at the meeting;
  - 18.2 A shareholder or shareholders representing not less than 10 per cent of the total voting rights of all shareholders having the right to vote at the meeting
  - 18.3 A shareholder or shareholders holding shares in Otaki Energy Coop that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 per cent of the total amount paid up on all shares that confer that right; or
  - 18.4 The chairperson of the meeting.
19. A poll may be demanded either before or after the vote is taken on a resolution.
20. 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.
21. The chairperson of a shareholders' meeting is not entitled to a casting vote.
22. For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of Otaki Energy Coop 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.

#### **PROXIES**

23. A shareholder may exercise the right to vote either by being present in person or by proxy.
24. A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.
25. 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.
26. No proxy is effective in relation to a meeting unless a copy of the notice of appointment is delivered to Otaki Energy Coop at least 48 hours before the start of the meeting.

#### **VOTE BEFORE NOTICE OF REVOCATION**

27. A vote given in accordance with the terms of a notice of appointment of proxy is valid notwithstanding:

- 27.1 The previous death or insanity of the shareholder;
- 27.2 The revocation of the notice or of the authority under which the notice was executed; or
- 27.3 Transfer of the share in respect of which the notice is given:

if no notice in writing of the death, insanity, revocation, or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the notice is used, or presented at the meeting or adjourned meeting before the vote is given.

## **POSTAL AND ELECTRONIC VOTES**

- 28. A shareholder may not exercise the right to vote at a meeting by casting a postal vote or by any electronic means provided by Otaki Energy Coop unless the Board determines prior to the meeting that the postal or electronic voting procedure will be available for such meeting and gives notice thereof in the notice of meeting.
- 29. If the Board determines that the postal or electronic voting procedure will be available for a meeting (but not otherwise), such postal votes or electronic votes shall be cast and counted in accordance with the following provisions:
  - 29.1 The notice of a meeting at which shareholders are entitled to cast a postal vote or an electronic vote must state the name of the person authorised by the Board to receive and count postal votes or electronic votes at that meeting.
  - 29.2 If no person has been authorised to receive and count postal votes or 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.
  - 29.3 A shareholder may cast:
    - 29.3.1 A postal 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 votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting; or
    - 29.3.2 An electronic vote on all or any of the matters to be voted on at the meeting by following the procedure stipulated by the Board in the notice of meeting for the casting of an electronic vote. The vote must be made at least 48 hours before the start of the meeting.
  - 29.4 It is the duty of a person authorised to receive and count postal or electronic votes at a meeting:
    - 29.4.1 To collect together all postal or electronic votes received by it, or by Otaki Energy Coop; and
    - 29.4.2 In relation to each resolution to be voted on at the meeting, to count:



- 29.4.2.1 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
  - 29.4.2.2 The number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and
  - 29.4.2.3 To sign a certificate that it has carried out the duties set out in clauses 29.4.2.1 and 29.4.2.2 and which sets out the results of the counts required by clause 29.4.2.2; and
  - 29.4.2.4 To ensure that the certificate required by clause 29.4.2.3 is presented to the chairperson of the meeting.
- 29.4.3 If a vote is taken at a meeting on a resolution on which postal or electronic votes have been cast, the chairperson at the meeting must:
- 29.4.3.1 On a vote by show of hands, count each shareholder who has submitted a postal or electronic vote for or against the resolution, or
  - 29.4.3.2 On a poll, count the votes cast by each shareholder who has submitted a postal or electronic vote for or against the resolution.
- 29.4.4 The chairperson of a meeting must call for a poll on a resolution on which it holds sufficient postal or electronic votes that it believes that if a poll is taken the result may differ from that obtained by a show of hands.
- 29.4.5 The chairperson of a meeting must ensure that a certificate of postal and electronic votes held by it is annexed to the minutes of the meeting.

## **MINUTES**

- 30. The Board must ensure that minutes are kept of all proceedings at meetings of shareholders.
- 31. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

## **SHAREHOLDER PROPOSALS**

- 32. 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.
- 33. 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 Otaki Energy Coop, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- 34. 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.

35. 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 must, 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.
36. If the directors intend that the shareholders may vote on the proposal by proxy, by postal or by electronic 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.
37. The Board is not required to include in or with the notice given by the Board:
  - 37.1 Any part of a statement prepared by a shareholder which the directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous or vexatious; or
  - 37.2 Any part of a proposal or resolution by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992).
38. 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 Otaki Energy Coop or tender to Otaki Energy Coop a sum sufficient to meet those costs.

#### **CORPORATIONS MAY ACT BY REPRESENTATIVES**

39. 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.

#### **VOTES OF JOINT HOLDERS**

40. 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 holders.

#### **LOSS OF VOTING RIGHTS IF CALLS UNPAID**

41. If a sum due to Otaki Energy Coop in respect of a share has not been paid, that share may not be voted at a shareholders' meeting other than a meeting of an interest group.

#### **VOTING BY ADMINISTRATOR**

42. If any person otherwise entitled by this Constitution to a vote is a minor, a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment & Treatment) Act 1992, or a person subject to a property order under the Protection of Personal and Property Rights Act 1988 he or she may vote by his or her guardian or committee or manager or administrator or attorney under an enduring power of attorney, as the case may be.

**OTHER PROCEEDINGS**

43. Except as provided in this Schedule and the Act, a meeting of shareholders may regulate its own procedure.

## **SCHEDULE 2**

### **PROCEEDINGS AT MEETINGS OF THE BOARD**

#### **1. CHAIRPERSON**

- 1.1 The Board may elect one of their number as Chairperson of the Board, and, if they think fit, one of their number as Deputy Chairperson of the Board. The Board shall determine the period for which the Chairperson and the Deputy Chairperson (if appointed) are to hold office, and, unless otherwise determined, they shall be elected annually.
- 1.2 The Chairperson of the Board shall preside at each meeting of the Board, and in case of his or her absence or incapacity to act at any meeting, the Deputy Chairperson, if there has been one appointed, shall preside. In the absence from any meeting of the Board or inability to act of the Chairperson of the Board and of the Deputy Chairperson (if any) the directors present shall choose one of their number to be Chairperson of the meeting.

#### **2. CONVENING MEETINGS**

- 2.1 A director or, if requested by a director to do so, an employee of Otaki Energy Coop, may convene a meeting of the Board by giving notice in accordance with this clause.
- 2.2 Not less than two days' notice of a meeting of the Board must be sent to every director who is in New Zealand, and the notice must include the date, time, and place of the meeting and the matters to be discussed. If a director who is for the time being absent from New Zealand furnishes Otaki Energy Coop with a facsimile number or address (including an e-mail address) to which notices are to be sent during his or her absence, then notice must be given to that director. Otherwise, notice need not be given to any director for the time being absent from New Zealand. However, if he or she has nominated an alternate director who is in New Zealand, then notice must be given to that person. Where the Chairperson believes it is necessary to convene a meeting of the Board as a matter of urgency, shorter notice of the meeting of the Board may be given, so long as at least two hours' notice is given.
- 2.3 An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.
- 2.4 The notice of meeting given pursuant to clause 2.2(Schedule 2) must be sent to the address or facsimile number which the director provides to Otaki Energy Coop for that purpose, but if an address or facsimile number is not provided, then either to his or her last place of employment, or residence, or facsimile number known to Otaki Energy Coop.

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

A meeting of the Board may be held either:

- 3.1 by a number of the directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- 3.2 by means of audio, or audio visual, communication by which all directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

### **4. QUORUM**

- 4.1 A quorum for a meeting of the Board shall be at least two directors present in person and not by way of alternate.
- 4.2 No business may be transacted at a meeting of the Board if a quorum is not present.

### **5. VOTING**

- 5.1 Every director has one vote.
- 5.2 In the case of an equality of votes, the Chairperson of the meeting shall have a second or casting vote.
- 5.3 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 the resolution.

### **6. MINUTES**

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

### **7. UNANIMOUS RESOLUTION**

- 7.1 A resolution in writing, signed or assented to by all 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.
- 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.
- 7.3 A copy of any such resolution must be entered in the minute book of Board proceedings.

### **8. OTHER PROCEEDINGS**

Except as set out in this Constitution, the Board may regulate its own procedure.

## **SCHEDULE 3**

### **PROCEEDINGS AT MEETINGS OF THE ELECTORAL COMMITTEE**

#### **1. CHAIRPERSON**

- 1.1 The Electoral Committee shall elect one of their number as Chairperson of the Electoral Committee. The Electoral Committee shall determine the period for which the Committee Chairperson will hold office, and, unless otherwise determined, the Committee Chairperson shall be elected annually.
- 1.2 The Committee Chairperson shall preside at each meeting of the Electoral Committee. In the absence from any meeting of the Electoral Committee or inability to act of the Committee Chairperson, the Committee Members present shall choose one of their number to be Chairperson of the meeting.

#### **2. CONVENING MEETINGS**

- 2.1 A Committee Member or, if requested by a Committee Member to do so, an employee of Otaki Energy Coop, may convene a meeting of the Committee Authority by giving notice in accordance with this clause.
- 2.2 Not less than five (5) days' notice of a meeting of the Electoral Committee must be sent to every Committee Member who is in New Zealand, and the notice must include the date, time, and place of the meeting and the matters to be discussed. Notice need not be given to any Committee Member for the time being absent from New Zealand. Where the Chairperson believes it is necessary to convene a meeting of the Electoral Committee as a matter of urgency, shorter notice of the meeting of the Electoral Committee may be given, so long as at least two hours' notice is given.
- 2.3 An irregularity in the notice of a meeting is waived if all Committee Members entitled to receive notice of the meeting without protest as to the irregularity, or if all Committee Members entitled to receive notice of the meeting agree to the waiver.
- 2.4 The notice of meeting given pursuant to clause 2.2 (Schedule 3) must be sent to the address or facsimile number which the Committee Member provides to Otaki Energy Coop for that purpose, but if an address or facsimile number is not provided, then either to his or her last place of employment, or residence, or facsimile number known to Otaki Energy Coop.

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

A meeting of the Electoral Committee may be held either:

- 3.1 by a number of the Committee Members who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- 3.2 by means of audio, or audiovisual, communication by which all Committee Members

participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

#### **4. QUORUM**

- 4.1 A quorum for a meeting of the Electoral Committee shall be two Committee Members.
- 4.2 No business may be transacted at a meeting of the Electoral Committee if a quorum is not present.

#### **5. VOTING**

- 5.1 Every Committee Member has one vote.
- 5.2 In the case of an equality of votes, the Committee Chairperson of the meeting shall have a second or casting vote.
- 5.3 Whilst it is generally hoped that the Electoral Committee's decisions are unanimous, a resolution of the Electoral Committee is passed if it is agreed to by all Committee Members present without dissent or if a majority of the votes cast on it are in favour of the resolution.

#### **6. MINUTES**

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

#### **7. UNANIMOUS RESOLUTION**

- 7.1 A resolution in writing, signed or assented to by all Committee Members then entitled to receive notice of a Electoral Committee meeting, is as valid and effective as if it had been passed at a meeting of the Electoral Committee duly convened and held.
- 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 Committee Members.
- 7.3 A copy of any such resolution must be entered in the minute book of Electoral Committee proceedings.

#### **8. OTHER PROCEEDINGS**

Except as set out in this Constitution, the Electoral Committee may regulate its own procedure.