

Board paper  
11/08/0550

Establishment of New  
Zealand Transport  
Ticketing Ltd.



Board Paper	
Paper no:	11/08/0550
Meeting date:	5 August 2011
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Recommended by:	Dave Brash
Board function:	Setting organisation direction
Subject:	Establishment of New Zealand Transport Ticketing Ltd

### Purpose

- 1 This paper sets out the process for the establishment of New Zealand Transport Ticketing Limited (NZTTL) and the decisions the Board needs to take as part of this process.

### Recommendations

- 2 That the NZ Transport Agency Board:
  - a. agrees to create New Zealand Transport Ticketing Limited, as a subsidiary company of the New Zealand Transport Agency, subject to written notice to Responsible Ministers under the Crown Entities Act 2004 sec 96 (b);
  - b. agrees to appoint the NZTA Chief Executive as the initial director of New Zealand Transport Ticketing Limited; and
  - c. agrees to approve the attached draft constitution for New Zealand Transport Ticketing Limited.

### Establishment process

- 3 The transfer of the ticketing central system from Auckland Transport (AT) to NZTTL is planned to occur once the Auckland Integrated Fares Scheme (AIFS) programme is up and running, ie during the 2012/2013 financial year. It is useful to get NZTTL established well in advance of the transfer of the central system, as this will allow time to develop the administrative arrangements for managing and supplying services to AT initially and other regions, as they implement new integrated ticketing schemes. It will allow time for the NZTTL

business plan to be developed, clarify the respective roles of NZTA and NZTTL and identify any future opportunities for NZTTL service provision.

- 4 The ownership structure of NZTTL needs to be such that it ensures NZTA control of NZTTL, is relatively simple to establish and administer, maximises opportunity for different ownership structures in the future, allows potential for a wide range of commercial and public good activities and fulfils the contractual requirements for asset transfer from AT. It is proposed that NZTTL be established initially as a NZTA wholly owned subsidiary as this ownership arrangement fulfils these requirements.
- 5 The NZTTL Establishment Subcommittee has met and agreed an approach for establishing NZTTL, as a wholly owned subsidiary of NZTA, focusing on the minimum requirements to register the entity.
- 6 The process to establish NZTTL is planned as follows:
  - 6.1. **NZTA action points**
    - Board approval of the NZTTL Constitution.
    - Board appointment of at least one director, to enable the company to be registered.
  - 6.2. **Subsequent steps**
    - NZTA to give written notice to the Minister of Transport and the Minister of Finance under the Crown Entities Act 2004 sec 96 (b) that it plans to establish a Crown entity subsidiary.
    - NZTA to then register the Company.
  - 6.3. **After registration of the company**
    - Board approval of an administration agreement between NZTA and NZTTL covering roles, responsibilities and delegations.
    - Seek approval for NZTTL to be an Approved Organisation under the Land Transport Management Act 2003 so that it can be funded under the National Land Transport Fund.
    - The Board, as majority shareholder, appoints further directors to the Board of NZTTL.
- 7 Once NZTTL is established, its work programme priorities will be to:
  - 7.1. Establish hosting agreements with Auckland Transport for hosting the Central System. (The hosting arrangements are planned to be implemented in 2011/12 and may initially be with NZTA, if NZTTL is not yet established)
  - 7.2. Develop a business plan for its services and ensure that NZTTL objectives are included in the 2012/2013 NZTA Statement of Intent.

7.3. Oversee the transfer of the central system from AT to NZTTL and the novation of the AIFS Project Agreement with Thales. This transfer will occur when the AIFS system is fully operational and is likely to be in the 2012/2013 financial year.

7.4. Ensure that NZTTL has scheme agreements and service level agreements in place with Auckland Transport for the ongoing operation of ticketing processing services.

## Constitution

8 A standard draft constitution has been drafted by NZTA's legal advisors and Chapman Tripp. As majority shareholder NZTA can modify the constitution in the future as required. The following points cover several specific matters previously raised by the Board that relate to the wording of the constitution.

### Control by NZTA and preserving NZTA's shareholding rights

9 The Board requested that the constitution preserve NZTA shareholding rights. To do this, the constitution states that the majority shareholder appoints directors, appoints the chair, and approves any share issues or changes to the constitution.

10 NZTA's shareholding rights are preserved as long as it remains as the majority shareholder. If at some future point NZTA's shareholding was to be diluted to less than 51%, prior to that reduction NZTA could change the constitution. Such change could tailor the constitution for specific circumstances to preserve rights NZTA wishes to retain or to specify service obligations required by NZTA.

### Service obligations

11 The Board requested that the constitution enshrine certain service obligations in the constitution. Under the constitution, and under the Crown Entities Act 2004, NZTTL must:

11.1. act consistently with the NZTA's objectives and current statement of intent (to the extent they relate to NZTTL);

11.2. exercise its powers only for the purpose of performing, or assisting the NZTA to perform, the NZTA's functions; and

11.3. comply with a direction given by a Minister to the NZTA (to the extent that it relates to NZTTL) or to NZTTL, under the Crown Entities Act 2004 (CEA) or the LTMA 2003.

12 This enables the NZTA to set objectives for NZTTL in the NZTA Statement of Intent and require it to comply with these objectives.

## Appointment of directors

### Initial directors

13 The constitution requires a minimum of one director to be appointed. This is done by NZTA as majority shareholder. Once NZTTL is established and its business plan and strategy are well developed, the NZTA Board can agree the skill sets, selection criteria and the number of directors for the NZTTL Board.

14 The NZTTL Establishment Subcommittee considered two options for the initial NZTTL director – an existing NZTA Board member or NZTA management. Their preference is for a

management appointee and the Subcommittee asked for advice about the legal position and statutory guidance for such an appointment.

- 15 There can be conflict of interest concerns with public servants serving on statutory boards, as a public servant serves the Minister and would also, as a director, be required to act in the best interests of the company. Such a conflict of interest is not an issue for NZTTL. Under the CEA the Crown entity parent is required to ensure that the subsidiary exercises its powers only for the purpose of performing, or assisting the parent to perform, the parent's functions. In addition, a director of a wholly owned subsidiary is required under section 131 of the Companies Act, when exercising powers or performing duties as a director, to act in a manner which they believe is in the best interests of the subsidiary company's parent company, even though it may not be in the best interests of the subsidiary company.
- 16 This allows for a member of NZTA management to be appointed and it is recommended that the Board appoint the Chief Executive as the initial director, subject to written notice to Ministers and registration of the company.

## Attachments

- 17 There are two attachments to this paper:
- 18 Attachment 1: Subcommittee and NZTTL Board work plan
- 19 Attachment 2: Draft Constitution

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## Attachment 1

### Subcommittee and NZTTL Board work plan

August 2011	Board Approval OF Constitution and Appointment of Initial Director Written Notice to Ministers Company registration	
August - December 2011	Business Plan development	
December 2011	NZTTL Draft Business Plan	
March 2012	Business Plan sign off by NZTA Board and Incorporation into 2012/13 SOI	
April 2012	Appointment of Directors	
June - December 2012	Development of Service delivery for AIFS Scheme Agreements developed Novation of the AIFS Project Agreement	Potential exploration of wider commercial opportunities

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**CONSTITUTION OF NEW ZEALAND TRANSPORT  
TICKETING LIMITED  
(A WHOLLY OWNED SUBSIDIARY OF THE NEW ZEALAND  
TRANSPORT AGENCY)**

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## INTERPRETATION

### 1. Defined Terms

In this constitution the following expressions have the following meanings:

*Act* means the Companies Act 1993;

*Company* means the company whose name is New Zealand Transport Ticketing at the date of this constitution, whether or not the company subsequently changes its name;

*Crown entity subsidiary* has the meaning specified in section 8(2) of the Crown Entities Act 2004;

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

*LTMA* means the Land Transport Management Act 2003;

*Majority shareholder* means one or more shareholders holding Shares which carry more than 50 percent of the total votes attaching to Shares;

*NZTA* means the New Zealand Transport Agency established under the Land Transport Management Act 2003;

*Share* means a share in the Company

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

### 2. CONSTRUCTION

In this constitution:

2.1 Subject to clause 1, expressions which are defined in the Act (whether generally, or for the purposes of one or more particular provisions) have the meanings given to them by the Act. Where an expression is defined in the Act more than once and in different contexts, its meaning is governed by the context in which it appears in this constitution.

2.2 Headings appear as a matter of convenience and do not affect the interpretation of this constitution;

- 2.3 The singular includes the plural and vice versa, and words importing one gender include the other genders;
- 2.4 A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended from time to time, or to any enactment or regulations substituted for that enactment or those regulations;

## **RELATIONSHIP BETWEEN THIS CONSTITUTION AND THE ACT**

### **3. Effect of the Act on this constitution**

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

### **4. Effect of this constitution**

This constitution has no effect to the extent that it contravenes the Act, or is inconsistent with it.

### **5. Shareholders may alter or revoke this constitution**

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

## **LTMA AND CROWN ENTITIES ACT 2004**

### **6. Powers of Company while a Crown entity subsidiary**

During any period when the Company is a Crown entity subsidiary of the NZTA, the capacity, rights, powers, or privileges of the Company are no broader than those of the NZTA; and in particular, the Company may not carry on or undertake any business or activity, do any act, or enter into any transaction that is outside the functions of the NZTA as set out in the LTMA.

### **7. Application of LTMA and Crown Entities Act 2004**

During any period when the Company is a Crown entity subsidiary of the NZTA, the Company:

- (a) is a Crown entity for the purposes of the Crown Entities Act 2004; and
- (b) must not do anything that the NZTA itself does not have the power to do; and
- (c) must act consistently with the NZTA's objectives and current statement of intent (to the extent they relate to the Company); and
- (d) must exercise its powers only for the purpose of performing, or assisting the NZTA to perform, the NZTA's functions; and
- (e) must not contravene the Crown Entities Act 2004 or the LTMA to the extent that those Acts relate to a Crown entity subsidiary of the NZTA (and, without limiting the provisions of those Acts that apply to it, must comply with sections 96, 97, 99, 100, 101, 118, 133, 158, 160 to 164, and 168 of the Crown Entities Act 2004); and

- (f) must comply with a direction given by a Minister to the NZTA (to the extent that it relates to the Company) or to the Company, under the Crown Entities Act 2004 or the LTMA; and
- (g) must not pay its directors any compensation or other payment or benefit, on any basis, for ceasing for any reason to hold office; and
- (h) must not perform any of the NZTA's statutorily independent functions; and
- (i) must comply with the statutory requirements as to employees that apply to the NZTA;
- (j) must perform its functions efficiently and effectively and in a manner consistent with the spirit of service to the public; and
- (k) may pay remuneration to its directors only at a rate and of a kind determined by the NZTA in accordance with the fees framework (as defined in section 10(1) of the Crown Entities Act 2004) or after consultation with the NZTA's responsible Minister; and
- (l) must comply with the requirements as to chief executives as set out in section 117 of the Crown Entities Act 2004 in the same way as the NZTA must do (but for this purpose, references to the responsible Minister in section 117 must be read as references to the NZTA); and
- (m) despite section 178 of the Act, is not entitled to refuse to provide information that must be provided under the Crown Entities Act 2004, or otherwise made available to any person under the Official Information Act 1982.

## SHARES

### 8. Company's shares

At the time of the registration of this constitution, the Company has 100 shares. No money is payable for calls or otherwise on those shares.

### 9. Board to issue shares

9.1 Neither the Board nor any other person may issue any shares, or securities convertible into shares, or options to acquire shares, in the Company unless the issue (including the terms of the issue) is expressly authorised in writing by or on behalf of the majority shareholder.

9.2 Subject to clause 9.1 the Board may issue further shares that rank as to voting or distribution rights, or both, equally with or prior to any existing shares in the Company. Any such issue will not be treated as an action affecting the rights attached to the existing shares.

9.3 The Company may:

- (a) subject to compliance with applicable provision of this constitution, issue redeemable Shares; and
- (b) redeem redeemable Shares in accordance with the Act and the terms of the issue of the redeemable Shares; and

- (c) exercise an option to redeem redeemable Shares issued by the Company in relation to one or more holders of redeemable Shares in accordance with the Act and the terms of issue for the redeemable Shares.

**10. No statutory pre-emptive rights**

Section 45 of the Act does not apply to the Company.

**11. Board may make calls**

11.1 The Board may make calls on any shareholder for any money that is unpaid on that shareholder's Shares and not otherwise payable at a specified time or times under this constitution or the terms of issue of those Shares or any contract for the issue of those Shares.

11.2 The Board may, at its discretion, deduct from any dividend payable to any shareholder any amount owed by the shareholder to the Company on account of any call.

11.3 If any amount called is not paid in full at the time specified for payment, the person from whom the amount is due must pay the Company interest on the amount that remains unpaid at a rate determined by the Board and calculated from the time specified for payment until the day of actual payment. The Board may waive some or all of the payment of that interest.

11.4 A call may be revoked or postponed as the Board may determine.

**12. Authority to acquire own shares**

For the purposes of section 59 and 60(1)(b)(ii) of the Act, the Company is expressly authorised to purchase or otherwise acquire shares issued by it.

**13. Authority to hold own shares**

Subject to any restrictions or conditions imposed by law, the Company is expressly authorised to hold shares acquired by it under section 59 of the Act.

**14. Shares in lieu of dividends**

The Board may not exercise the powers under section 54 of the Act except in accordance with a written authority to do so signed by or on behalf of the majority shareholder.

**MEETINGS OF SHAREHOLDERS**

**15. Special meetings of shareholders**

A special meeting of shareholders entitled to vote on an issue may be called at any time by the Board or by any shareholder.

**16. Proceedings at meetings of shareholders**

16.1 The First Schedule of the Act governs the proceedings at meetings of shareholders, except as provided below in clauses 16.2 to 16.5.

16.2 Clause 1 of the First Schedule of the Act does not apply to the Company. The chairperson of the Board, if any, will chair each meeting of shareholders. If there is no chairperson of the Board or if the chairperson of the Board is not present within 5 minutes of the time appointed for the commencement of a meeting of shareholders or is unwilling to act, the shareholders present may appoint a person to be chairperson of the meeting.

16.3 Clause 12 of the First Schedule of the Act does not apply to the Company. A shareholder is entitled to vote at any meeting of shareholders whether or not all sums due to the Company by that shareholder in respect of any share registered in that shareholder's name have been paid.

16.4 A proxy need not be a shareholder of the Company.

16.5 Clause 7 of Schedule 1 of the Act does not apply to the Company. A shareholder may not exercise the right to vote at a meeting of shareholders by casting a postal vote.

## **DIRECTORS**

### **17. Number of directors**

The minimum number of directors is one director.

### **18. Appointment and removal of directors and chairperson**

18.1 Subject to clause 18.2, any person may at any time be appointed, reappointed, or removed as:

- (a) a director of the Company; or
- (b) the chairperson of directors of the Company -

by written notice signed by or on behalf of the majority shareholder and delivered to the address for service of the Company; and any such appointment, reappointment, or removal is effective from the time specified in the notice or, if no time is specified, from the time the notice is received at the address for service of the Company.

18.2 During any period when the Company is a Crown entity subsidiary, a member of Parliament may not be a director or chairperson of directors of the Company.

## **19 Meetings of the Board**

19.1 Schedule 3 of the Act governs the proceedings at meetings of the Board, except as provided below.

- 19.2 Clause 1 of Schedule 3 of the Act does not apply to the Company. The Majority Shareholder must elect one of the Directors as chairperson of the Board. The chairperson of the Board will chair all meetings of the Board at which he or she is present. If there is no chairperson of the Board, or if at a meeting of the Board the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, then the directors present may elect one of their number to be chairperson of the meeting.
- 19.3 The chairperson of the Board holds that office until he or she vacates office or the Majority Shareholder removes him or her from office.
- 19.4 Clause 2 of the Third Schedule of the Act does not apply to the Company. A Director, or any other person at the request of a Director, may convene a meeting of the Board by giving notice in accordance with this clause. Except where clause 19.7 applies, the notice of meeting must be a written notice delivered to each Director, or sent to the address or facsimile number, or an electronic mail message sent to the electronic mail address, which each Director provides to the Company for that purpose, or if an address or facsimile number, or electronic mail address, is not provided, then a written notice to his or her last place of employment or residence or facsimile number known to the Company.
- 19.5 The notice of meeting must include the date, time and place of the meeting.
- 19.6 At least two days' notice of a meeting of the Board must be given unless the chairperson of the Board (or, in the chairperson's absence from New Zealand, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least two hours' notice is given.
- 19.7 Notice need not be given to any Director who is absent from New Zealand or another usual country of residence. However, if he or she has an alternate Director who is in New Zealand or that other usual country of residence, then notice must be given to that person.
- 19.8 Any irregularity in the notice of a meeting, or failure to comply with clauses 19.4 to 19.7 is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or failure, or if all Directors entitled to receive notice of the meeting agree to the waiver.
- 19.9 A meeting of the Board may be held either:
- (a) By a number of Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - (b) By means of audio, or audio and visual, communication by which a quorum of Directors participating can simultaneously hear each other throughout the meeting.

- 19.10 The quorum necessary for the transaction of business at a meeting of the Board is a majority of the Directors, unless the Company only has one Director, in which case the quorum is one Director. The Majority shareholder may change the number of Directors required for a quorum by written notice to the Company. No business may be transacted at a meeting of the Board unless a quorum is present.
- 19.11 If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the meeting will be adjourned automatically until the following working day at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Directors present will constitute a quorum.
- 19.12 Each Director has one vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it. A Director present at a meeting of the Board may abstain from voting on a resolution, and any Director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Act.
- 19.13 In the case of an equality of votes, the chairperson of the Board does not have a casting vote.
- 19.14 Minutes of proceedings at meetings of the Board which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.
- 19.15 Except as set out in this clause, the Board may regulate its own procedure.
- 20 **Committee proceedings**  
The provisions of this constitution relating to proceedings of the Board also apply to proceedings of any committee of Directors, except to the extent the Board determines otherwise.
- 21 **Written resolutions of Board permitted**
- 21.1 A written resolution signed or assented to by all of the Directors then entitled to receive notice of a meeting of the Board is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 21.2 Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the Directors. A copy of a written resolution, which has been signed and is sent by facsimile or any similar means of communication, will satisfy the requirements of this clause.
22. **Committee proceedings**  
The provisions of the Act and of this constitution relating to proceedings of the Board shall, insofar as they are not altered by regulations made by the Board, also apply to proceedings of any committee of directors.

23. **Interested Directors**

Section 144 of the Act does not apply to the Company. A director of the Company who is interested in a transaction entered into, or to be entered into, by the Company may not:

- (a) vote on a matter relating to the transaction, other than a matter to which either of clauses 28 and 29 apply; or
- (b) attend a meeting of directors at which a matter relating to the transaction arises, or be included among the directors present at the meeting for the purpose of a quorum; or
- (c) sign a document relating to the transaction on behalf of the Company; or
- (d) do anything else as a director in relation to the transaction.

24. **Remuneration and other benefits of directors**

Notwithstanding anything in section 161 of the Act:

- (a) during any period when the Company is a Crown entity subsidiary, clause 7(k) applies in relation to the remuneration or other benefits of directors; and
- (b) during any period when the Company is not a Crown entity subsidiary, the amount of remuneration or other benefits payable by the Company to directors for services as a director or in any other capacity shall be determined from time to time by written notice signed by or on behalf of the majority shareholder and delivered to the address for service of the Company.

25. **While the Company is a wholly owned subsidiary, directors may act in interests of holding company**

For the purposes of section 131(2) of the Act, each director of the Company may, when exercising powers or performing duties as a director, act in a manner which he or she believes is in the best interests of the Company's holding company even though it may not be in the best interests of the Company.

26. **Directors may appoint and remove alternate directors**

(1) Every director may:

- (a) appoint any person who is not disqualified by the Act from being a director and whose appointment has been approved by the majority shareholder, to act as an alternate director in his or her place; and
- (b) remove that person from that office-

by giving written notice to that effect to the Company

(2) While acting in the place of the director who appointed him or her, the alternate director has, and may exercise and discharge, all the powers, rights, duties and privileges of that director (including the right to sign any document, including a written resolution, and to act as

chairperson, but excluding the right to appoint an alternate). He or she is also subject to the same terms and conditions of appointment as that director, except in respect of remuneration.

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

## **GENERAL**

### **27. Change of Company name**

A director may apply to the Registrar of Companies to change the name of the Company if:

- (a) the Board has approved the director doing so; and
- (b) the majority shareholder has given written approval of the change of name

### **28. Company may indemnify directors and employees for certain liabilities**

The Company is authorised to indemnify a director or employee of the Company or a related company for any liability or costs for which a director or employee may be indemnified under section 162 of the Act and section 122 of the Crown Entities Act 2004 (when read together). Subject to those provisions, the Board may determine the terms and conditions of any such indemnity.

### **29. Company may effect insurance for directors and employees**

The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company for any liability or costs for which a company may effect insurance for a director or employee under section 162 of the Act and section 123 of the Crown Entities Act 2004 (when read together). Subject to those provisions, the Board may determine the amounts and the terms and conditions of any such insurance.

### **30. Continuing directors**

The directors and chairperson of directors in office at the date of adoption of this constitution will continue in office as such until they are removed from office under clause 18 or vacate office in accordance with the Act and the Crown Entities Act 2004.

### **31. Restriction on Board's right to delegate its powers**

The Board may delegate to a committee of directors, a director, an employee of the Company or with the prior approval of the Minister of Transport any other person including any employee of NZTA) any one or more of its powers other than its powers under any of the sections of the Act set out in the second schedule to the Act.

### **32. Board delegates to comply with regulations**

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

33. **Committee Proceedings**

- (1) A committee of the Board comprising more than one person may elect a chairperson of its meetings. If no such chairperson is elected, or if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairperson of the meeting.
- (2) A committee of the Board may meet and adjourn as it thinks proper. Questions arising at any meeting of a committee comprising more than one person shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairperson of the meeting shall have a second and casting vote except when only two members are present at the meeting.
- (3) The provisions of this constitution relating to the meetings and proceedings of the Board shall, so far as not altered by any regulations made by the Board, apply also to the meetings and proceedings of any committee. The quorum of any committee shall be:
  - (a) the number of members of the committee where the committee composes not more than two members; and
  - (b) two members where the committee comprises three or more members;in both cases unless the Board specifies otherwise.

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To Dave Brash  
Cc Dave Whiteridge  
From Rebecca Gilbert  
Date 02 August 2011  
Subject New Zealand Transport Ticketing Limited

**Changes to the Draft Constitution – Please draw the following matters to the Board’s attention:**

There are a few “tidy ups” that are needed to the draft:

- Clause 33 of the draft should be deleted – board proceedings already covered in clause 19, and clause 19 is more prescriptive.
- References to section 122 and 123 of the Crown Entities Act (CEA) in clauses 28 and 29 to be deleted as those sections only apply to “statutory entities” under the CEA, and a crown entity subsidiary is not a “statutory entity” as defined in the CEA.

If the Board agree to the changes, recommendation 2(c) in the paper will need to be changed to:

“agrees to approve the draft constitution (as amended) for New Zealand Transport Ticketing Limited”.

**Crown Entity Subsidiary Companies – General Overview**

A crown entity subsidiary company is a company *and* a crown entity:

- Crown entity subsidiary companies (CESC’s) are companies ‘controlled’ by one or more crown entities. This means that the crown entity/s must have control of the composition of the board, or greater than 50% of either the shareholding, right to dividends, or voting rights (Companies Act test for ‘control’).
- As a company, the Companies Act 1993 applies to CESC’s, and their board members are directors under that Act (not the CEA).
- The CEA also applies as a CESC is also a crown entity under that Act.
- A crown entity subsidiary company is not a “crown entity company”, which is a company wholly owned by the Crown and listed in the Crown Entities Act.
- The Minister can’t give a direction to NZTTL under the CEA, but NZTA can given a direction to NZTTL, that NZTTL would be required (under the Constitution) to comply with.

**NZTTL Constitution**

- The constitution is based on the Constitution for Housing New Zealand Limited which is a crown entity subsidiary company, with Housing New Zealand Corporation as sole shareholder. Only one

other company (Hobsonville Land Company Limited, also a crown entity subsidiary of Housing New Zealand Corporation), is known to be crown entity subsidiary company.

- NZTA is responsible under the CEA to ensure its subsidiary company complies with certain requirements, which is why those requirements have been built into the constitution as requirements on NZTTL (see clause 7).

#### **Directors**

- A member of Parliament cannot be a Director (CEA)
- There is no restriction or requirement in the CEA regarding who can be a director of a crown entity subsidiary, although for the purposes of control and accountability we would suggest that the directors are people of a senior management level.
- Directors appointed and removed by written notice by the majority shareholder (NZTA)

#### **Shareholders**

- NZTA initially to be sole shareholder – further shares can only be issued with authorisation from NZTA as majority shareholder.

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**Companies Act amendments – In case you are asked questions regarding clauses in the Constitution which contract out of certain provisions in the Companies Act.**

The procedures set out for board proceedings apply, unless changed by the Constitution (s160 Companies Act). The Constitution sets out changes in the following clauses:

**Clause 10**

Section 45 stated not to apply. That section states that shares issued or proposed to be issued that rank as to voting and/or distribution rights, equally with or prior to shares already issued, must be offered for purchase to the current shareholders on terms which would maintain the existing voting and/or distribution rights of those shareholders.

**Clause 14**

Section 54 sets out the Board's power to issue shares in lieu of dividends. Clause 14 states that the Board can't do this unless the majority shareholder authorises it to do so.

**Clause 16.2**

Changes the time for the chairperson to be present at a meeting to 5 minutes (from 15 minutes in the Act), otherwise the directors choose a chairperson for the meeting. *NOTE:* The NZTA board may want to consider whether the 5 minute time period in clause 19.2 for the Chairperson to appear at a meeting, is appropriate, or should it be 15 minutes (which is what the Act specified also). The time period is probably more relevant where there are numerous directors, but not so relevant where there is only one director (which is intended for the initial set up), so the time period is probably something that can be changed later when the directorship/shareholding changes.

**Clause 16.3**

Clause 12 of the First Schedule states that if a sum due to the company in respect of a share has not been paid, that share may not be voted at a shareholders meeting. Clause 16.3 allows those shareholders to vote whether or not all sums due have been paid or not.

**Clause 16.5**

Clause 7 of the First Schedule, allows a shareholder to exercise a vote by casting a postal vote. Clause 16.5 does not allow this.

**Clause 19.2**

Clause 1 of Schedule 3 allows the directors to elect one of their number as chairperson of the Board. Clause 19.2 however, only allows the majority shareholder to elect a director as chairperson.

**Clause 19.4**

Clause 2 of the Third Schedule required notice of meetings to be posted not less than 10 days before a meeting (ie did not allow for other forms of notice, nor urgent meetings).

**Clause 23**

Section 144 allowed a director who was interested in a transaction to vote on a matter relating to the transaction, attend a meeting to which the transaction relates, sign a document, do anything else etc.

**Clause 24**

Section 161 relates to remuneration and other benefits. No changes to this, but clause 24 clarifies crown entity subsidiary requirements under the CEA.

**Clause 25**

Section 131(2) states that a director of a company that is a wholly-owned subsidiary may, when exercising powers or performing duties as a director, if expressly permitted to do so by the constitution of the company, act in a manner which he or she believes is in the best interests of that company's holding company even though it may not be in the best interests of the company. Clause 24 expressly allows the director to act in the holding company's best interests.

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