

# CONSTITUTION

## Wai Hononga Water Services Limited

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**Certified as the Constitution of Wai Hononga Water Services Limited by Steve Ruru (as the applicant for the registration of Wai Hononga Water Services Limited) by:**



**Signature – Steve Ruru**

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## WAI HONONGA WATER SERVICES LIMITED CONSTITUTION

### 1. DEFINITIONS AND INTERPRETATION

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1.1 In this Constitution, unless the context otherwise requires:

**Appointment and Remuneration of Directors of Council Organisations Policy** means the New Plymouth District Council's (Council) policy for the appointment and removal of directors of council organisations, as amended by resolution of the Council from time to time.

**Board** means Directors who number not less than the required quorum, acting together as a board of Directors.

**Board Skills Matrix** means a matrix setting out the skills which are required to be represented on the Board, by being held by one or more Directors in office, as adopted and amended from time to time by the Shareholder(s).

**Business Day** means any day (other than a Saturday, a Sunday or a public holiday) in New Plymouth, New Zealand.

**Chair** means the chair of the Board appointed in accordance with clause 10.99.

**Companies Act** means the Companies Act 1993.

**Company** means Wai Hononga Water Services Limited, a company incorporated in New Zealand.

**Constitution** means this constitution of the Company as amended from time to time in accordance with the Companies Act.

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

**Financial Year** has the meaning set out in the LG(WS) Act.

**Independent Director** means a person who is appointed as a director of the Company and who is neither:

- a) a current elected member or employee of any Local Authority that is a Shareholder; nor
- b) a current employee of any Shareholder or of the Company.

**LGA** means the Local Government Act 2002.

**LG(WS) Act** means the Local Government (Water Services) Act 2025.

**Local Authority** has the meaning set out in the LGA.

**Major Transaction** has the meaning given to that term in the Companies Act.

**Related Company** has the meaning given to that term in the Companies Act.

**Service Area** has the meaning set out in the LG(WS) Act and, as at the date of incorporating of the Company, is the New Plymouth district (within the meaning of the LGA).

**Shares** means the shares in the Company.

**Shareholder** means any person for the time being registered in the Company's share register as the holder of one or more Shares in the Company.

**Statement of Expectations** has the meaning given to it in LG(WS) Act.

**Subsidiary** has the meaning given to that term in the Companies Act.

**Water Organisation** has the meaning given to it in the LG(WS) Act.

**Water Services** has the meaning given to it in the LG(WS) Act.

**Water Services Annual Budget** has the meaning given to it in the LG(WS) Act.

**Water Services Annual Report** has the meaning given to it in the LG(WS) Act.

**Water Services Half-yearly Report** has the meaning given to it in the LG(WS) Act.

**Water Services Strategy** has the meaning given to it in the LG(WS) Act.

1.2 **Interpretation:** In this Constitution, the following rules of interpretation apply, unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) words in this Constitution have the same meaning as in the Companies Act;
- (e) a reference to a party, person or entity includes:
  - (i) an individual, firm, company, trust, partnership, joint venture, association, corporation, body corporate, estate, state, government or any agency thereof, municipal or local authority

and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and

- (ii) an employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person, entity;
- (f) a reference to a clause or schedule is to a clause or schedule of this Constitution (and each schedule forms part of this Constitution);
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) references to the word 'include' or 'including' are to be construed without limitation;
- (i) a reference to any form of law is to New Zealand law, including as amended or re-enacted;
- (j) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (k) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (l) any obligation falling due for performance on or by a day other than a Business Day will be performed on or by the Business Day immediately following that day; and
- (m) an obligation not to do something includes an obligation not to allow or cause that thing to be done.

**1.3 Conflict:** If there is any conflict:

- (a) between a provision in this Constitution and a mandatory provision in the Companies Act, the LG(WS) Act or the LGA, then the mandatory provision in the Companies Act, the LG(WS) Act or the LGA will prevail; or
- (b) between:
  - (i) a provision in this Constitution and a provision in the Companies Act which is expressly permitted to be altered by this Constitution; or
  - (ii) a word or expression defined or explained in the Companies Act and a word or expression defined or explained in this Constitution,

then the provision, word or expression in this Constitution will prevail.

## **2. WATER ORGANISATION REQUIREMENTS**

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2.1 **Purpose:** As at the date of its incorporation, the Company is a Water Organisation in terms of section 44 of the LG(WS) Act.

2.2 **Business of the Company:** The Company must not carry on any business other than the provision of, or preparation for the provision of, Water Services in the Service Area and activities that are related to, or necessary for, the provision of, or preparation for the provision of, Water Services in the Service Area, in accordance with the objectives set out in section 17 of the LG(WS) Act.

2.3 **Obligations:** The Company must comply with:

- (a) its obligations under the LGA and LG(WS) Act, including preparing, adopting and publishing its Water Services Strategy, Water Services Annual Budget, Water Services Half-yearly Report and Water Services Annual Report;
- (b) all applicable statutory and regulatory obligations relating to Māori and the Te Tiriti o Waitangi, including those set out in the LGA and LG(WS) Act; and
- (c) Parts 1 – 7 of the Local Government Official Information and Meetings Act 1987.

2.4 **Shareholder Input:**

- (a) A Shareholder is entitled to comment on the Company's draft Water Services Strategy and draft Water Services Annual Budget, and the Company must consider those comments. However, Shareholders will not have the power to require changes or approve the final Water Services Strategy or final Water Services Annual Budget.
- (b) Where a Shareholder raises serious concerns relating to service delivery, public health or safety, regulatory compliance, financial sustainability or consistency with the Statement of Expectations, the Board must explain to Shareholders in writing, how those concerns have been addressed or managed and provide further information or assurance if requested.
- (c) The Company must also seek input from other stakeholders as appropriate, including the Commerce Commission and Taumata Arowai (the Water Regulator), and must consider and act on that input as required.

2.5 **Financial Obligations:** The Company must, while it is a Water Services Provider, act in accordance with the following financial obligations:

- (a) the Company must spend the revenue it receives from, and funding it receives for, providing Water Services on the Water Services it provides (including on maintenance, improvements, infrastructure renewal, servicing debt relating to the Water Services it provides, and providing for growth);
- (b) the Company must ensure that the revenue and funding it applies to providing Water Services is sufficient to sustain the Company's long-term investment in its water services while meeting all regulatory requirements;
- (c) the Company's revenue and funding (including from charges), expenses, and dividends (if applicable) must be transparent to the public; and
- (d) the Company must be accountable to Shareholders for its revenue, funding, and expenses.

**2.6 Use and Ownership of Assets:** The Company must not:

- (a) use any of the assets of its Water Services networks as security for any purpose; or
- (b) transfer the ownership of its Water Services infrastructure or of any other interest in a Water Service to any third party,

except to the extent permitted by the LG(WS) Act.

**2.7 Statement of Expectations:** The Board must ensure that the Company gives effect to and carries out its objectives in a manner which is consistent with the Statement of Expectations provided to it by its Shareholder(s).

### **3. REPORTING REQUIREMENTS**

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**3.1 Reporting:** Subject to clause 3.2, the Board must:

- (a) Within 8 months after the start of each Financial Year, prepare, adopt, and deliver to each Shareholder a Water Services Half-yearly Report under section 248 of the LG(WS) Act, and must publish such report in accordance with section 223 of the LG(WS) Act;
- (b) Within 3 months after the end of each Financial Year, prepare, adopt, and deliver to each Shareholder a Water Services Annual Report under the Companies Act and section 246 of the LG(WS) Act, and must publish such report in accordance with section 223 of the LG(WS) Act,

and the Board must prepare any additional reports requested in a written notice given by any Shareholder, provided such notice complies with section 249(4) of the LG(WS) Act.

3.2 **Exempt Information:** The reports referred to in clause 3.1 need not include information lawfully withheld under the Local Government Official Information and Meetings Act 1987.

#### 4. SHARES

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4.1 **Initial Shares on Issue:** All Shares at the time of incorporation of the Company will be fully paid, ordinary shares which are equal ranking in all respects.

4.2 **Pre-emptive Rights:** Section 45 of the Companies Act does not apply to the Company.

4.3 **Issue of Shares:** The Board may issue Shares only with the prior approval of the Shareholder and in accordance with this Constitution and the LG(W.S) Act.

4.4 **Transfer of Shares:** No Shares may be transferred to any person without the prior approval of the Shareholder.

4.5 **Shareholder Meetings:** Each Shareholder has the right to receive notice of and attend every meeting of the Shareholders.

4.6 **Rights Attaching to Shares:** Subject to the terms of issue of any Share, each Share confers on the holder the right to:

- (a) one vote on a poll at a meeting of the Shareholders on any resolution, including any resolution to:
  - (i) appoint or remove a Director;
  - (ii) adopt a constitution;
  - (iii) alter the Company's constitution;
  - (iv) approve a Major Transaction;
  - (v) approve an amalgamation of the Company under section 221 of the Companies Act; or
  - (vi) put the Company into liquidation; and
- (b) an equal share in the distribution of the surplus assets of the Company.

4.7 **Types of Shares:** Subject to this Constitution and the written approval of the Shareholder(s) (other than in the case of the initial issue under clause 4.1), the Board may:

- (a) issue Shares at any time to any Shareholder and in any number;
- (b) issue Shares in different classes which have different rights; and

- (c) divide existing Shares into different classes which have different rights.

## 5. CALLS ON SHARES

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- 5.1 **Company May Make Calls:** The Company may from time to time make such calls as it thinks fit on any Shareholder in respect of any amount unpaid on its Shares and not, by the conditions of issue, made payable at a fixed time or times. The Shareholder must, subject to receiving at least 14 days' written notice specifying the time or times of payment, pay to the Company at the time or times so specified any amount so called. A call may be revoked or postponed as the Company may determine. The Shareholder will be liable to pay, in accordance with the relevant notice, every call and will remain liable to do so notwithstanding the subsequent transfer of the relevant Shares.
- 5.2 **Terms of Issue:** Money payable in accordance with the terms of issue of a Share will be deemed to be a call made and payable in accordance with the terms of issue.
- 5.3 **Interest:** If an amount called in respect of a Share is not paid before or at the time appointed for payment, the person from whom the amount is due must pay:
  - (a) interest on that amount from the time appointed for payment to the time of actual payment at such rate as the Company, acting reasonably, may determine; and
  - (b) all expenses which the Company has incurred or may incur because of non-payment.

The Company may waive payment of any such interest wholly or in part.

## 6. SUSPENSION OF RIGHT TO DISTRIBUTIONS, LIEN AND FORFEITURE

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- 6.1 **Suspension of Distributions:** If a Shareholder has defaulted in paying any money due to the Company, the Board may suspend payment of any distribution to the Shareholder until the default is remedied.
- 6.2 **Satisfaction of Money Due:** The Company may apply any such suspended payment in full or part satisfaction of the money due by the Shareholder to the Company.
- 6.3 **Liability Not Extinguished:** A Shareholder's liability for all money owing under a call made under clause 5 is not extinguished by a transfer of the Share in respect of which the money is owed.
- 6.4 **Lien:** The Company has a first lien on (and on the proceeds of sale and all distributions declared in respect of) every Share registered in the name of a Shareholder, for:

- (a) all money payable to the Company by the Shareholder in respect of that Share;
- (b) all other money payable by the Shareholder to the Company; and
- (c) any money the Company may be required to pay under any statute or regulation in respect that Share or the Shareholder,

whether or not the time for the payment has arrived.

6.5 **Company May Sell Shares:** The Company may sell any Share on which the Company has a lien. The Company may not make such a sale:

- (a) unless money in respect of which the lien exists is due for payment; and
- (b) until it has given notice to the registered Shareholder requiring payment of the money in respect of which the lien exists within 20 Business Days of the notice.

6.6 **Director's Certificate:** A certificate signed by a Director stating that the power of sale in clause 5 has arisen and is exercisable by the Company is conclusive evidence of the facts stated in the certificate.

6.7 **Authority to Complete Transfer:** The Board may authorise any person to complete a transfer of Shares to a purchaser to give effect to any sale under clause 6.5.

## 7. DISTRIBUTIONS

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7.1 The Company must not pay any dividend or distribute any surplus in any way, directly or indirectly, to the Shareholder.

## 8. COMPANY ACQUIRING ITS OWN SHARES

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8.1 With the prior written approval of the Shareholder, the Company may acquire its own Shares and any Shares so acquired will be deemed to be cancelled immediately on acquisition.

## 9. SHAREHOLDER MEETINGS

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9.1 **Annual Meeting:** The Board must hold an annual Shareholder meeting in accordance with section 120 of the Companies Act unless, in the case of any annual meeting, everything required to be done at that meeting (whether by way of resolution or otherwise) is done by written resolution in accordance with section 122 of the Companies Act.

9.2 **Special Meetings:** A special Shareholder meeting:

- (a) may be called at any time by the Board; and
- (b) must be called by the Board on the written request of the Shareholder.

9.3 **Proceedings at Shareholder Meetings:** The provisions of Schedule 1 of the Companies Act, as modified by this Constitution, govern proceedings at Shareholder meetings.

## 10. DIRECTORS

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10.1 **Independent Directors:** All Directors must be Independent Directors.

10.2 **Number of Directors:** The maximum number of Directors will be six, and from the date the Company becomes a Water Services provider within the meaning of LG(WS) Act, the minimum number of Directors will be three.

10.3 **Board Purpose:** The Board is responsible for the strategic governance, oversight, and stewardship of Water Service delivery in accordance with the expectations of the Shareholder and the legislative framework under the LG(WS) Act.

10.4 **Best Interests:** A Director, when exercising powers or performing duties in his or her capacity as a Director, must act in a manner which that Director believes to be in the best interests of the Company and consistent with section 59 of the LGA.

10.5 **Appointment and Removal of Directors:**

- (a) **By Shareholder:** The Shareholder may appoint, remove or replace any Director at any time by resolution in accordance with the Appointment and Remuneration of Directors of Council Organisations Policy and by notice in writing to the Company.
- (b) **By Board:** The Board may appoint any person to be a Director to fill a temporary vacancy in (and only in) circumstances where the number of Directors falls below the minimum number set out in clause 10.2. This can be at any time during a three-month period prior to the next annual general meeting (but not otherwise). Subject to their earlier resignation, retirement, disqualification or removal in accordance with this Constitution, any Director appointed under this clause 10.5(b) will cease to hold office at the commencement of the next annual meeting of the Company or at the next special meeting of the Company, whichever is earlier.
- (c) **Removal:** Every Director will hold office subject to the provisions of this Constitution and may at any time be removed by the Shareholder(s) under clause 10.5(a). Section 156 of the Companies Act will not apply to the Company.

10.6 **Skills of Directors:** The Shareholder(s) will ensure that each Director is appointed on the basis of their competency to perform the role, and so that the Board collectively has an appropriate mix of skills, knowledge, and experience in relation to providing Water Services, with the aim of ensuring that the Board as a whole has the skills required by the Board Skills Matrix.

10.7 **Term of Appointment:**

- (a) Each Director will be appointed for a **Term** which is no longer than 3 years, provided however the Directors appointed at the time of incorporation of the Company will be appointed for a Term as agreed in writing with the Shareholder(s).
- (b) A Director may be reappointed at the expiry of their Term, provided that no Director may be appointed for more than 3 consecutive Terms.

10.8 **Tenure of Office:** Each Director will hold office as such until they:

- (a) resign by written notice to the Company. The notice is to be effective when it is received by the Company or at a later time specified in the notice;
- (b) are removed from office in accordance with clause 10.5;
- (c) become disqualified from being a Director pursuant to section 151 of the Companies Act; or
- (d) die.

10.9 **Appointment of Chair:**

- (a) The Shareholder must appoint a Chair.
- (b) The Chair will hold office until:
  - (i) they cease to be a Director of the Company; or
  - (ii) a new Chair is appointed by the Shareholder.

10.10 **Indemnity and Insurance of Directors and Employees:** The Company may indemnify and effect insurance for any Director and for any employee of the Company in accordance with section 162 of the Companies Act, provided that the Board may impose any conditions in relation to any indemnity or insurance if the conditions do not contravene the Companies Act.

For the purposes of this clause 10.10 "Director" includes any former Director, "employee" includes any former employee of the Company and "Company" includes any related company.

10.11 **Disqualification of Directors:** A person will be disqualified from holding the office of Director if they are or become disqualified from being a Director under any provision of the Companies Act, LGA or the LG(WS) Act.

10.12 **Remuneration of Directors:**

- (a) The Shareholder(s) will determine the remuneration of the Board each year and the Board may not exercise any of its powers under section 161 of the Companies Act without the written approval of the Shareholder(s).
- (b) The Board may authorise the reimbursement by the Company of reasonable travelling, hotel and other expenses incurred by any Director in attending any Board meeting, Shareholder meeting or in relation to any other Company matters.

## 11. PROCEEDINGS OF THE BOARD

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11.1 **Board Proceedings:** The provisions of Schedule 3 of the Companies Act as modified by this Constitution, including the rules set out in Schedule 1 of this Constitution, govern proceedings of the Board.

11.2 **Disclosure of Interests:** A Director must disclose particulars of any interest which he or she has in a transaction or proposed transaction of the Company in accordance with section 140 of the Companies Act.

11.3 **Interested Directors:** A Director who is interested in a transaction entered into, or to be entered into, by the Company must not do any of the following:

- (a) sign a document relating to that transaction on behalf of the Company; or
- (b) do any other thing in his or her capacity as a Director in relation to that transaction,

provided that a Director may vote, sign documents and otherwise do any other thing in his or her capacity as a Director with regard to any matter relating to the following:

- (c) any payment or other benefit of the type referred to in section 161 of the Companies Act where this has been approved or authorised in accordance with clause 10.12;
- (d) the entry into an indemnity or insurance arrangement in respect of that Director in his or her capacity as a director of the Company in accordance with clause 10.10; or
- (e) transactions in which a Director is interested solely in their capacity as a director of a Subsidiary of the Company.

- 11.4 **Quorum:** No prohibition under clause 11.3 will prevent the attendance of a Director at a Board meeting from counting for quorum purposes.

## **12. NOTICES**

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- 12.1 **Service:** Notices may be served by the Company on any Director or Shareholder, either by personal delivery or by email to the email address of such Director or Shareholder.
- 12.2 **Service by Email:** A notice served by email will be deemed to have been served on the day following completion of its transmission or, if such day is not a Business Day in the place of intended receipt, then on the next Business Day at that place. In proving service by email, it will be sufficient to prove confirmation of delivery to the recipient's email address from the transmitting system.

## **13. LIQUIDATION**

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- 13.1 **Distribution of Surplus Assets:** Subject to clause 13.2, on the liquidation of the Company, the assets, if any, remaining after payment of the debts and liabilities of the Company and the costs of winding up will be distributed to the Shareholder.
- 13.2 **Distribution in Specie:** On a liquidation of the Company, the liquidator, with the approval of the Shareholder and subject to any other sanction required by law, may distribute some or all of the assets of the Company in specie to the Shareholder.

## **14. METHODS OF CONTRACTING**

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- 14.1 A deed which is to be entered into by the Company may be signed on behalf of the Company by:
- (a) two or more Directors;
  - (b) a Director, and any person authorised by the Board, whose signatures must be witnessed; or
  - (c) one or more attorneys appointed by the Company.

## **15. AUDITOR**

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- 15.1 The Auditor-General will be the auditor of the Company in accordance with the LG(WS) Act. In accordance with the LGA or the LG(WS) Act (as applicable), the Company's or annual report will contain a copy of the Auditor-General's audit report.

**16. INFORMATION**

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16.1 Parts 1 to 7 of the Local Government Official Information and Meetings Act 1987 apply to the Company while it is a Water Organisation.

16.2 The Ombudsman Act 1975 applies to the Company while it is a Water Organisation.

**17. AMENDMENT**

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17.1 This Constitution may only be amended by special resolution of the Shareholder(s).

# SCHEDULE 1

## Board Proceedings

### 1. NOTICE OF MEETING

- 1.1 A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with this clause.
- 1.2 At least seven Business Days' notice of a meeting of the Board must be given to every Director who is in New Zealand or, if not in New Zealand, is readily contactable by the Company. The notice must include the date, time and place of the meeting and the matters to be discussed.
- 1.3 An irregularity in the notice of the meeting is waived if all Directors attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- 1.4 The notice of meeting must be a written notice delivered to the Director, or sent to the postal or email address which the Director provides to the Company for that purpose, or if a postal or email address is not provided, then the written notice must be sent to their last place of residence known to the Company.

### 2. METHOD OF HOLDING MEETINGS

A meeting of the Board may be held in any of the following ways:

- 2.1 **Physical Meeting:** by a number of the Directors who constitute a quorum being assembled together at the place, date and time appointed for the meeting;
- 2.2 **Other Means:** by means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting; or
- 2.3 **Combination:** a combination of 2.1 and 2.2.

### 3. QUORUM

- 3.1 At any meeting of Directors:
- (a) a quorum will only be present if at least a majority of Directors are present; and
  - (b) any resolution, unless otherwise specified in this Constitution, will be passed if a majority of the votes cast on it are in favour of it.

- 3.2 If a quorum is not present within 30 minutes of the scheduled start time of the Board meeting, the Chair can decide to adjourn the meeting to the same day and time of the following week, or to another date, time, and place. No business can be conducted if a quorum is not present.

#### **4. VOTING**

- 4.1 Every Director has one vote.
- 4.2 The Chair does not have a casting vote.
- 4.3 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 it.
- 4.4 A Director who abstains from voting is not presumed to have voted in favour of the relevant resolution of the Board.

#### **5. MINUTES**

- 5.1 The Board will ensure that minutes are kept of all proceedings at meetings of the Board.

#### **6. RESOLUTIONS**

- 6.1 A resolution in writing and signed or assented to by all Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 6.2 A copy of every Directors' resolution must be entered in the minute book of Board proceedings.

#### **7. OTHER PROCEEDINGS**

Subject to any contrary provision in this Constitution and to any contrary rule of law, the Board may regulate its own proceedings.