

Reference: 20160209



3 August 2016

Alex Harris

fyi-request-4131-504581ff@requests.fyi.org.nz

Dear Alex Harris

Thank you for your request made under the Official Information Act, received on 10 June 2016. You requested:

Treasury Report "Otago Ltd - Amendment to Constitution" (May 2016)

On 8 July 2016 I wrote to you to extend the time limit for deciding on your request by an additional 20 working days.

Please find enclosed the following document:

Item	Date	Document Description	Decision
1.	18 May 2016	Treasury Report: Otago Ltd - Amendment to Constitution	Release in part

I have decided to release the document listed above, subject to information being withheld under one or more of the following sections of the Official Information Act, as applicable:

- section 9(2)(a) - *to protect the privacy of natural persons, including that of deceased natural persons;*
- section 9(2)(g)(i) – *to maintain the effective conduct of public affairs through the free and frank expression of opinions.*

In making my decision, I have considered the public interest considerations in section 9(1) of the Official Information Act.

This fully covers the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely



Angela Graham
Manager, Commercial Operations

1 The Terrace
PO Box 3724
Wellington 6140
New Zealand
tel. 64-4-472 2733
fax. 64-4-473 0982
www.treasury.govt.nz

Treasury Report: Ōtākaro Ltd - Amendment to Constitution

Date:	18 May 2016	Report No:	T2016/901
		File Number:	CM-1-3-118

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Bill English)	Agree to amend Ōtākaro's constitution and sign attached Shareholders' Resolution	Monday, 23 May 2016
Minister supporting Greater Christchurch Regeneration (Hon Gerry Brownlee)	Agree to amend Ōtākaro's constitution and sign attached Shareholders' Resolution	Monday, 23 May 2016

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
s9(2)(g)(i)	Analyst, Commercial Operations - Commercial Advice	s9(2)(g)(i)	s9(2)(a) ✓
Angela Graham	Manager, Commercial Operations - Commercial Advice	04 917 6115 (wk)	

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury. Please scan and return the Shareholders' Resolution to Treasury as soon as possible after signing, in order that Ōtākaro Ltd can file the resolution with the Companies Office within the statutory timeframe.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

Treasury Report: Ōtākaro Ltd - Amendment to Constitution

Purpose of Report

1. This report recommends a number of amendments to Ōtākaro Ltd's constitution. This proposal requires the approval of shareholders, through the signing of the attached Shareholders' Resolution.
2. We propose amending the purpose statement to more accurately reflect the purpose of the company as outlined in Cabinet paper "Incorporation and Initial Funding Arrangements for Ōtākaro" [CAB-16-MIN-0034 refers].
3. In addition, Ōtākaro Ltd has requested the requirements for minute taking be amended to only require the minutes from Board meetings to be in short-form, as opposed to long-form format. This is consistent with standard commercial practice, and Treasury supports the change.

Analysis

4. Ōtākaro was incorporated on 17 February 2016. Due to time constraints, there was little time available for an in-depth discussion of the constitution with the company directors prior to incorporation and they asked for the opportunity to provide feedback on some clauses as time permitted.
5. In particular, clause 3.1 of the Constitution currently states the purpose of the company as follows:

"The purpose of the Company is to deliver Anchor Projects in a manner that is not inconsistent with any Recovery Plan or Regeneration Plan, and to acquire, manage and divest the Crown's assets associated with the Anchor Projects (including Crown Land) over a timeframe agreed from time to time with the Shareholding Ministers, with the objective of achieving a commercial return for the Crown."
6. Directors are concerned that the purpose clause gives the company a solely commercial objective. They consider that the purpose clause should acknowledge that Ōtākaro Ltd is a mixed-objectives company with both commercial and regeneration objectives.
7. The company is undertaking anchor projects that contribute to the regeneration of Christchurch which might not otherwise be justifiable with a narrow commercial focus. It also has land adjacent to these projects which can be divested to generate commercial returns and/or to further contribute to recovery and regeneration objectives.
8. We consider that a modified purpose statement would be both consistent with shareholding Ministers' and Cabinet's expectations, and with Ōtākaro directors' understanding of the company's purpose when they are being appointed.
9. The challenge for board members and shareholding Ministers will be to reach a common view on what is the appropriate balance between commercial and regeneration objectives. This will require ongoing dialogue and clear communication of expectations from shareholding Ministers.

IN-CONFIDENCE

10. Directors have also sought a change to clause 15.14, which currently states that:

"The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of the Board."

11. Directors have stated they are concerned that "full and accurate" might imply they are required to transcribe their meetings in full. They have suggested an amendment which would allow the recording of minutes to be based on the length and content of the board meeting. This is consistent with standard commercial practice, and Treasury supports the change.

12. There are two further amendments proposed, which update references to specific legislation. These are noted below.

13. In order to amend Ōtākaro Ltd's company constitution, the approval of shareholders by way of Special Resolution is required (attached).

14. The full text proposed changes is set out below:

- deleting clause 3.1, the words

"The purpose of the Company is to deliver Anchor Projects in a manner that is not inconsistent with any Recovery Plan or Regeneration Plan, and to acquire, manage and divest the Crown's assets associated with the Anchor Projects (including Crown Land) over a timeframe agreed from time to time with the Shareholding Ministers, with the objective of achieving a commercial return for the Crown"

and replacing with the words

"The purpose of the Company is to add value to Anchor Projects and Crown Land in a manner which balances a desire to achieve good commercial outcomes against the Crown's regeneration objectives, and support the Crown's exit over time on favourable terms".

- deleting clause 15.14, the words "full and accurate" and "all", adding to clause 15.14, the words "and that a record is kept of all written resolutions of Directors" and "unless they are shown to be inaccurate".
 - remove the definition of "Greater Christchurch Regeneration Legislation" in clause 1.1:
 - replace the words "Greater Christchurch Regeneration Legislation" in the definition of "Recovery Plan" and "Regeneration Plan" in clause 1.1 with the words "Greater Christchurch Regeneration Act 2016":
 - deleting clause 3.2 (a), the words "from the date on which an Order in Council made under section 3AB of that Act amending Schedule 4A of that Act by adding the name of the Company to Schedule 4A of that Act takes effect".
15. Treasury's Legal team has reviewed the Shareholder Resolution and amended constitution and confirmed that these comply with relevant legislation.

IN-CONFIDENCE

16. The Companies Act 1993 provides a legislative timeframe for advising the Registrar of any alterations to a company's constitution. The directors of the company are responsible for advising the Registrar within 10 working days of adopting a new constitution, which will effectively occur when shareholding Ministers sign the Shareholders' Resolution. Therefore, we request that Ministers' offices scan and return the Shareholders' Resolution to Treasury as soon as possible after signing, in order to assist the directors to meet their legislative duties. Both shareholding Ministers should sign the same Shareholders' Resolution document.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Recommended Action

We recommend that you:

- a **agree** to amend the purpose statement of Ōtākaro's constitution to better reflect the mixed objectives purpose of the company, while still aiming to achieve good commercial outcomes for the Crown, as follows:

"The purpose of the Company is to add value to Anchor Projects and Crown Land in a manner which balances a desire to achieve good commercial outcomes against the Crown's regeneration objectives, and support the Crown's exit over time on favourable terms".

Agree/disagree.
Minister of Finance

Agree/disagree.
Minister Supporting Greater
Christchurch Regeneration

- b **agree** to amend clause 15.14 so that the board is not required to take long form minutes

Agree/disagree.
Minister of Finance

Agree/disagree.
Minister Supporting Greater
Christchurch Regeneration

- c **note** that changes to the constitution require the consent of shareholders, and

- d **agree** to sign the attached Shareholders' Resolution, authorising the changes to Ōtākaro's company constitution.

Agree/disagree.
Minister of Finance

Agree/disagree.
Minister Supporting Greater
Christchurch Regeneration

Angela Graham
Manager, Commercial Operations - Commercial Advice

Hon Bill English
Minister of Finance

Hon Gerry Brownlee
Minister supporting Greater Christchurch Regeneration

ŌTĀKARO LIMITED
(the Company)

SPECIAL RESOLUTION OF THE SHAREHOLDERS OF THE COMPANY
(Pursuant to clause 9.3(a) of the Company's constitution and section 32(2) of the Companies Act 1993)

NOTED

The Shareholders of the Company propose to amend aspects of the Company's constitution.

RESOLVED

It is hereby resolved as a special resolution in writing:

1. **THAT**, on and from the date of this resolution, the following amendments be made to the Company's constitution:

1.1 remove the definition of "Greater Christchurch Regeneration Legislation" in clause 1.1:

1.2 replace the words "Greater Christchurch Regeneration Legislation" in the definition of "Recovery Plan" and "Regeneration Plan" in clause 1.1 with the words "Greater Christchurch Regeneration Act 2016":

1.3 replace the text under the heading to clause 3.1 (and before the heading to clause 3.2) with the following:

"The purpose of the Company is to add value to Anchor Projects and Crown Land in a manner that balances a desire to achieve good commercial outcomes against the Crown's regeneration objectives, and support the Crown's exit over time on favourable terms."

1.4 delete from clause 3.2(a) the following: "from the date on which an Order in Council made under section 3AB of that Act amending Schedule 4A of that Act by adding the name of the Company to Schedule 4A of that Act takes effect":

1.5 replace the under the heading to clause 15.14 (and before the heading to clause 15.15) with the following:

"The Board must ensure that minutes are kept of proceedings at meetings of the Board and that a record is kept of all written resolutions of Directors. Minutes of proceedings of the Board that have been signed correct by the Chairperson are prima facie evidence of the proceedings unless they are shown to be inaccurate."

2. THAT the directors of the Company and their delegates be severally authorised to execute any such document and to do or cause to be done all such further acts and things necessary to give effect to the foregoing resolution and to comply with section 32(3) of the Companies Act 1993

DATED

2016

SIGNED by all the shareholders of the Company

Minister of Finance
Hon Simon William English

Minister Supporting Greater
Christchurch Regeneration
Hon Gerard Anthony Brownlee

RELEASED UNDER THE
OFFICIAL INFORMATION ACT