

Proposed CONSTITUTION of Phytos Inc
(replacing in its entirety the constitution of STIMBR)

1 NAME OF THE ORGANISATION

- 1.1 The full name of the organisation will be **Phytos Incorporated** (“Phytos” or “the Society” elsewhere in this constitution).

2 OBJECTS

- 2.1 The objects of the Society are to lead, promote, support and co-ordinate initiatives aimed at developing, maintaining and enhancing world-leading phytosanitary market access solutions for sustainable wood fibre.
- 2.2 In furtherance of these objects the Society may:
- 2.2.1 Commission, co-ordinate, promote and publish research consistent with the objects of the Society
 - 2.2.2 Communicate with government, industry and the wider public as to the unique needs of New Zealand’s situation regarding the required phytosanitary treatments to ensure our ongoing ability to trade in forest products and specifically export logs.
 - 2.2.3 Act as a forum for the discussion of stakeholder interests and activities.
 - 2.2.4 Seek funding to support its objectives.
 - 2.2.5 Undertake any other activities which are considered to be in the interests of the Society and may further achievement of its objects.

3 MEMBERSHIP

- 3.1 Membership of the Society will comprise persons (whether individual or corporate) who are either levy payers or related entities, as those terms are defined in clause 3.2(a) and (b) respectively.
- 3.2 (a) **Levy payers** are log exporters who become members or retain membership by payment of a voluntary levy to the Society based on the volume of logs exported at a frequency determined by the Board. The mechanism for determining the levy amount payable (expressed as a multiplier of the export volume in \$/Tonne) is to be determined by the

Board and approved at the AGM. Any change in the levy rate will commence at the beginning of the calendar month following the AGM.

- (b) **Related entities** means any member of the NZ Forest Owners Association, the Farm Forestry Association as a corporate entity, a Maori Forestry Association as a corporate entity, and any forest owner that seeks membership and is approved by the Board. Related entities will pay a subscription annually, at a level to be set by the Board from time to time, and approved at the AGM in respect of the financial year in which the AGM is held. For clarity, if a forest owner also acts as an exporter they will be a member through clause 3.2 (a) – a levy payer.
- 3.3 Each member (whether a levy payer or a related entity member) shall be entitled to one vote in any general meeting, to be exercised by the representative or proxy notified under clause 7.1. Others who belong to or are employed by a member in good standing may attend general meetings but will not be entitled to a vote.
- 3.4 The Chair will determine the extent to which any non-voting individual may be extended speaking rights at a general meeting.
- 3.5 The membership year of Phytos shall be its financial year, which begins on 1 July of each calendar year.
- 3.6 If a member fails to pay any levy or subscription within 3 months of the due date its representative will not be entitled to vote at any general meeting of the Society and if its representative holds office in Phytos or is a member of a committee that representative will be ineligible to participate in the affairs of Phytos while the member's levies are overdue.
- 3.7 Membership may be cancelled by the Board in any instance where a member fails to pay the levy or subscription within 4 months of the due date.
- 3.8 Membership may be cancelled by the Board where the Board, after appropriate investigation (including providing the member an opportunity to respond to any allegation) believes that the member has brought Phytos into disrepute or where their behaviour does not support the aims of Phytos. No refund of levies or subscriptions will be paid in these circumstances.
- 3.9 A non-exclusive list of examples of behaviour that may lead to membership being cancelled would include:
 - (a) The proven or substantiated influencing of a decision affecting personal benefit in contravention of clause 17.

- (b) The unreported declaration of a conflict of interest in contravention of clause 11 that materially affected or could affect the objectives/outcome of a decision-making process or the financial situation of Phytos.
 - (c) Breach of any confidentiality agreement.
 - (d) Being unable to register, struck off or declined registration in the Government "Forests (Log Traders And Forestry Advisors) Amendment Act 2020".
- 3.10 A member may resign from membership at any time by notice to the Secretary/Treasurer but this shall not excuse payment of any levy that has become payable before the date of the receipt of the notice.

4 ANNUAL GENERAL MEETING

- 4.1 The Annual General Meeting shall be held no earlier than 1 September or later than 30 November in every year. Notice of the meeting and papers related to the business of the meeting shall be sent to all members at least three weeks prior to the date set.
- 4.2 All financial members of Phytos shall be eligible to attend the Annual General Meeting.
- 4.3 Subject to Clause 3.3, observers may attend the Annual General Meeting at the discretion of the Chair.

5 CONDUCT OF THE ANNUAL GENERAL MEETING

- 5.1 The Chair, or a person designated by the Chair, shall chair the Annual General Meeting (AGM).
- 5.2 The quorum shall be 5 levy paying members whose levies are up to date and no fewer than 20% related entity members whose subscriptions are paid at the date of the AGM. The amount payable to retain currency of membership to satisfy this clause is that derived from the formula, or (in the case of related entities) approved as the subscription, by the previous AGM, since the present AGM may approve adjusted levies and subscription applicable to the financial year in which the AGM is being held.
- 5.3 Proposals relating to changes in policy, membership, or the constitution may be given effect by a simple majority of the members attending the Annual General Meeting provided all such proposals are circulated with the notice of meeting.

- 5.4 Every motion properly put to the meeting shall be decided in the first instance by the person holding the chair on the voices or, if the motion has been circulated prior, on the votes of attendees and any proxy votes properly authenticated. If, after any motion has been put, the chair considers it desirable, or a member present calls for the motion to be decided by ballot, and not less than 10 members entitled to vote on the motion agree that the motion be decided by a ballot, a ballot shall be taken on the motion.
- 5.5 Any ballot will engage the vote weighing procedures as determined by participating members only and as set out in this clause.
- (a) Each levy paying member entitled to vote and voting will have **the proportion of votes of all levy paying members voting on that particular ballot** determined by the volume of logs exported by that member in the year ending 30 June of the year in which the AGM is held, as a proportion of total New Zealand export log volume in the same period (figures to be provided to the Board by the financial controller of the NZ Forest Owners Association no less than one clear month in advance of the AGM and circulated to all levy paying members with meeting papers).
- (b) Each related entity member entitled to vote and voting will have **the proportion of votes of all related entity members voting on that particular ballot** determined by the number of commercial hectares in New Zealand managed by that member in the 12 months ending 30 June of the year in which the AGM is held, as a proportion of the total number of commercial hectares under management in New Zealand for the same period (figures to be provided to the Board by the financial controller of the Forest Owners Association no less than one clear month in advance of the AGM and circulated to all related entity members with meeting papers, using the NZ Forest Owners Association Statistics). If a related entity is not a manager/owner of a commercial forest then they shall have the proportion of votes of all related entity members voting on that particular ballot by number of such members, ie, if 7 related entity members cast a vote in the ballot, a non-manager member will have 1/7 of the total vote, the other related entity members' vote pool to be reduced proportionately as necessary.
- 5.6 Business to be conducted at the Annual General Meeting shall include:
- (a) Consideration of the Chair's report on the activities of Phytos in the previous financial year;
- (b) Consideration of the financial statements of Phytos for the previous financial year;

- (c) Election of officers for the subsequent year to the next AGM or SGM, (such appointments to be for a period of one year);
- (d) Appointment of independent accountant to review the accounts for the current financial year;
- (e) Establishment of the level of levy and subscription for the current year, to take effect after approval at the AGM;
- (f) Consideration of other such matters as have previously been circulated to all members of Phytos in accordance with clause 4.1;
- (g) Such other business as may normally be expected to be conducted at an Annual General Meeting.

5.7 An Annual General Meeting may be held at the discretion of the Board utilising remote access technology (either in conjunction with, or replacing, in-person attendance) with such procedural adjustments as may be appropriate to ensure that the membership is adequately able to be heard and voting recorded accurately. Proxies may be engaged and certain matters made the subject of written confirmation by email or electronic voting also at the discretion of the Board but so that all members entitled to participate shall have adequate notice of the procedures (these to be circulated with the notice of meeting) and be able to participate.

5.8 If a quorum is not reached within 30 minutes of the designated date and time for the Annual General Meeting or if the meeting becomes inquorate for any reason it must be reconvened within 10 working days of the designated original date, by notice to all members, notice being given not later than 2 working days before the date of the reconvened AGM. The reconvened AGM if properly notified may be completed provided the Chair and at least 5 members are present.

6 SPECIAL GENERAL MEETINGS

6.1 Special General Meetings of Phytos may be called by the Board and held at such time and place as the Board determines for the purpose of considering, and if necessary, taking action with reference to any motion or business of which due notice has been given which may include election of replacement officers if a vacancy has occurred; changing the rules of Phytos; determining or ratifying levies or fees.

6.2 A Special General Meeting shall be convened and held without delay other than the necessary time required to arrange and notify the meeting in terms of this

constitution if not less than 25% of financial members so require by signed requisition delivered to the Secretary/Treasurer and stating in writing the matters required to be put before the meeting.

- 6.3 At least three weeks' notice in writing of the time and place so fixed for any Special General Meeting of Phytos and of the motions or business to be considered at such meeting shall be given by the Secretary/Treasurer to all financial members.
- 6.4 All financial members of Phytos shall be eligible to attend any Special General Meeting of Phytos.
- 6.5 Observers may be permitted to attend a Special General Meeting at the discretion of the Chair.
- 6.6 Voting on any matter at an SGM shall be by members participating in that meeting either in person or by proxy, one vote per member, unless a ballot has been called for in the initial requisition of the SGM in which case votes shall be weighted as set out in clause 5.5 and the notification of the SGM under clause 6.3 must include the figures on which the allocation of proportional votes will be determined for that class of member.

7 PROXY VOTING

- 7.1 Where a member representative is unable to attend any Annual General Meeting or Special General Meeting the member shall be entitled to a proxy to represent the member and exercise that member's vote. Such proxy is to be notified in writing to the Secretary/Treasurer no later than two working days in advance of the Annual or Special General Meeting.

8 OFFICERS AND BOARD

- 8.1 The officers of Phytos shall be a Chairperson (Chair) appointed by the Board for a term not exceeding three years who is an independent person (not a member of Phytos) and a Secretary/Treasurer elected at the annual general meeting of members to hold office for the year following that general meeting or, if elected by Special General Meeting to fill a vacancy arising during the year, to hold office for the remainder of that year and the subsequent year. An individual may hold office in either capacity for a maximum of 2 consecutive terms, which in the case of a Secretary/Treasurer elected by SGM to fill a vacancy, will include the part year in which s/he is first elected and the following 2 years.
- 8.2 The Board will comprise the 2 officers together with representatives of the following groups, in the case of groups a. b. and c. nominated by the groups

concerned prior to the relevant AGM of the Society. The nominee of each of a., b., and c. below when notified to the AGM will take office as a Board member for the following 3 years.

- | | |
|---------------------------------|-----|
| a. NZ Forest Owners Association | (1) |
| b. Maori Economic Interests | (1) |
| c. A Forest Owner who exports | (1) |
| d. Log Exporters | (3) |

Any given person may only serve on the Board for a period of two consecutive terms unless agreed otherwise by a meeting of the Society.

In the case of group d., the largest 2 exporters by volume in the financial year preceding the first AGM of the Society held under these Rules will be entitled automatically to nominate a representative on the Board, while the remaining exporter representative will be a nominee of the other exporters in the same way as for groups a. – c. and that nominee will hold the position for one year only. The representative of the second-largest exporter will hold the position for 2 years following the first AGM of the Society under these Rules. The 3 representatives of group d. will thereafter be nominated for 3 year terms in a 3 year cycle, starting with the representative of smaller exporters, the next year the representative of the 2nd largest exporter in the preceding financial year, and the next year the representative of the largest exporter in the preceding financial year.

- 8.3 If the Secretary/Treasurer is a member representative this shall not entitle that member to another representative or vote.
- 8.4 The Board may co-opt up to two individuals to the Board who shall have the same powers as other Board members. Such co-option will normally be utilised only to obtain specialist expertise that is not currently within the Board and will expire at the next Annual General Meeting.
- 8.5 Any casual vacancy occurring among members of the Board other than the Secretary/Treasurer or Chair may be filled by the Board in consultation with the group by which the vacating Board member was nominated under clause 8.2.
- 8.6 The Board may delegate to any person including any employee, contractor or agent of Phytos implementation of a matter that has previously been agreed by the Board. Such delegations are to be in writing and signed by the Chair or Vice-Chair.

9 POWERS AND RESPONSIBILITIES OF OFFICERS AND BOARD

9.1 The Board shall be responsible for the efficient and effective management of the affairs of Phytos in line with its objects.

9.2 The role of the Chair shall be to:

- (a) chair each meeting of the Board, the Annual General Meeting and Special General Meeting;
- (b) provide an annual report to the Annual General Meeting on the activities of Phytos for the previous financial year;
- (c) act as spokesperson for Phytos unless otherwise determined by the Board.

9.3 A Vice-Chair shall be responsible for chairing meetings of the Board and of members in the absence of the Chair.

9.4 The role of the Secretary/Treasurer shall be to ensure the following matters are attended to accurately and in timely fashion:

- (a) keep the record of members, and update regularly the payment status of each member so as to enable accurate establishment of the standing and voting entitlement of each member in terms of clauses 3.1 to 3.3 and 3.6 to 3.7 inclusive;
- (b) arrange and notify meetings of members and the Board;
- (c) record and distribute the minutes of meetings of the Board and of members;
- (d) maintain a Register of Conflicts of Interest;
- (e) hold Phytos' documents and records;
- (f) receive and reply to correspondence as required by the Board;
- (g) maintain the schedule of agreed levies and fees;
- (h) prepare and issue invoices for levies and fees;
- (i) receive levies, fees and other forms of income related to the activities of Phytos;
- (j) maintain accurate financial records of all Phytos transactions;

- (k) Prepare and track annual budgets for Phytos activity;
- (l) prepare and arrange for scrutiny by the financial reviewer of the annual financial statements for each financial year at the end of which the Secretary/Treasurer holds office;
- (m) provide a set of financial statements and report from the financial reviewer to members at the Annual General Meeting.
- (n) Undertake reporting required under the Incorporated Societies Act 1908 or any substituted enactment.

The Secretary/Treasurer may delegate to any individual or organisation employed or contracted by the Board for the purpose any or all of the above, but must maintain proper oversight of performance and is responsible to the Board for that performance.

- 9.5 The Board may employ staff and/or engage contractors to expedite the business of Phytos.
- 9.6 The Board shall have such other powers as may be necessary for the efficient and effective administration of Phytos.
- 9.7 The Board shall have power to establish such committees comprising members of Phytos as shall appear to it to be desirable and to delegate to such committees responsibilities including allocation of funding to programmes and projects, but so that any such committees remain accountable to the Board and are required to report their decisions to the Board in writing.
- 9.8 The Board shall have power to appoint representatives of Phytos (who may include employees of or contractors to Phytos) to working parties or external committees in which Phytos has an interest and such representatives may be required to provide reports to the Board on their participation in such working parties or external committees.
- 9.9 The Board may initiate and support working parties or committees which include non-members of Phytos for purposes which the Board judges to be in the interest of achieving Phytos' objects.

10 MEETINGS OF THE BOARD

- 10.1 The Board shall meet at least 4 times a year. Meetings are to be notified to all Board members at least 2 weeks prior to the meeting and may be attended

remotely by teleconference or videoconference, or a combination of methods, including in person attendance.

- 10.2 A quorum of the Board shall consist of 4 members where there are 6 Board members and 5 members where there are 7 or 8 Board members.
- 10.3 Decisions shall, in the first instance, be taken by a simple majority of those present and voting.
- 10.4 At meetings the Chair (or Vice-Chair if presiding) shall have both a casting and deliberative vote.
- 10.5 Resolutions may also be circulated to all members of the Board and if signed by a majority shall be considered to have been decided by the Board as effectively as if at a meeting.
- 10.6 Expenses of members of the Board in attending meetings of the Board may be paid by Phytos on provision of appropriately supported expense claims, shall not be considered to be in breach of the rule concerning personal benefit.

11 **CONFLICTS OF INTEREST**

- 11.1 Members elected or appointed to office or the Board or to any committee or working party established by the Board shall declare to the Secretary/Treasurer relevant interests known to them that are or may become conflicts of interest and those interests shall be recorded in the Register of Interests.
- 11.2 An office holder, Board member or member of any committee or working party who has a conflict of interest or potential conflict of interest in respect of a transaction entered into, or to be entered into must, prior to the relevant discussion(s):
 - (a) remind the Board, committee or working party concerned of the interest or if not already recorded, declare that interest to the Secretary/Treasurer and have it recorded in the Register of Conflicts of Interest and in the minutes of the particular meeting.
 - (b) refrain from voting on the matter.
- 11.3 The Board, committee or working party concerned shall have the ability to decide by a simple majority on a case-by-case basis whether it is appropriate that the conflicted or potentially conflicted member takes part in any discussion and/or elaboration of a particular related motion. The decision must be made prior to any such discussion and minuted as part of the proceedings of the meeting.

12 FINANCES

- 12.1 The financial year of Phytos shall end on 30 June.
- 12.2 The funds of Phytos shall be held and managed in accordance with generally accepted financial practices, including regular reconciliation of accounts.
- 12.3 The Board must authorise in writing expenditure and investment of the funds of Phytos in any amount exceeding \$10,000 (ten thousand New Zealand dollars). Transactions on the Society's account may be carried out by a duly appointed person reporting to the Secretary/Treasurer but in all cases must be clearly authorised prior, either by the Board or an officer of the Society.
- 12.4 Accurate and up to date statements of account shall be made available to each Board member at least 5 working days before each scheduled meeting of the Board.
- 12.5 Should a financial member request access to the accounts in writing to the Secretary/Treasurer, the latest such statement of account shall be provided to that member as promptly as practicable following receipt of the request.
- 12.6 A financial reviewer who shall be a chartered accountant independent of the officers and Board members shall be appointed by the Annual General Meeting. The Board may fill any casual vacancy in the office of financial reviewer.
- 12.7 It shall be the duty of the financial reviewer to report annually to the members of Phytos whether the financial statements present a true and fair view of the state of Phytos' financial affairs.
- 12.8 It shall be the responsibility of the Secretary/Treasurer to provide annually a reviewed financial statement for the previous financial year together with a budget for the following year. These documents shall be presented to the Annual General Meeting after their circulation to all members.

13 COMMON SEAL AND EXECUTION OF DOCUMENTS

- 13.1 The Common Seal shall be in the custody of the Secretary/Treasurer or held by an agent or appointee of Phytos authorised by the Secretary/Treasurer.
- 13.2 Any document requiring execution under seal shall be approved by the Board and signed by two members of the Board as witness to the application of the seal.
- 13.3 Other written agreements with third parties shall be signed by at least two members of the Board.

14 **CONFIDENTIALITY**

- 14.1 All members shall be bound by such confidentiality agreements as may be approved by the Phytos Board in relation to any research or other publications as may evolve from Phytos activities.
- 14.2 Should a person or organisation cease to be a member of Phytos whether by resignation or cancellation of their membership, all rights and obligations prior to such resignation or cancellation will not be affected. In particular, all confidentiality obligations of the member shall survive their resignation or cancellation of membership.

15 **DISPUTE RESOLUTION**

- 15.1 If a dispute arises out of or in relation to this Constitution (other than a dispute which is to be resolved in accordance with express provisions set out elsewhere in this Constitution) ("the Dispute") no party may commence any court or arbitration proceedings relating to the Dispute unless it has complied with the following paragraphs of this clause, except where the party seeks urgent interlocutory relief.
- 15.2 A party claiming the Dispute has arisen under or in relation to this Constitution must give written notice to the Chair and Secretary/Treasurer specifying the nature of the Dispute.
- 15.3 On receipt of that notice, the Chair and the parties involved in the Dispute will use all reasonable endeavours to resolve the Dispute by discussion, consultation, negotiation or other informal means.
- 15.4 If the Chair and the relevant parties are unable to resolve the Dispute by negotiation within ten working days of the notice being given pursuant to clause 15.2 (or within such further period agreed in writing by the parties) then the relevant parties shall refer the Dispute to mediation. The mediator shall be appointed by the parties involved in the Dispute but where the parties cannot agree within a period of five working days of first attempting to do so, then the chairperson of the New Zealand chapter of LEADR (Leading Edge Alternative Dispute Resolvers) shall appoint a mediator.
- 15.5 If the Dispute is not resolved within 20 Working Days following the appointment of a mediator in accordance with clause 15.4 (or within such further period agreed in writing by the parties involved in the Dispute) any party involved in the Dispute may, by giving written notice to the other parties involved, require the Dispute to be determined by the arbitration of a single arbitrator. Such notice seeking arbitration must be given within 20 working days after the end of the period provided for mediation or any extension agreed in writing. The

arbitrator will be appointed by the relevant parties or, failing agreement within five working days of the notice requiring arbitration, by the President of the New Zealand Law Society on application of any party involved in the Dispute. The arbitration will be conducted as soon as possible and in accordance with the provisions of the Arbitration Act 1996.

16 GOVERNING LAW

- 16.1 This Constitution shall be governed by the law of New Zealand and all members will submit to the non-exclusive jurisdiction of the courts of New Zealand.

17 PERSONAL BENEFIT

- 17.1 No member of Phytos or any person associated with a member shall participate in or materially influence any decision made by Phytos in respect of the payment to or on behalf of the member or associated person of any income, benefit or advantage whatsoever.
- 17.2 It shall be open to Phytos to engage a member or person associated with a member to perform services required by Phytos for remuneration (subject to the above restriction). Any such remuneration paid shall be reasonable and relative to that which would be paid in an arm's length transaction (being the open market value). The provisions of this clause shall not be removed from these rules and shall be included and implied into any rules replacing these rules.

18 WINDING UP

- 18.1 If upon the winding up or dissolution of Phytos there remains after the satisfaction of its debt and liabilities any property or funds whatsoever, these shall be transferred forthwith to a not-for-profit organisation registered either under the Incorporated Societies Act 1908 or 2022, or the Charities Act 2005 with aims similar to that of Phytos, as approved by a general meeting of Phytos prior to the completion of winding up, or by the Board if no general meeting has been held.

19 ALTERATIONS TO RULES

- 19.1 This Constitution may be altered and amended from time to time but only in such manner as continues to conform with the provisions of the applicable Incorporated Societies Act. Such alterations or amendments shall be made only at the Annual General Meeting or Special General Meeting after the giving of due notice as required by this Constitution subject to the following conditions:

- 19.2 Notice stating the general tenor of any proposed alterations or additions to this Constitution shall be given to each member as part of the notice of meeting.
- 19.3 The meeting may amend any such proposals provided such amendments do not materially change the intent of the proposal. Decisions on whether the proposal has been materially changed or not will rest with the Chair.
- 19.4 Proposals relating to changes in this Constitution may be given effect by a simple majority of the members present at the Annual General Meeting or Special General Meeting and entitled to vote.