



Te Kaunihera-ā-Rohe o Taratahi

CARTERTON
DISTRICT COUNCIL

AGENDA

Ordinary Council Meeting

Date: Wednesday, 24 September 2025

Time: 11:30 am

**Location: Carterton Events Centre
50 Holloway St
Carterton**

Mayor R Mark

Deputy Mayor S Cretney

Cr B Deller

Cr R Cherry-Campbell

Cr S Laurence

Cr G Ayling

Cr L Newman

Cr S Gallon

Notice is hereby given that an Ordinary Meeting of Council of the Carterton District Council will be held in the Carterton Events Centre, 50 Holloway St, Carterton on:

Wednesday, 24 September 2025 at 11:30 am

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1 KARAKIA TIMATANGA

Mai i te pae maunga, raro ki te tai

Mai i te awa tonga, raro ki te awa raki

Tēnei te hapori awhi ai e Taratahi.

Whano whano, haramai te toki

Haumi ē, hui ē, tāiki ē!

2 APOLOGIES

3 CONFLICTS OF INTERESTS DECLARATION

4 PUBLIC FORUM

5 DISCUSSION OF THE PUBLIC FORUM

6 YOUTH COUNCIL VIEWS ON AGENDA ITEMS

7 CONFIRMATION OF THE MINUTES

Nil

VIDEOCONFERENCE DETAILS

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8 REPORTS



8.1 LOCAL WATER DONE WELL DOCUMENTS FOR ADOPTION

1. PURPOSE

This paper seeks Council's approval of the Wairarapa Tararua Water Services Council Owned Organisation (COO) shareholder Constitution and Shareholder Agreement documents.

2. SIGNIFICANCE

The matters for decision in this report are not considered to be of significance under the Significance and Engagement Policy.

3. BACKGROUND

On 20 August 2025 Carterton, Masterton, South Wairarapa, and Tararua District Councils adopted their Water Services Delivery Plan (WSDPs) confirming their commitment to establish a regional Water Services Organisation (WSO). These plans were submitted to the Department of Internal Affairs (DIA) on 29 August 2025 and are currently being assessed by the DIA assessment panel.

The establishment of the WSO is now proceeding in two major stages – legal establishment will be achieved by 1 July 2026 and the company will be operational, providing water services to the community by 1 July 2027.

The first step in the legal establishment of the WSO is to finalise the company's governing documentation – the company Constitution and Shareholders' Agreement. The substance of these documents has been previously agreed by all four councils and iwi and the attached documents have been drafted in accordance with these previous agreements.

4. DISCUSSION

In March and April 2025, the Council consulted with the community on options for the future of water services delivery in the district. The Council consulted on two options – the establishment of a Wairarapa Tararua Water Services Organisation (WSO) and a form of the status quo delivery model.

Community feedback strongly supported the Wairarapa Tararua model, with 70% of submitters indicating a preference for this option. Based on this feedback, Council resolved on 9 July 2025 to proceed with establishing a Wairarapa Tararua WSO, working with Masterton, South Wairarapa and Tararua District Councils.

Following the completion of consultation, the four Councils and two iwi worked together to prepare WSDPs and agree key terms relating to the governance and commercial

arrangements for the new entity. These WSDPs and a Commitment Agreement were adopted by the Council on 20 August 2025 and submitted to DIA on 29 August 2025.

The WSDPs set out the high-level implementation and transition plan for the entity and this is summarised in Table 1 below. Council have previously agreed that the water services organisation will be legally established by 1 July 2026 and operational by 1 July 2027.

Table 1: Water Services Organisation establishment and transition plan

Programme stage	Key deliverables and milestones	Estimated timing
Stage 1: Legal establishment The purpose of this stage is to complete the legal incorporation of the company and get the company's governance structures in place	- WSDP approved by DIA - Complete Constitution and Shareholders' Agreement - Appoint Stakeholders' Forum - Complete initial Director recruitment - Complete legal incorporation - Plan operational transition	- Nov 2025 - Oct 2025 - Nov 2025 - Mar 2026 - Mar 2026 - Dec 2025
Stage 2: Operational transition The purpose of this stage is to set up all the necessary operational requirements for the company and complete the transfer of services, assets, debt and all other water-related operations from the four Councils to the company	- Statement of Expectations prepared, and Water Services Strategy finalised - Complete remaining Director recruitment and CEO and leadership team recruitment - Finalise Transfer Agreements for each Council (assets, debt, services) - Complete Council staff change process and transfer - Development of systems requirements, insurance arrangements, treasury and funding agreements in place with LGFA - Transfer assets, contracts, responsibilities, services following Board confirmation of readiness for go live.	- Sept 2026 - Mid/late 2026 - Dec 2026 - Dec 2026 - Dec 2026 - June 2027

5. ANALYSIS AND ADVICE

The first step in the establishment and transition plan is to finalise the company's governing documentation – the Constitution and the Shareholders' Agreement. The substance of these documents has already been agreed between the four Councils and iwi and has been included in the Water Services Delivery Plans and Commitment Agreement submitted to DIA in August.

The Constitution of the company is a document that legally establishes the entity, sets out the objectives of the company at a high-level, and sets the rules of company governance. The Shareholders' Agreement sets out the details of how the relationship will work between the company shareholders and between the shareholders and the company. It also establishes the Stakeholders Forum, which is the representative forum of the shareholders and iwi representatives that provides the mechanism by which both exercise their powers in respect of the company. Both documents need to be developed and in place to complete the legal establishment of the company and enable the transition to progress to its next steps.

The Constitution is in **Attachment 2** and the Shareholders' Agreement is in **Attachment 3**. These documents have been prepared by Bell Gully, the legal advisers to the water services establishment programme. The documents have been drafted based on DIA legal templates, as per the previous direction of the Councils, with adjustments made to reflect the terms sheet previously agreed by Councils and iwi. These documents have been reviewed extensively by the Project Steering Group, made up of the respective Council CEO's. Feedback from Iwi has also been incorporated into the draft documents.

Table 2 below summarises where the details of the terms sheet previously agreed by Councils and iwi are included in the documents. The terms sheet is in **Attachment 1**.

Table 2: Document reference clauses

Constitution	
Cost-to-service (non-harmonised) pricing	Clause 2.2
Shareholder role in Water Services Strategy and Annual Budget	Clause 3.2
Dividends	Clause 8
Size and composition of the WSO Board	Clause 12.2
Board member term and reappointment	Clause 12.6
Board skills requirements	Clause 12.5 Schedule 3
Shareholders' Agreement	
Share allocation	Schedule 1 Clause 2.2, 7.2
Board member term and reappointment	Schedule 1
Establishment of the Stakeholders' Forum	Schedule 1 Clause 6.1 Schedule 4
Size and composition of the Stakeholders' Forum	Schedule 1 Clause 6.2
Iwi participation in the Stakeholders' Forum	Clause 6.2, 6.3
Debt transfer principles	Clause 3.2
Decision making framework	Clause 5.1 Clauses 6.5, 6.6, 7.3 Schedule 3 and 4 Also Constitution 12.3
Shareholder entry and exit	Clause 8 Schedule 5 and 6
Pricing principles	Clause 10 Schedule 7
Dividends	Clause 11

6. OPTIONS CONSIDERED

A summary of the options considered is included in the table below.

Option		Advantages	Disadvantages
1	Approve the attached Constitution and Shareholders' Agreement	Aligns with the decisions Council has made to date Is consistent with the timeframes and commitments the Council has made to DIA in its WSDP to establish the Water Services Organisation Documents give effect to agreements reached between Councils and iwi	No known disadvantages
2	Do not approve the attached Constitution and Shareholders' Agreement	No known advantages	Does not align with the decisions Council has made to date Does not deliver on the timeframes and commitments the Council made to DIA in the WSDP Does not meet agreements reached with other Councils and iwi

7. RECOMMENDED OPTION

Option 1 is recommended. Approving the governing documents today enables the establishment of the Water Services Organisation to continue its planned timeframes and ensures the Council meets the commitments made in its WSDP.

8. SUMMARY OF CONSIDERATIONS**Strategic, Policy and Legislative Implications**

The attached documents are consistent with the WSDP adopted by the Council on 20 August 2025 and the guidance and documentation provided by DIA in relation to Water Services Organisation governing documents.

Legal and risk

The attached documents have been drafted by Bell Gully. The drafting is consistent with the guidance provided by DIA for water organisations governing documents and with legislative requirements.

Significance, Engagement and Consultation

Council's three waters network are strategic assets under the Significance and Engagement Policy. Council has consulted with the community on the future service delivery model in line with provisions in the Local Government (Water Services Preliminary Arrangements) Act 2024 and the Local Government Act 2002.

The decisions sought in this report do not require further consultation with the community and are low significance as they are the implementation of decisions previously taken by the Council.

Financial Considerations

There are no specific financial implications related to the decisions in this paper.

Implications for Māori

Water and environmental wellbeing are key priorities for mana whenua and the wider Māori community. Ngāti Kahungunu ki Wairarapa and Rangitāne o Wairarapa iwi have previously agreed the key terms of these documents with the four Councils and have reviewed the drafts of these documents.

Communications/Engagement Plan

No further community consultation or engagement is required to make the decisions in this paper. There will be no public communications following this decision as it is a routine decision in the implementation of the new organisation. Public communications will be made at major milestones in the transition, with the next milestone expected to be the acceptance of the WSDP by DIA.

Environmental/Climate Change Impact and Considerations

There are no climate change impacts related to the decisions in this report.

9. NEXT STEPS

Following the agreement of all four Councils of these documents (at meetings on 24 September and 8 October), Councils and iwi will appoint their nominated representative to the Stakeholders' Forum in the new triennium (October/November), and the Stakeholders' Forum will begin the process to appoint company Directors.

10. RECOMMENDATION

That the Council:

1. **Receives** the report.
2. **Approves** the attached Constitution and Shareholders' Agreement for the Wairarapa Tararua Water Services Organisation.
3. **Delegates** authority to the Chief Executive to make non-material changes to the Constitution and Shareholders' Agreement.
4. **Notes** the Chief Executive will report back to Council on any changes made under this delegation.
5. **Delegates** authority to the Chief Executive, in consultation with the Mayor Elect, to sign the Constitution and Shareholders' Agreement on behalf of Carterton District Council.
6. **Notes** the next step in the transition to the Water Services Organisation, Council will need to appoint a representative to the Stakeholder Forum in November 2025.

File Number: 483303

Author: Geoff Hamilton, Chief Executive

Attachments:

1. **Terms Sheet** [↓](#)
2. **Wairarapa Tararua WSO Draft Constitution** [↓](#)
3. **Wairarapa Tararua WSO Draft Shareholder Agreement** [↓](#)

Appendix 1: Wairarapa Tararua WSO Commercial Terms Sheet

Issue	Agreement between Councils
General	
Principles to guide establishment and transition decision making	These principles will be included in the Commitment Agreement to guide the establishment of the Water Services Organisation: • Deliver long-term benefits to the region (recognising these benefits take time to accrue) ○ Efficient operational delivery ○ Affordable water services ○ Adequate investment in infrastructure through time ○ Financially resilient and sustainable ○ Working with iwi • Manage shorter-term transition impact on individual shareholding communities and Councils ○ Manage any cost/price changes ○ Ensure transparency in transition pathways ○ Maintain service continuity and reliability for customers and minimise staff disruption ○ Manage financial and/or operating risk for Councils • Ensure statutory and regulatory compliance ○ Operate within statutory planning and accountability framework ○ Meet DIA and Commerce Commission financial sustainability requirements ○ Meet regional Council and Taumata Arowai environmental standards • Where possible, provide flexibility in the design for the new entity and Councils to adapt to changing circumstances over time. • Recognise the independence of the new entity and provide it with the autonomy to make decisions necessary for success • Keep it simple, with straightforward arrangements easy for the community to understand.
Governance and oversight	
Stakeholders' Forum	• Councils agree to establish a Stakeholders' Forum as the basis for coordinating the shareholder activity and for the four Councils to exercise certain of their shareholding rights and responsibilities.
Iwi participation	• Councils agreed that iwi will be members of the Stakeholders' Forum (while not shareholders) to give effect to Councils' commitment to partner with iwi in oversight of the water organisation.
Size and composition of Stakeholder Forum	• Total membership will be 6 members – 1 member from each Shareholding Council and 1 each of from Rangitāne and Ngāti Kahungunu.
Size and composition of Water Services Organisation Board	• Water Services Organisation will have a flexible Board size of five to seven members, with all members appointed according to the skills matrix.
Board member appointment term and reappointment	• Initial Directors appointments terms will be varied to enable staggering of replacements and to enable appointment of initial Directors with entity start-up experience. • After the initial directors, general appointments will be for three-year terms, with up to two possible reappointment terms. Reappointment is subject to a formal process. • Reappointment beyond three terms will be at the Stakeholders' Forum's discretion but expected to be on an exceptional basis e.g., to retain an essential specialist skill set.
Board skills requirements	The Constitution will include the following skills requirements for the Water Services Organisation Board: • Governance and senior leadership experience

	• Experience in utilities and infrastructure industries, preferably water • Commercial and financial expertise, including Director(s) with relevant qualifications to chair an Audit and Risk Committee • Understanding of the relevant public accountability, legislative and regulatory context • Asset management experience • Commitment to partnership and upholding the Treaty of Waitangi, tikanga and te ao Māori • Knowledge and experience in te ao Maori and te taiao Maori and Treaty of Waitangi principles and implementation • Understanding and commitment to the four communities the organisation serves • Commitment to strong stakeholder management with the four Shareholding Councils																					
Decision making framework for key decisions involving shareholding councils	The decision table below sets out the decision-making mechanisms for key decisions, including whether those decisions are taken by Shareholding Councils only or by Councils plus iwi. By way of summary iwi vote on appointment of Directors and performance monitoring only, and they are involved in the preparation of the Statement of Expectations but do not vote on its adoption. All other votes are for Shareholding Councils only. <table><tr><th>Decision</th><th>Decision making mechanism</th><th>Decision making threshold</th></tr><tr><td colspan="3">Issues relating to governance and governing documents</td></tr><tr><td>Appointment of Directors (including Chair)</td><td> • Decision by Stakeholders' Forum (Councils plus iwi) • One Council, one vote • One vote per iwi representative </td><td>Simple majority (i.e., >50% of votes cast)</td></tr><tr><td>Approving Statement of Expectations</td><td> • Statement developed by Stakeholders' Forum (Councils plus iwi) • Decision to issue the SOE to the Water Services Organisation will be made by Shareholder members of the Stakeholders' Forum • One Council, one vote </td><td>Special majority (i.e., 75% votes cast)</td></tr><tr><td>Monitoring performance</td><td> • Decision by Stakeholders' Forum (Councils plus iwi) • One Council, one vote • One vote per iwi representative • Note Shareholders still receive reports as a shareholding right </td><td>Simple majority (i.e., >50% votes cast)</td></tr><tr><td>Changes to the Constitution (all matters except harmonisation review)</td><td> • Recommendation by the Board • Decision by Shareholders with voting based on a shareholding basis at either Stakeholders' Forum or Councils </td><td>Special majority (i.e., 75% votes cast)</td></tr><tr><td colspan="3">Issues of community interest</td></tr></table>	Decision	Decision making mechanism	Decision making threshold	Issues relating to governance and governing documents			Appointment of Directors (including Chair)	• Decision by Stakeholders' Forum (Councils plus iwi) • One Council, one vote • One vote per iwi representative	Simple majority (i.e., >50% of votes cast)	Approving Statement of Expectations	• Statement developed by Stakeholders' Forum (Councils plus iwi) • Decision to issue the SOE to the Water Services Organisation will be made by Shareholder members of the Stakeholders' Forum • One Council, one vote	Special majority (i.e., 75% votes cast)	Monitoring performance	• Decision by Stakeholders' Forum (Councils plus iwi) • One Council, one vote • One vote per iwi representative • Note Shareholders still receive reports as a shareholding right	Simple majority (i.e., >50% votes cast)	Changes to the Constitution (all matters except harmonisation review)	• Recommendation by the Board • Decision by Shareholders with voting based on a shareholding basis at either Stakeholders' Forum or Councils	Special majority (i.e., 75% votes cast)	Issues of community interest		
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Changes to the Constitution (all matters except harmonisation review)	• Recommendation by the Board • Decision by Shareholders with voting based on a shareholding basis at either Stakeholders' Forum or Councils	Special majority (i.e., 75% votes cast)																				
Issues of community interest																						

	Review of cost-to-serve/price harmonisation	For nine years: - Recommendation by Board - Decision by Councils After nine years: - Include review point after nine years to reconsider the issue and whether the cost to serve principle should be removed from the pricing principles in Constitution - Decision at this review point made by Councils on a shareholding basis, with advice to be provided by the Board - If cost to serve principle removed, any future decision on the issue would be a Board decision from year 10 onwards	Unanimous agreement (for nine years) Special majority (i.e., 75% votes cast) for review point
	Issues relating to shareholding		
	Shareholder entry	- Recommendation by Board and Stakeholders' Forum based on a proposal for entry - Shareholder entry principles would apply - Decision by Councils	Unanimous agreement
	Shareholder exit	- Recommendation by Board and Stakeholders' Forum based on a proposal for exit - Shareholder exit principles would apply - Decision by Councils	Unanimous agreement by non-exiting Shareholders (exiting Shareholder does not vote)
	New share issue to existing shareholders (i.e., company request for new funding)	- Board decision to request funding from shareholders - Decision by Councils to decide to grant funding - Details need to be worked through on implications of Council decisions at the time of any request	Each Council makes its own decision
	Other issues		
	Selected major transactions	- Major transactions (e.g., by value of \$100m or greater) will be subject to consideration by shareholders - Decision by Stakeholders' Forum on shareholding basis	Special majority (i.e., 75% votes cast)
	Ceasing operations of the company	- Recommendation by Board and Stakeholders' Forum - Decision by each Council - One Council, one vote	Special majority (i.e., 75% votes cast)

Shareholder role in Water Services Strategy and Annual Budget	Shareholders will not approve the Water Services Strategy or Budget. Their role will focus on the development and approval of the Statement of Expectations
Ownership	
Share allocation	Shareholding will be allocated based on network connections. Consideration will be given to if/when adjustments are needed and how this would be aligned with relevant decisions (e.g., development of the Water Services Strategy).
Shareholder entry	The Shareholders' Agreement will include the following principles in relation to future new Council joining as a shareholder (which will apply unless the shareholders agree otherwise at the time): - Shareholders are open to considering admission of new council shareholders - Proposal from a potential new council shareholder would be considered by the Board of Directors and recommendation made to the Stakeholders' Forum who could approve/not approve the admission or recommend to the four Councils to approve/not approve - New council shareholders' shareholding will be determined using the same method as used by the original shareholders - The terms of transfer of assets for a new council shareholder shall not be more favourable to the new council shareholder than to the original shareholders - As part of the decision to admit a new council shareholder, the existing shareholders will consider the position to ensure appropriate iwi participation for the larger service area - As part of the decision to admit a new council shareholder, the existing shareholders will need to review and agree changes to the company Constitution and Shareholders' Agreement - The addition of a new council shareholder must not materially worsen the Water Organisation's financial position or forecast financial position, or result in the Water Organisation failing to meet its regulatory obligations to be financially sustainable - Each party will bear its own costs of considering and redocumenting the arrangements for a new council shareholder joining - An appropriate timeline and transition plan will be developed (with at least one year's lead time) and agreed by the Board and Stakeholders' Forum - Any legislative consultation requirements will be complied with
Shareholder exit	The Shareholders' Agreement will include the following principles in relation to shareholder exit (which will apply unless the continuing shareholders agree otherwise at the time): - It will be possible for a shareholding Council to exit from the water services organisation and implement a new operating model - A detailed exit plan will be developed and agreed between the Board and Stakeholders' Forum (with a three-year time period between notification and exit) - As part of the decision for a Shareholder's exit, the existing shareholders will undertake a review to agree any changes to the company Constitution and Shareholders' Agreement - The exit of a shareholder must not materially worsen the Water Organisation's financial position or forecast financial position, or result in the Water Organisation failing to meet its regulatory obligations to be financially sustainable - Other principles to be developed for: treatment of assets, joint assets, consideration, stranded assets or liabilities, transactions costs - Any legislative consultation requirements will be complied with
Pricing and financial sustainability	
Pricing principles	The Constitution will include the following principles in relation to pricing:

	• Transparency between pricing and investment requirements • Engagement with communities in setting or changing pricing • Managing/smoothing the transition impact of any changes to pricing • Balancing affordability for customers with investment and financial sustainability requirements • Consideration of distributional impacts of pricing decisions • Adoption of cost-to-serve approach, with review point after nine years
Price harmonisation	• Councils agree to ringfence pricing for nine years to respond to Council and community concerns (i.e., each jurisdiction will operate on a cost-to-serve basis) • Every three years (i.e., in line with the LTP cycle), the Board could provide a case to Shareholders to consider amending the pricing, should it choose to do so (with the decision sitting with Shareholders as requiring unanimous agreement) • The Board's case to shareholders should include consideration of the factors: ○ Demonstrate there is sufficient reliable information available about future investment requirements to provide reliable and transparent estimates of costs to ratepayers ○ Consider the impact of any proposed changes on each shareholder's ratepaying population (including distributional impacts within and between Council districts) ○ Consider other benefits and costs of the new proposed approach relative to current approach (e.g., impact on operating costs/efficiencies for the entity) ○ Consider whether other compensatory measures could be put in place to manage any significant impact (if any) on subsets of ratepayers. • After nine years, the issue will be reconsidered. If the cost-to-serve principle is removed from the Constitution at this point, the issue becomes the responsibility of the Board and no longer a matter for Council decision.
Debt transfer	Councils agree to the following principles in relation of transfer of debt to the Water Services Organisation (which will apply unless the shareholders agree otherwise at the time): • Debt that can be identified by Councils as water-related debt will transfer to the new entity • Debt incurred by the shareholding Councils in relation to the establishment and transition to the new entity from the date of submission of the WSDP to DIA will be transferred to the Water Services Organisation • Cost effective transfer of debt from each Council to the Water Services Organisation will take place over a few years as tranches of debt mature and hedging is unwound • Interest costs incurred by Councils on waters debt after the Water Services Organisation is established (and the revenue is flowing into the Water Services Organisation) will be reimbursed to the Councils by the Water Services Organisation. (Note debt that remains with Councils over the transition period is looked through by LGFA for covenant purposes and assumed to be held by the Water Services Organisation for financial sustainability purposes) • For the nine-year period of no price harmonisation, each Council's guarantee/support of the Water Services Organisation is based on the actual debt outstanding for their jurisdiction • At nine years (or at the point when the Board proposes harmonization), the Board is required to provide advice to the shareholders on proposed allocation of guarantee/support based on the Water Services Organisation's financial position

	• Assumption would be that any reallocation of the guarantee would default to shareholding, unless Board proposed an alternative approach. • (Note that in the situation of a majority shareholder, the LGFA or lenders would typically treat the majority shareholder as the guarantor)
Dividends	• The Water Services Organisation would not pay dividends to Shareholding Councils for at least the first 9-12 years. The future possibility should be retained/not ruled out to encourage commercial discipline by the Board and management. • Initial priority is for surpluses, if any, generated, to be used by the Board to either reduce costs to consumers or bring forward necessary investment.

Council approval version

Constitution of Wairarapa Tararua Water Limited

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1. DEFINITIONS AND INTERPRETATION

1.1 In this Constitution, unless the context otherwise requires:

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

"Board Skills Requirements" means the skills set out in Schedule 3, as may be amended from time to time in accordance with clause 12.5(c).

"Business Day" means a day (other than a Saturday, a Sunday or a public holiday) on which registered banks are open for business in Carterton, Masterton, South Wairarapa and Tararua, New Zealand.

"Chair" means the chair of the Board appointed in accordance with clause 12.8.

"Companies Act" means the Companies Act 1993.

"Company" means Wairarapa Tararua Water Limited.

"Constitution" means this constitution of the Company (including the Schedules) and all amendments to it from time to time.

"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, in the determination of the Stakeholders' Forum, is free from any association that could materially interfere with the exercise of their independent judgement as a director of the Company, including that the person:

- (a) is not an elected member of any Shareholder;
- (b) is not employed, and has not previously been employed, in an executive capacity by any Shareholder unless there has been a period of at least two years between ceasing such employment and serving on the board;
- (c) is not employed, and has not previously been employed, in an executive capacity by the Company unless there has been a period of at least two years between ceasing such employment and serving on the board;
- (d) does not currently have (and has not within the last two years had) a material business or contractual relationship (for example, supplier or customer) with a Shareholder or the Company; and
- (e) does not have close family ties or personal relationships (including close social or business connections) with anyone in paragraphs (a) to (d) above.

"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.

"Reserved Matters" has the meaning given to it in the Shareholders' Agreement.

"Service Area" has the meaning set out in the LG(WS) Act.

"Shares" means the shares in the Company on issue from time to time.

"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.

"Shareholders' Agreement" means the shareholders' agreement relating to the Company between the Company and the Shareholders (as amended from time to time).

"Special Resolution" means a resolution that is approved by a majority of 75% of the votes of those Shareholders entitled to vote and voting on the question.

"Stakeholders' Forum" has the meaning set out in the Shareholders' Agreement.

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

"Subsidiary" has the meaning set out in the Companies Act.

"Water Organisation" has the meaning set out in the LG(WS) Act.

"Water Services" has the meaning set out in the LG(WS) Act, which shall be the water services in respect of which responsibility is transferred by the Shareholders to the Company in accordance with the Transfer Agreement between each Shareholder and the Company.

"Water Services Annual Budget" has the meaning set out in the LG(WS) Act.

"Water Services Annual Report" has the meaning set out in the LG(WS) Act.

"Water Services Half-yearly Report" means the report referred to in section 248 of the LG(WS) Act.

"Water Services Strategy" has the meaning set out 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 unless inconsistent with the context;

- (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 dollars or \$ is to New Zealand currency and excludes every tax and duty;
- (g) a reference to a clause or schedule is to a clause or schedule of this Constitution;
- (h) 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;
- (i) references to the word 'include' or 'including' are to be construed without limitation;
- (j) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (k) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (l) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (m) any obligation falling due for performance on or by a day other than a Business Day shall be performed on or by the Business Day immediately following that day; and
- (n) an obligation not to do something includes an obligation not to allow or cause that thing to be done.

1.3 If there is any conflict:

- (a) between a provision of this Constitution and the provisions of the Shareholders' Agreement, the terms of the Shareholders' Agreement will prevail (other than to the extent prohibited by the Companies Act) and the Shareholders must pass such resolutions as may be necessary to amend the provisions of this Constitution to make it consistent with the Shareholders' Agreement;
- (b) 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; and
- (c) 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. CAPACITY AND OBJECTIVES

- 2.1 As at the date of its incorporation, the Company is a Water Organisation.
- 2.2 The Company must not carry on any business other than the provision of Water Services and activities that are related to, or necessary for, the provision of Water Services. Such business must be carried on in order to:
 - (a) meet the objectives set out in section 17 of the LG(WS) Act for the Service Area;
 - (b) maximise the cost efficiency of providing the Water Services; and
 - (c) except where otherwise permitted by the Shareholders' Agreement, apply appropriate price differentials in setting charges for water users within a Service Area or in different Service Areas, so that those charges reflect the corresponding costs to serve those water users.
- 2.3 Subject to the Shareholders' Agreement, this Constitution, the Companies Act, the LG(WS) Act, the LGA and the Statement of Expectations, the Company has full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter into any transaction.

3. WATER ORGANISATION REQUIREMENTS

- 3.1 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 and Water Services Half-yearly Report;
 - (b) the obligation in the LG(WS) Act to act in a manner that is consistent with Treaty settlement obligations (including the Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Rua) Claims Settlement Act 2017, the Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua Claims Settlement Act 2022 and the Te Rohe o Rongokako Joint Redress Act 2022); and
 - (c) the applicable parts of the Local Government Official Information and Meetings Act 1987.
- 3.2 In preparing the Company's Water Services Strategy and Water Services Annual Budget, the Stakeholders' Forum will be able to provide comments on each of the draft strategy and draft budget, but will not have the power to require changes or approve the final strategy or final budget.
- 3.3 In accordance with the LGA, the auditor for the Company shall be the Auditor-General.

4. SHARES

4.1 **Initial shares:** The Shares on issue at the date of adoption of this Constitution are ordinary shares. Subject to the Shareholders' Agreement and the rights of Shares which confer special rights, 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 or auditor; or
 - (ii) adopt a constitution; or
 - (iii) alter the Company's constitution; or
 - (iv) approve a major transaction; or
 - (v) approve an amalgamation of the Company under section 221 of the Companies Act; or
 - (vi) put the Company into liquidation;
- (b) an equal share in dividends authorised by the Board; and
- (c) an equal share in the distribution of the surplus assets of the Company.

4.2 **Issue of Shares:** Subject to this Constitution, the Shareholders' Agreement and the LG(W.S) Act, the Board may:

- (a) issue Shares at any time, to any person listed in clause 7.4 or any other person permitted to hold Shares in accordance with the LG(W.S) Act and in such numbers as it thinks fit;
- (b) issue Shares in different classes which have different rights;
- (c) issue Shares which are redeemable (as defined in section 68 of the Companies Act); and
- (d) divide existing Shares into different classes which have different rights,

provided that no Shares may be issued unless the issue is first approved by written resolution of all Shareholders.

5. CALLS ON SHARES

5.1 **Board may make calls:** Subject to the Shareholders' Agreement, the Board may make calls on any Shareholder in respect of any money unpaid on their Shares, and not previously made payable at a fixed time, by prior written notice to the relevant Shareholder specifying the time and date for payment (such time and date to be no earlier than 10 Business Days after the notice is given to the relevant Shareholder). The relevant Shareholder must comply with the terms of any call made by the Board. A call may be payable by instalments. The Board may revoke or postpone a call.

- 5.2 **Interest and expenses:** A person who fails to pay a call on the due date must pay:
- (a) interest on that money from the day payment was due to the day of actual payment at a rate fixed by the Board; and
 - (b) all expenses which the Company has incurred or may incur because of non-payment,

provided that the Board may waive payment of all or part of that interest or those expenses.

- 5.3 **Joint Shareholders:** Joint Shareholders are jointly and severally liable to pay all calls in respect of Shares registered in their names.

6. LIEN OVER SHARES

- 6.1 **Existence and subject matter of lien:** If a Shareholder fails to pay any call on the due date, the Board may at any time by written notice to the Shareholder require payment of the unpaid amount together with any amount payable under clause 5.2. Such notice must specify a further date (not earlier than 10 Business Days from the date of the notice) by which payment is required to be made, and must state that if such payment is not made on or before the specified date, clause 6.2 will apply.

6.2 Company has first lien:

- (a) The Company has a first lien over:
 - (i) each Share and the proceeds of sale of the Share; and
 - (ii) all distributions made in respect of the Share,for:
 - (iii) all unpaid calls owing in respect of the Shares and any amount payable under clause 5.2; and
 - (iv) sale expenses owing to the Company in respect of the Shares.
- (b) The registration of any transfer of a Share will not operate as a waiver of any lien the Company may have on that Share, unless notice to the contrary is given by the Company to the transferee.

7. TRANSFER OF SHARES

- 7.1 **Right to transfer:** Subject to any restrictions set out in this clause 7, the LGA, the LG(WS) Act and the Shareholders' Agreement, a Share may be transferred by entry of the name of the transferee in the share register for the Company following receipt by the Company of a validly signed form of transfer.
- 7.2 **Prior approval required:** No Shareholder may sell, assign, transfer or dispose of, directly or indirectly, the legal or beneficial ownership of any of its Shares except in accordance with the provisions of this clause 7 and unless such sale, assignment, transfer or disposal:

- (a) has first been approved in writing by all Shareholders; or
 - (b) is a permitted transfer in accordance with clause 7.4.
- 7.3 **No delay:** The Board may not exercise any powers conferred by this Constitution to refuse or delay the registration of any sale, assignment, transfer or disposal of Shares completed in accordance with clause 7.2.
- 7.4 **Permitted transfers:** Subject to the LG(WS) Act, the restrictions in this clause 7 do not apply to the transfer of Shares by a Local Authority to:
- (a) any successor Local Authority to that Local Authority; or
 - (b) a consumer trust established for the purpose of providing water services to the public.
- 7.5 **Board may refuse to register:** The Board may refuse or delay the registration of any transfer of a Share to any person if:
- (a) the transfer would result in a breach of law, this Constitution or the Shareholders' Agreement;
 - (b) any money payable on that Share is due for payment and has not been paid;
 - (c) the Shares are not fully paid and the Board is not satisfied in its sole discretion with the ability of the transferee to pay any call that may be made in the future (whether or not contemplated at that time);
 - (d) the Company has an unsatisfied lien on that Share or the proceeds of sale of that Share;
 - (e) the transferee is a person without legal capacity to contract or the transfer has not been properly executed;
 - (f) the transfer is not accompanied by proof (reasonably required by the Directors) of the right of the transferor to make the transfer;
 - (g) the Directors acting in good faith determine that registration of the transfer would not be in the best interests of the Company; or
 - (h) the transfer document is not in the usual or common form or otherwise in the form prescribed by the Board from time to time (if any),

provided that the Board must at all times comply with section 84 of the Companies Act.

8. DISTRIBUTIONS

- 8.1 **Distributions:** The Board, if satisfied on reasonable grounds that the Company will, immediately after the Distribution, satisfy the solvency test under section 4 of the Companies Act, may, subject to the Companies Act, the Shareholders' Agreement and the LG(WS) Act, authorise Distributions by the Company at times, and of amounts, and in such form, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.

9. COMPANY ACQUIRING ITS OWN SHARES

- 9.1 **Company may acquire its own Shares:** The Company may purchase or otherwise acquire its own Shares only if it has first been authorised to do so by Special Resolution or any higher threshold specified in the Shareholders' Agreement in which case the Shares purchased or otherwise acquired shall be deemed to be cancelled immediately on acquisition.

10. SHAREHOLDER MEETINGS

- 10.1 **Annual meeting:** The Board must hold an annual Shareholders' 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.
- 10.2 **Special meetings:** A special Shareholders' 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 Stakeholders' Forum.
- 10.3 **Proceedings at Shareholders' meetings:** The provisions of Schedule 1 to the Companies Act as modified by this Constitution, including the rules set out in Schedule 1 to this Constitution, govern proceedings at Shareholders' meetings.

11. REPORTING REQUIREMENTS

- 11.1 The Board must prepare the reports required by the Stakeholders' Forum by notice in writing to the Company (such notice must comply with the requirements in section 249(4) of the LG(WS) Act), in accordance with the requirements specified in that notice.
- 11.2 Within eight months of the start of each Financial Year of the Company, the Board must prepare and adopt a Water Services Half-yearly Report in accordance with the LG(WS) Act, which must include information required to be included by the Statement of Expectations.
- 11.3 Within three months of the end of each Financial Year of the Company, the Board must prepare, adopt and deliver to the Shareholders, and publish in accordance with the LG(WS) Act, its Water Services Annual Report for that Financial Year, which must be consistent with Treaty settlement obligations (including obligations under the Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Rua) Claims Settlement Act 2017, the Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua Claims Settlement Act 2022 and the Te Rohe o Rongokako Joint Redress Act 2022) and include the information required to be included by:
- (a) the Statement of Expectations;
 - (b) the Companies Act; and
 - (c) sections 245 to 248 of the LG(WS) Act.

12. DIRECTORS

12.1 **Independent Directors:** All Directors will be Independent Directors. A Director who ceases to be an Independent Director must be replaced promptly in accordance with the Shareholders' Agreement by another person who is an Independent Director.

12.2 **Number of Directors:** On and from 1 July 2027, the minimum number of Directors will be five and the maximum number of Directors will be seven. Before that date, the minimum number of Directors will be two and the maximum number of Directors will be seven.

12.3 **Appointment and removal by Stakeholders' Forum:**

- (a) Subject to clause 12.1, the Stakeholders' Forum will appoint up to the number of Directors set out in clause 12.2, by notice in writing to the Company. Directors may be removed and replaced by the Stakeholders' Forum in the same way. The Stakeholders' Forum will ensure that there is always at least the minimum number of Directors required by clause 12.2.
- (b) The Shareholders and the Company shall promptly take such steps as may be necessary to effect the appointment, replacement or removal of any individual (including if a Director fails to vacate office when required to do so) in accordance with this clause 12.3 if applicable, including, in the case of the Shareholders, by exercising their voting rights in the relevant Shareholders' meeting (or by way of written resolution).

12.4 **Insufficient number of Directors:** The Directors may act notwithstanding any vacancy in their body, but if and so long as the number of Directors holding office is less than the minimum number fixed by clause 12.2, the continuing Directors may act only for the purposes of calling a meeting of the Shareholders to appoint Directors.

12.5 **Skills of Directors:**

- (a) A person may only be appointed to be a Director if the person has, in the opinion of the Stakeholders' Forum, the skills, knowledge, or experience to:
 - (i) guide the Company, given the nature and scope of its activities; and
 - (ii) contribute to the achievement of the objectives of the Company.
- (b) The Stakeholders' Forum must, prior to exercising its right to select and appoint or reappoint a Director, have reasonable regard to the extent to which any candidate for appointment:
 - (i) satisfies some or all of the Board Skills Requirements; and
 - (ii) will contribute the Board, collectively, having an appropriate mix and depth of the Board Skills Requirements.
- (c) The Stakeholders' Forum may, by unanimous agreement, from time to time amend the Board Skills Requirements or adopt a formal skills matrix which specifies additional criteria, weightings or other factors which must be considered or complied with in selecting and appointing or reappointing a Director. Any such

skills matrix is subject to the terms of this Constitution and the Shareholders' Agreement (unless otherwise agreed).

12.6 Term of Appointment:

- (a) No person may be appointed as a Director for a term of more than three consecutive years ("**Term**").
- (b) A Director may be reappointed at the expiry of his or her Term of appointment, provided that no Director may be appointed for more than three Terms unless otherwise approved by the Stakeholders' Forum in what the Stakeholders' Forum determines to be exceptional circumstances.

12.7 Vacation of office: A Director vacates office if that Director:

- (a) resigns by written notice of resignation to the Company. The notice is to be effective when it is received at that address or at a later time specified in the notice;
- (b) is removed from office in accordance with clause 12.3;
- (c) holds office as a Director for a period of longer than three years since the date of their last appointment or re-appointment;
- (d) becomes disqualified from being a Director pursuant to section 151 of the Companies Act; or
- (e) dies.

12.8 Appointment of Chair:

- (a) The Board must appoint a Chair by majority vote of the Board.
- (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 Board.

12.9 Powers of the Board:

- (a) Subject to clause 12.9(b) and any restrictions in the Companies Act, the LG(W)S Act, the Shareholders' Agreement and this Constitution, the business and affairs of the Company must be managed by or under the direction or supervision of the Board.
- (b) The Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the Company except to the extent that this Constitution, the Shareholders' Agreement, the Companies Act or the LG(W)S Act expressly requires those powers to be exercised by the Shareholders or any other person.

12.10 Shareholder Reserved Matters: Notwithstanding clause 12.9(b), but subject to any restrictions in the LG(W)S Act, the Board must not, and must not cause the Company to

enter into any transaction or matter that is a Reserved Matter, unless first approved in writing by the Shareholders in accordance with the Shareholders' Agreement.

- 12.11 **Solvency test:** The Board must not cause the Company to borrow or raise any money, or enter into or incur any guarantee or other liability of any nature, if the effect of doing so would be that the Company will not satisfy the solvency test (as that term is defined in the Companies Act).
- 12.12 **Proceedings of the Board:** The provisions of Schedule 3 to the Companies Act as modified by this Constitution, including the rules set out in Schedule 2 to this Constitution, govern proceedings at meetings of Directors.
- 12.13 **Directors' duties:** In addition to the duties set out in the Companies Act, the Directors must assist the Company to meet the objectives set out in clause 2.2 and any other requirements set out in the Statement of Expectations or the LG(WS) Act.
- 12.14 **Directors to act in good faith:** A Director, when exercising powers or performing duties, must act in a manner which that Director believes to be in the best interests of the Company (notwithstanding that it may not be in the best interests of any particular Shareholder).
- 12.15 **Indemnity and insurance of Directors and employees:** The Company may indemnify and directly or indirectly effect insurance for any director or employee of the Company or a related company to the maximum extent permitted by section 162 of the Companies Act. For the purposes of this clause 12.15, 12.15 "director" includes any former director, "employee" includes any former employee and "Company" includes any related company.
- 12.16 **Disqualification of Directors:** A person will be disqualified from holding the office of Director if he or she:
 - (a) is or becomes disqualified from being a Director under any provision of the Companies Act or the LG(WS) Act; or
 - (b) dies; or
 - (c) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
 - (d) is an undischarged bankrupt.
- 12.17 **Remuneration of Directors:**
 - (a) The Stakeholders' Forum shall determine the total sum available to the Board each year to make reasonable market-based remuneration payments in accordance with clause 12.17(b).
 - (b) The Board may not authorise any form of remuneration to be paid to a Director without Board approval and unless such payment is made and authorised in accordance with the provisions of the Companies Act and with the approval of the Stakeholders' Forum.
 - (c) The Board may authorise the reimbursement by the Company of reasonable travelling, hotel and other expenses incurred by Directors in attending Board meetings, Shareholder meetings or in relation to any other affairs of the Company.

12.18 **Other offices with company held by Director:** Subject to clause 12.1, any Director may:

- (a) Act by himself or herself or by the Director's firm in a professional capacity for the Company, and the Director or the Director's firm will be entitled to remuneration for professional services as if the Director were not a Director. Nothing in this clause 12.18 authorises a Director or the Director's firm to act as auditor of the company.
- (b) Hold any other office or place of profit in the Company (other than the office of auditor) in conjunction with the Director's office of Director for such period and on such terms (as to remuneration and otherwise) as the Board may determine, subject to the necessary reporting disclosures and avoidance of conflicts of interest.

12.19 **Alternate Directors:**

- (a) Each Director will have the power from time to time by written notice to the Company to appoint any person who is already a Director to act as an alternate Director in his or her place. An alternate Director cannot be appointed for more than one Director at any given time. The following provisions will apply to an alternate Director:
 - (i) the alternate Director will not be entitled to any remuneration in his or her capacity as alternate Director in addition to that of the Director in whose place he or she acts, but will have the same rights as a Director to be reimbursed under clause 12.17(c);
 - (ii) unless otherwise provided by the terms of the appointment, the alternate Director:
 - (aa) has the same rights, powers and privileges (including the power to sign resolutions of Directors and the power to sign documents on behalf of the Company, but excluding the power to appoint an alternate Director under this clause 12.19); and
 - (bb) must discharge all of the duties and obligations of the Director in whose place he or she acts.
- (b) An alternate Director will cease to be an alternate Director:
 - (i) if the Director who appointed the alternate Director ceases to be a Director or revokes the appointment;
 - (ii) on the occurrence of any event relating to the alternate Director which, if the alternate Director were a Director, would disqualify the alternate Director from being a Director; or
 - (iii) if a majority of the other Directors resolve to revoke the alternate Director's appointment.

13. INTERESTS OF DIRECTORS

13.1 **Disclosure of interests:** A Director must disclose particulars of any interest in a transaction or proposed transaction of the Company in accordance with section 140 of the Companies Act.

13.2 **Interested Directors may act:** 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 their capacity as a Director in relation to that transaction,

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

(c) any payment or other benefit of the kind referred to in section 161 of the Companies Act in respect of that Director in accordance with clause 12.17;

(d) the entry into an indemnity or insurance arrangement in respect of that Director in their capacity as a director of the Company in accordance with clause 12.15; or

(e) transactions in which a Director is interested solely in their capacity as a director of a Subsidiary of the Company.

13.3 **Interests register review:** The Board shall review the interests register at the beginning of every Board meeting.

13.4 **No prohibition re quorum:** No prohibition under this clause 13 will prevent the attendance of a Director at a Board meeting from counting for quorum purposes.

14. NOTICES

14.1 **Service:** Notices may be served by the Company upon any Director or Shareholder, either by personal delivery, by electronic means or by posting it in a prepaid envelope or package addressed to the recipient at his or her last known address (or, in the case of a company, its registered office). A notice may be given by the Company to joint Shareholders by giving the notice to the joint Shareholder named first in the Share Register in respect of the Share, or to such other person as the joint Shareholders may in writing direct.

14.2 **Time of service:** Notices are deemed served at the following times:

(a) when given personally, on delivery;

(b) when sent by post or document exchange, five Business Days after (but exclusive of) posting; and

(c) when sent by email, at the time of transmission, if (in the event receipt is disputed) the sender produces a printed copy of the email which evidences that the email was sent to the email address of the recipient.

Any notice which has been served on a Saturday, Sunday or public holiday is deemed to be served on the first Business Day after that day.

15. LIQUIDATION

15.1 If the Company is liquidated, the liquidator may, with the approval of the Shareholders by Special Resolution and any other approval required by the Companies Act or the LG(W.S) Act, but subject to the requirements of the Shareholders' Agreement (as notified by any Shareholder to the liquidator) and, if applicable, the rights or restrictions attached to the different classes of shares issued by the Company:

- (a) distribute to the Shareholders in kind the whole or any part of the assets of the Company; and
- (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that the Shareholders are not compelled to accept any Shares or other securities on which there is any liability.

16. METHODS OF CONTRACTING

16.1 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.

16.2 Subject to clause 16.1, an obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by two people acting under the express or implied authority of the Company.

16.3 Subject to clause 16.1, any other obligation or contract may be entered into on behalf of the Company in writing or orally by two people acting under the express or implied authority of the Company.

17. AMENDMENTS

17.1 The Shareholders may, by Special Resolution, alter or revoke this Constitution in accordance with the requirements of the Companies Act. Any alterations or replacements may be proposed by the Board to the Shareholders.

SCHEDULE 1**Rules for Shareholder Meetings****1. CHAIR**

- 1.1 If the Chair is present at the meeting, he or she must chair the meeting.
- 1.2 If there is no Chair or if the Chair is not present at the meeting within 15 minutes of the start time, the Directors present may elect a chair for that meeting, failing which, the Shareholders (or their representatives) present may elect a chair for that meeting.

2. NOTICE OF MEETINGS

- 2.1 The provisions of clause 2 of Schedule 1 of the Companies Act apply.

3. METHODS OF HOLDING MEETINGS

- 3.1 The provisions of clause 3 of Schedule 1 of the Companies Act apply.

4. QUORUM

- 4.1 No business may be transacted at a Shareholder meeting if a quorum is not present.
- 4.2 A quorum for a Shareholder meeting is present if a majority of Shareholders (based on the number of Shares held) or their proxies:
 - (a) is present; or
 - (a) has completed postal votes (where permitted).
- 4.3 If a quorum is not present within the 30 minutes after the start time for the meeting:
 - (a) if the meeting is called under section 121(b) of the Companies Act, the meeting is dissolved;
 - (b) for any other meeting, the meeting is adjourned to:
 - (i) the same day in the following week at the same time and place, or
 - (ii) to another date, time and place to be fixed by the Directors.

5. ADJOURNMENTS

- 5.1 The Chair:

- (a) may adjourn the meeting from time to time and from place to place, but no business can be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place; and
- (b) must adjourn the meeting as above if directed to do so by the meeting.

6. VOTING

- 6.1 The provisions of clause 5 of Schedule 1 of the Companies Act apply.

7. PROXIES AND POSTAL VOTES

- 7.1 The provisions of clause 6 and clause 7 of Schedule 1 of the Companies Act apply.

8. MINUTES

- 8.1 The Board must ensure that minutes are kept of all proceedings at Shareholder meetings.
- 8.2 Minutes which have been signed correct by the Chair of the meeting are prima facie evidence of the proceedings.

9. SHAREHOLDER PROPOSALS

- 9.1 The Shareholders may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next Shareholder meeting. The provisions of clause 9 of Schedule 1 of the Companies Act apply to any notice given under this rule 9.1.
- 9.2 The Chair of a Shareholder meeting will allow a reasonable opportunity for the Shareholders to question, discuss or comment on the management of the Company.

10. OTHER PROCEEDINGS

- 10.1 Except as provided in this Schedule 1, and subject to this Constitution, a Shareholder meeting may regulate its own procedure.

SCHEDULE 2**Rules for 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 rule 1.
- 1.2 At least five Business Days' notice of a meeting of the Board must be given to every Director. 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 Notice of a meeting may be given by any means, including by telephone or email. Notice given by a letter addressed to a Director at his or her last known residential address in New Zealand will be deemed to have been given on the next Business Day after the letter is posted.

2. METHOD OF HOLDING MEETINGS

- 2.1 The Board may meet in person or by any technological means that allow participating Directors to be in communication with other participating Directors in a manner that is relatively contemporaneous. Where Directors are not all in attendance in one place but are holding a meeting through such a system of communication:
- (a) the participating Directors will be taken to be assembled together at a meeting and present at that meeting (including for the purposes of quorum requirements);
 - (a) the meeting will be taken to be held at the place agreed to by the participating Directors so long as at least one participating Director is physically present at that place; and
 - (b) all proceedings at meetings conducted in such a manner will be valid and effective as if conducted at a meeting at which all of them were physically present.

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 or the Shareholders' Agreement, 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 time appointed for the commencement of the Board meeting, the Board meeting must be adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Chair may appoint, and if at the adjourned meeting a quorum is not present within one hour after the time appointed for the commencement of the meeting, the Directors present (regardless of the person who appointed them) will constitute a quorum. No business may be transacted at a meeting of Directors 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 Subject to clause 12.10, 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 must ensure minutes are kept of all proceedings at meetings of the Board.

6. RESOLUTIONS

- 6.1 A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 6.2 A resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more Directors.
- 6.3 A copy of all resolutions must be entered in the minute book of Board proceedings.

7. NO NOTICE TO DIRECTORS OUTSIDE NEW ZEALAND

- 7.1 It is not necessary to give notice of a meeting of the Board to any Director temporarily absent from New Zealand.

8. OTHER PROCEEDINGS

- 8.1 Except as provided in this Schedule 2 and this Constitution, the Board may regulate its own procedure.

SCHEDULE 3**Skills Requirements**

The skills and experience which the Stakeholders' Forum will have regard to in exercising their rights to select and appoint or reappoint a Director are as follows:

- 1) For Directors and the Chair of the Company prior to 1 July 2027, knowledge and experience in the formation of new entities and establishment of business processes and systems.
- 2) Governance and senior leadership experience.
- 3) Experience in utilities and infrastructure industries, preferably water.
- 4) Commercial and financial expertise, including Director(s) with relevant qualifications to chair an Audit and Risk Committee.
- 5) Understanding of the relevant public accountability, legislative and regulatory context.
- 6) Asset management experience.
- 7) Commitment to partnership and upholding the Treaty of Waitangi, tikanga and te ao Māori.
- 8) Knowledge and experience in te ao Māori and te taiao Māori and Treaty of Waitangi principles and implementation.
- 9) Understanding and commitment to the four communities the organisation serves.
- 10) Commitment to strong stakeholder engagement with the four Shareholders.

Council approval version

Shareholders' Agreement relating to Wairarapa Tararua Water Limited

PARTIES

Carterton District Council

Masterton District Council

South Wairarapa District Council

Tararua District Council

Each a Council and together the Councils

Wairarapa Tararua Water Limited

Company

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AGREEMENT dated

2025

PARTIES

Carterton District Council

Masterton District Council

South Wairarapa District Council

Tararua District Council

(Each a “**Council**” and together the “**Councils**”)

Wairarapa Tararua Water Limited

(“**Company**”)

BACKGROUND

- A. The Councils are the Shareholders in the Company. The parties have entered into this agreement to record how the Shareholders will manage their shareholdings in the Company and their respective relationships with each other.
- B. The Company is party to this agreement to record certain obligations owed to it by, and owed by it to, the Shareholders.
- C. The terms and conditions of this agreement are set out in Schedule 1 (Agreement Details) and Schedule 2 (Terms and Conditions) and Schedules 3 to 8.

SIGNATURES

SIGNED for and on behalf of

CARTERTON DISTRICT COUNCIL by:

Signature of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

Name of Authorised Signatory

Date

Date

MASTERTON DISTRICT COUNCIL by:

Signature of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

Name of Authorised Signatory

Date

Date

SOUTH WAIRARAPA DISTRICT COUNCIL by:

Signature of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

Name of Authorised Signatory

Date

Date

TARARUA DISTRICT COUNCIL by:

Signature of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

Name of Authorised Signatory

Date

Date

WAIRARAPA TARARUA WATER LIMITED

by:

Signature of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

Name of Authorised Signatory

Date

Date

SCHEDULE 1

AGREEMENT DETAILS

Initial share issue and shareholding <i>(Clause 2.2, Schedule 2)</i>	Total Shares to be issued on incorporation: [●] Initial Shareholders: <table> <tr> <th>Shareholder</th><th>Number of Shares</th></tr> <tr> <td>Carterton District Council</td><td>[●]</td></tr> <tr> <td>Masterton District Council</td><td>[●]</td></tr> <tr> <td>South Wairarapa District Council</td><td>[●]</td></tr> <tr> <td>Tararua District Council</td><td>[●]</td></tr> </table> [Drafting Note: Shareholdings to be determined based on connections.]	Shareholder	Number of Shares	Carterton District Council	[●]	Masterton District Council	[●]	South Wairarapa District Council	[●]	Tararua District Council	[●]						
Shareholder	Number of Shares																
Carterton District Council	[●]																
Masterton District Council	[●]																
South Wairarapa District Council	[●]																
Tararua District Council	[●]																
Price payable for each share issued <i>(Clause 2.3, Schedule 2)</i>	The transfer of the assets and assumption of liabilities under the relevant transfer agreement to be entered into by each Shareholder																
Name of Company <i>(Clause 2.4, Schedule 2)</i>	Wairarapa Tararua Water Limited																
Registered office and address for service of Company <i>(Clause 2.4, Schedule 2)</i>	19 Kitchener Street, Martinborough, Martinborough, 5711, New Zealand																
Initial Directors and term of appointment <i>(Clause 4.2, Schedule 2)</i>	Initial Directors and their term of appointment: <table> <tr> <th>Directors</th><th>Term</th></tr> <tr> <td>[Name]</td><td>[insert months/years]</td></tr> <tr> <td>[Name]</td><td></td></tr> <tr> <td>[Name]</td><td></td></tr> <tr> <td>[Name]</td><td></td></tr> <tr> <td>[Name]</td><td></td></tr> <tr> <td>[Name]</td><td></td></tr> <tr> <td>[Name]</td><td></td></tr> </table>	Directors	Term	[Name]	[insert months/years]	[Name]		[Name]		[Name]		[Name]		[Name]		[Name]	
Directors	Term																
[Name]	[insert months/years]																
[Name]																	
[Name]																	
[Name]																	
[Name]																	
[Name]																	
[Name]																	
Other matters to be included in the	As set out in Schedule 8.																

Statement of Expectations <i>(Clause 12.2(c), Schedule 2)</i>		
Interest rate payable on payment default <i>(Clause 16.3(a), Schedule 2)</i>	For any day, interest calculated at the Bill Rate for that day plus a margin of 4 percentage points, where the Bill Rate means the average rate per annum (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page displaying substantially the same information) under the heading FRA for bank accepted bills having a term of 90 days as fixed at 10:45am on the first business day following the due date.	
Address for notices <i>(clause 19.1, Schedule 2)</i>	Carterton District Council	Masterton District Council
	[insert physical and postal address details of Council] Email: [Insert details] Attention: [Insert details]	[insert physical and postal address details of Council] Email: [Insert details] Attention: [Insert details]
	South Wairarapa District Council	Tararua District Council
	[insert physical and postal address details of Council] Email: [Insert details] Attention: [Insert details]	[insert physical and postal address details of Trust] Email: [Insert details] Attention: [Insert details]
	Wairarapa Tararua Water Limited	
	[insert physical and postal address details of Company] Email: [Insert details] Attention: [Insert details]	
Stakeholders’ Forum membership	Total number of members of the Stakeholders’ Forum: 6 Initial members of the Stakeholders’ Forum:	

(Schedule 4)

- [X], appointed by Carterton District Council
- [X], appointed by Masterton District Council;
- [X], appointed by South Wairarapa District Council;
- [X], appointed by Tararua District Council;
- [X], appointed by Rangitāne; and
- [X], appointed by Ngāti Kahungunu.

Alternates of the Stakeholders' Forum:

- [X], appointed by Carterton District Council
- [X], appointed by Masterton District Council;
- [X], appointed by South Wairarapa District Council;
- [X], appointed by Tararua District Council;
- [X], appointed by Rangitāne; and
- [X], appointed by Ngāti Kahungunu.

SCHEDULE 2**TERMS AND CONDITIONS****AGREEMENT****1. DEFINITIONS AND INTERPRETATION****1.1 Definitions:** In this agreement the following definitions apply:

"Alternate" means in relation to a Shareholder, an alternate to that Shareholder's appointed Stakeholders' Forum Member to observe, participate and vote at meetings of the Stakeholders' Forum (as applicable, in accordance with Schedule 4 of this agreement).

"Board" means the board of Directors of the Company.

"Business" means the business and activities set out in clause 2.2 of the Constitution.

"Business Day" means a day (other than a Saturday, a Sunday or a public holiday) on which registered banks are open for business in Carterton, Masterton, South Wairarapa and Tararua, New Zealand.

"Companies Act" means the Companies Act 1993.

"Confidential Information" means all information of a confidential nature (which, where the confidentiality of the information is not expressly stated, shall be determined by the recipient, acting reasonably) obtained by one party from the other party under or in connection with this agreement, including, in relation to the Company, trade secrets, proprietary information and confidential information belonging to the Company that are not generally known to the public, including information concerning business plans, financial statements and other information provided pursuant to this agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents which the Company treats as confidential, and any other information in respect of which the Company is bound by an obligation of confidence owed to a third party, but does not include the provisions of this agreement.

"Constitution" means the constitution of the Company as filed with the New Zealand Companies Office on the incorporation of the Company, as amended or replaced from time to time.

"Director" means a director of the Company.

"Event of Default" in respect of a Shareholder, means where a Shareholder breaches or fails to observe any of the obligations under this agreement and:

- (a) if that breach or failure is capable of remedy, does not remedy that breach or failure within 20 Business Days of notice from any other Shareholder specifying the breach or failure and requiring remedy; or
- (b) if that breach or failure is material in the context of the obligations of that Shareholder under this agreement and that breach or failure is not capable of remedy.

"Incorporation Date" means the date on which the Company is incorporated as determined by the date recorded by the New Zealand Companies Office.

"Independent Director" has the meaning given to it in the Constitution.

"Iwi" means each of Rangitāne and Ngāti Kahungunu.

"LGA" means the Local Government Act 2002.

"LGFA" means the New Zealand Local Government Funding Agency Limited.

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

"Local Authority" has the meaning given to it in the LGA.

"Material" means material in the context of the Business and assets of the Company as a whole.

"Ngāti Kahungunu" means the hapu of Ngāti Kahungunu ki Wairarapa Tamaki nui a Rua as represented by Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua Settlement Trust.

"Ordinary Resolution" means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question.

"Rangitāne" means the hapu of Rangitāne o Wairarapa and Tamaki nui-a-Rua as represented by Rangitāne tu mai ra Trust.

"Reserved Matters" means matters of the nature listed in Schedule 3.

"Security Interest" includes a mortgage, debenture, charge, lien, pledge, assignment or deposit by way of security, bill of sale, lease, hypothecation, hire purchase, credit sale, agreement for sale on deferred terms, option, right of pre-emption, caveat, claim, covenant, interest or power in or over an interest in an asset and any agreement or commitment to give or create any such security interest or preferential ranking to a creditor including set off.

"Service Area" has the meaning set out in the LG(WS) Act.

"Shares" means shares in the Company on issue from time to time.

"Shareholder" means a shareholder in the Company and includes any person who subsequently becomes a shareholder. Where Shares are held by persons jointly, those persons are considered one Shareholder for the purpose of this agreement.

"Special Resolution" means a resolution that is approved by a majority of 75% of the votes of those Shareholders entitled to vote and voting on the question.

"Stakeholders' Forum" means the forum of Shareholder and Iwi representatives formed pursuant to clause 6.1.

"Stakeholders' Forum Member" means a member of the Stakeholders' Forum.

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

"Terms of Reference" means the terms of reference of the Stakeholders' Forum in the form set out in Schedule 4 as amended from time to time.

"Transfer Agreement" has the meaning set out in the LG(WS) Act.

"Water Service Connection" means a physical connection to the wastewater network and the drinking water network provided by, or on behalf of, the Company, with a connection to the network in respect of both wastewater and drinking water for a single user being deemed to be a single connection.

"Water Services" has the meaning set out in the LG(WS) Act, which shall be the water services in respect of which responsibility is transferred to the Company in accordance with the respective Transfer Agreements between the Company and each Shareholder.

"Water Services Strategy" has the meaning set out in the LG(WS) Act.

1.2 **Interpretation:** In this agreement, unless the context otherwise requires:

- (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 agreement have the same meaning as in the Companies Act unless inconsistent with the context;
- (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 dollars or \$ is to New Zealand currency and excludes every tax and duty;
- (g) a reference to a clause or schedule is to a clause or schedule of this agreement;
- (h) 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;
- (i) references to the word 'include' or 'including' are to be construed without limitation;

- (j) references to any form of law is to New Zealand law, including as amended or re-enacted;
 - (k) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (l) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
 - (m) any obligation falling due for performance on or by a day other than a Business Day shall be performed on or by the Business Day immediately following that day; and
 - (n) an obligation not to do something includes an obligation not to allow or cause that thing to be done.
- 1.3 **Subsidiaries of the Company:** If at any time the Company has a subsidiary (as defined in the Companies Act) or subsidiaries, clauses 3.1, 5.1 and 6.1 shall be read so as to relate to the group of companies consisting of the Company and its subsidiaries, rather than to the Company alone.
2. **ESTABLISHMENT OF COMPANY AND STAKEHOLDERS' FORUM**
- 2.1 **Incorporation:** The Shareholders shall immediately after signing this agreement take all steps necessary (including signing documents) to:
- (a) incorporate the Company as a New Zealand registered company including by:
 - (i) granting any necessary authorisations, approvals and delegations;
 - (ii) procuring the execution of director consent forms by the Initial Directors;
 - (iii) preparing, or procuring that an authorised person prepare, a share register for the Company; and
 - (iv) completing, or procuring that an authorised person complete, all necessary Companies Office filings;
 - (b) procure that the Company enter into and execute this agreement; and
 - (c) establish the Stakeholders' Forum in accordance with clause 6.1.
- 2.2 **Shares:** The Company shall immediately upon incorporation have the number of shares set out in Schedule 1 which, on issue, will be held by the Shareholders set out in Schedule 1. These shareholdings represent the Shareholders' best estimate of the number of Water Service Connections as at 1 July 2027.
- 2.3 **Payment for Shares:** As set out in Schedule 1, no cash amount shall be payable by each Shareholder in respect of each Share held by that Shareholder.
- 2.4 **Name and registered office:** The name of the Company shall be as set out in Schedule 1 and the initial registered office and address for service of the Company shall be as set out in Schedule 1.

3. PURPOSE OF COMPANY

- 3.1 **Purpose:** It is the intention of the Shareholders and the Stakeholders' Forum that the Company is to carry on the Business.
- 3.2 **Initial business set up:** The Shareholders and the Company will develop and agree the terms of the Transfer Agreements, including incorporating the debt transfer principles set out in Schedule 5 to the Commitment Agreement between Shareholders dated 25 August 2025, promptly after execution of this agreement and must enter into the Transfer Agreements no later than [September 2026] (or such other date as the parties may agree). Once entered, the Shareholders and the Company must each comply with the terms and conditions of the relevant Transfer Agreement.

4. BOARD AND DIRECTORS

- 4.1 **Board:**
- (a) The Company will have a number of Directors that complies with the Constitution.
 - (b) The Directors will be appointed and removed in accordance with the Constitution.
 - (c) All Directors will be Independent Directors. A Director who ceases to be an Independent Director must be promptly replaced by another person who is an Independent Director in accordance with this agreement.
- 4.2 **Initial Directors:** The Directors named in Schedule 1 are deemed to have been nominated by the Stakeholders' Forum to be the Directors from incorporation of the Company, and are deemed to have been appointed for a term commencing from the Incorporation Date and continuing for the period stated in Schedule 1 unless the Director otherwise ceases to be a Director in accordance with the Constitution or the Companies Act.
- 4.3 **Performance evaluation:** The Board will undertake a self-evaluation of its performance on an annual basis, in line with accepted good governance principles and practices and any reasonable written requests of the Stakeholders' Forum, and the results will be reported directly to the Stakeholders' Forum.

5. SHAREHOLDERS' RIGHTS AND OBLIGATIONS

- 5.1 **Voting and Shareholder Reserved Matters:**
- (a) Subject to clause 5.1(b) and any resolution that is required by the Companies Act or the Constitution to be passed as a Special Resolution or by any other voting threshold, all resolutions of meetings of the Shareholders may be passed by Ordinary Resolution.
 - (b) The Company will not enter into any transaction or matter which is a Shareholder Reserved Matter unless the entry into that transaction or matter is approved in writing in accordance with the threshold for the relevant Shareholder Reserved Matter specified in Schedule 3.
- 5.2 **Duty to comply with Constitution:** Each Shareholder shall comply with the Constitution.

- 5.3 **Compliance with laws:** The Shareholders will each ensure they comply with their, and the Company complies with its, obligations under the LGA, Local Government (Water Services Preliminary Arrangements) Act 2024, the LG(WS) Act, the Water Services Act 2021, the Companies Act and all other applicable laws.
- 5.4 **Spirit of collaborative working:** The Shareholders and the Company must at all times act in a spirit of co-operation and collaborative working, endeavouring to act together to allow for the effective communication of the Shareholders' intentions or requirements to the Company and of the Company's intentions or requirements, as applicable.
- 5.5 **No surprises:** The Shareholders shall use best endeavours to act under the principle of "no surprises", both with the Company and with each other in relation to their respective interests. The Company shall use best endeavours to act under the principle of "no surprises" with each of the Shareholders in relation to their respective interests.

6. **STAKEHOLDERS' FORUM**

6.1 **Establishment and Terms of Reference:**

- (a) The Shareholders will establish, maintain and operate a Stakeholders' Forum in accordance with the Terms of Reference to provide overarching governance of the Company, including:
- (i) in relation to the appointment of Directors to the Board of the Company;
 - (ii) to assist the Shareholders to fulfil their obligations under this agreement;
 - (iii) to provide opportunities for collaboration with Iwi;
 - (iv) where the Company has any obligation to consult with the Shareholders under the LG(WS) Act or other applicable law, to allow the Company to meet such obligation by consulting with the Stakeholders' Forum; and
 - (v) where the Company has Treaty settlement obligations (including under the Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Rua) Claims Settlement Act 2017, the Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua Claims Settlement Act 2022 and the Te Rohe o Rongokako Joint Redress Act 2022), to allow the Company to meet such obligations by consulting with the Stakeholders' Forum.
- (b) The Stakeholders' Forum will be deemed to have been established on the date of this agreement, at which time:
- (i) the Terms of Reference are on the terms attached at Schedule 4 to this agreement; and
 - (ii) the initial Stakeholders' Forum Members and Alternates are as set out in Schedule 1.

6.2 **Stakeholders' Forum Members:**

- (a) The Stakeholders' Forum will be made up of:

- (i) one Stakeholders' Forum Member appointed by each Shareholder; and
- (ii) one Stakeholders' Forum Member appointed by each of Rangitāne and Ngāti Kahungunu.
- (b) Each Stakeholders' Forum Member (and/or their Alternate) appointed by a Shareholder may be (but is not required to be) an elected member of a Council.
- (c) Each Shareholder and Iwi must ensure that it has appointed a Stakeholders' Forum Member and an Alternate at all times. If a Shareholder or Iwi fails to comply with this requirement, then the Chief Executive (or equivalent) of the relevant Shareholder or Iwi (as applicable) will be deemed to be the Stakeholders' Forum Member appointed by that Shareholder or Iwi until such time as a new Stakeholders' Forum Member is appointed by that Shareholder or Iwi (as applicable).
- (d) Each Iwi who appoints a Stakeholders' Forum Member, and that Stakeholders' Forum Member, must enter into confidentiality arrangements substantially similar to those set out in clause 18 of this agreement.

6.3 Replacing a Stakeholders' Forum Member:

- (a) Each Shareholder's appointed Stakeholders' Forum Member and/or Alternate may be replaced from time to time by that Shareholder providing written notice to the Stakeholders' Forum and the other Shareholders.
- (b) Each Iwi appointed Stakeholders' Forum Member and/or Alternate may be replaced from time to time by the relevant Iwi (and not any other person) providing written notice to the Stakeholders' Forum and the Shareholders.

6.4 Terms of Reference:

- (a) The Shareholders may amend the Terms of Reference by the written agreement of all Shareholders, provided the Shareholders have first consulted with Iwi.
- (b) The:
 - (i) operation of the Stakeholders' Forum will be governed by the Terms of Reference (as amended from time to time); and
 - (ii) Shareholders must procure that their appointed Stakeholders' Forum Member (and their Alternate) comply at all times with the Terms of Reference.

6.5 Delegations to a Stakeholders' Forum Member: Each Shareholder agrees to delegate to its appointed Stakeholders' Forum Member, and their Alternate, those responsibilities and powers set out in the Appendix to the Terms of Reference and those in clause 6.6.

6.6 Authority of Stakeholders' Forum Member: Subject to the delegations under clause 6.5 above, the Shareholders agree that any right, power, discretion or action for a Shareholder under this agreement (including casting a vote on any Shareholder resolution, signing any notice, resolution, consent or approval and approving any Shareholder Reserved Matter)

may be exercised by the Stakeholders' Forum Member appointed by that Shareholder (or their Alternate).

6.7 **Iwi representation:** The parties acknowledge and agree that clauses 6.2(a)(ii), 6.2(d), 6.3(b) and parts of Schedule 4 contain benefits in favour of Rangitāne and Ngāti Kahungunu and shall be enforceable by those Iwi in accordance with Part 2, Subpart 1 of the Contract and Commercial Law Act 2017. Nothing in this clause 6.7 prevents the Shareholders from amending this agreement, including any of clauses 6.2(a)(ii), 6.2(d), 6.3(b) and Schedule 4, without the consent of each Iwi provided where any change is proposed to Iwi rights of participation in the Stakeholders' Forum the Shareholders:

- (a) proactively seek ways to enhance Iwi participation;
- (b) consult with Iwi in good faith on the proposed change;
- (c) engage with Iwi as to the effects of the proposed change; and
- (d) seek to mitigate the adverse effects of the proposed change, if any.

6.8 **Breach:**

- (a) Each Stakeholders' Forum Member (and their Alternate) must comply with all applicable requirements of the Terms of Reference.
- (b) In the event of Material breach by a Stakeholders' Forum Member (or their Alternate), as determined by a majority of the other Stakeholders' Forum Members, of the Terms of Reference or the rules that may be adopted by the Stakeholders' Forum from time to time to regulate its own procedures, the other Stakeholders' Forum Members may suspend the voting and other rights of participation of that Stakeholders' Forum Member for such time as they consider necessary to resolve the breach or otherwise appropriate in the circumstances.
- (c) If:
 - (i) the suspended Stakeholders' Forum Member fully remedies the relevant breach to the reasonable satisfaction of all other Stakeholders' Forum Members (such satisfaction to be evidenced in writing); or
 - (ii) the other Stakeholders' Forum Members agree (acting reasonably),

the suspension shall automatically end and all rights, privileges, and entitlements of the suspended Stakeholders' Forum Member under this agreement shall be reinstated with effect from the date on which such written confirmation is given.

7. ISSUING ADDITIONAL SHARES

7.1 **Share issue:** Additional shares in the Company may be issued:

- (a) with the written approval of all Shareholders;
- (b) to an existing Shareholder in accordance with the process set out in clause 7.2; or
- (c) to a third party in accordance with the process set out in clause 8.2.

- 7.2 **Periodic adjustment to Shares:** The Shareholders agree that their intention is for each Shareholder's shareholding in the Company as a proportion of total Shares to be equivalent to the number of Water Service Connections in the Shareholder's Service Area as a proportion of total Water Service Connections in the Service Areas for all Shareholders. To maintain this equivalency over time:
- (a) within four weeks after 1 July of each third anniversary of the date of this agreement, the Board must calculate the number of Water Service Connections in each Shareholder's Service Area as a proportion of total Water Service Connections in the Service Areas for all Shareholders as at that 1 July;
 - (b) promptly after the calculations referred to at clause 7.2(a) have been completed, the Board must notify the Shareholders and the Stakeholders' Forum of the resulting proportions of each Shareholder and the details of the Board's proposed action under clause 7.2(c);
 - (c) at least 10 business days after notifying the Shareholders and the Stakeholders' Forum under clause 7.2(b) (the **Notification Period**), but promptly thereafter, the Board and the Shareholders must take all steps necessary to issue and/or acquire and cancel Shares in the Company in such number and in respect of such Shareholders as is required to ensure that, immediately following such issuance and/or cancellation, each Shareholder's shareholding in the Company as a proportion of total Shares is equivalent to the proportion calculated in respect of that Shareholder under clause 7.2(a). For the avoidance of doubt, shares must not be issued, acquired or cancelled under this clause 7.2 prior to the conclusion of the Notification Period without the agreement of all Shareholders; and
 - (d) all shares acquired or issued under this clause 7.2 as part of any periodic adjustment to shareholdings shall be acquired or issued for nil consideration.
- 7.3 **Adjustment to Shares for capital events:** An adjustment to the respective holdings of Shares may be initiated at any time by the Board, and will be initiated by the Board prior to any increase in capital from Shareholders or distribution to Shareholders, in each case in accordance with the methodology as set out in clause 7.2, provided that the Board will select a date that the adjustment should be undertaken as at.
- 7.4 **Disputes:** Any dispute as to the operation of, and calculations under, clause 7.2 or 7.3 will be resolved in accordance with clause 17, provided that if the Board receives a notice of dispute pursuant to clause 17.1 within five business days after notice has been given under clause 7.2(b), the Board will not proceed to take any action under clause 7.2(c) until the dispute has been resolved under clause 17, following which the Board may take such action or make such adjustments as it deems reasonably necessary to give effect to any change in shareholdings, including in respect of transactions that may have occurred prior to the resolution of the dispute but on a basis consistent with the determined outcome of the dispute.
8. **SHAREHOLDER ENTRY AND EXIT**
- 8.1 **No sale:** No Shareholder shall directly or indirectly sell, transfer, or dispose of the legal or beneficial ownership of, or the control of, any of its Shares otherwise than in compliance with this clause 8, the Constitution and the LG(WS) Act.

8.2 **New Shareholders:** A Local Authority who is not an existing Shareholder may be admitted as an additional Shareholder in accordance with the process and requirements of Schedule 5.

8.3 **Shareholder exit:** A Shareholder who wishes to exit from its shareholding in the Company may do so in accordance with the process and requirements of Schedule 6.

9. LOANS AND GUARANTEES BY SHAREHOLDERS

9.1 **Loans and guarantees:** No Shareholder will be required to make any loans to the Company or guarantee the obligations of the Company, to any creditor or other party except with the express prior agreement of such Shareholder or as set out in clause 9.2 below.

9.2 **Establishment funding:** The Shareholders agree that it is intended that the Company will, in advance of the Company receiving revenue from the Business, borrow from Shareholders for the purpose of meeting the reasonable establishment and operating costs of the Company (**Establishment Loans**). To this end, it is agreed that:

- (a) the Company may, in one or more requests in writing given prior to the date on which it receives its first revenue following the closing under the Transfer Agreement, request the advance by each Shareholder of up to, in aggregate with all other sums advanced by that Shareholder under this clause 9.2, the sum of \$[•];
- (b) that request for advance must be made to each Shareholder at the same time and for the same amount;
- (c) the Shareholders must advance the funds requested to the Company under the Establishment Loan within five Business Days of receipt of the request;
- (d) the Establishment Loan will be unsecured, interest free and repayable upon the earlier of:
 - (i) 30 June 2028;
 - (ii) the date on which the Company is eligible to borrow from LGFA and remain in compliance with all LGFA funding requirements and covenants; and
 - (iii) the date elected by the Company; and
- (e) the Shareholders will do all things reasonably required in connection with the Establishment Loans, including capitalising the Establishment Loans, to the extent necessary for the Company to be able to borrow from LGFA.

9.3 **LGFA:** The Shareholders agree that it is intended that the Company will borrow from LGFA. In accordance with LGFA foundation policies, the Company (as a CCO) must have financial support from its shareholders. To this end, it is agreed that each Shareholder will:

- (a) support the Company in taking all steps necessary for it to:
 - (i) be approved by LGFA as a borrower; and

- (ii) accede to LGFA's Multi Issuer Deed and Notes Subscription Agreement (or similar); and
 - (b) either:
 - (i) enter into, in a timely manner, a deed of guarantee (or such other documentation as required by LGFA) for the Company's debt liabilities to LGFA; or
 - (ii) commit to provide uncalled capital,

based on the following principles:

 - (iii) no Shareholder will ultimately be required to guarantee, or pay, more than that Shareholder's Agreed Proportionate Amount; and
 - (iv) the guarantee/amount of any uncalled capital will be reviewed periodically to ensure it reflects the above principle.
- 9.4 The "**Agreed Proportionate Amount**" for a Shareholder will be set out or determined in accordance with the Transfer Agreement for that Shareholder, and will be agreed with all Shareholders.
- 10. SETTING WATER CHARGES AND OTHER REVENUE RECOVERY**
- 10.1 The Board will make all decisions in relation to the setting of water charges and other revenue recovery.
- 10.2 Each decision of the Board regarding water charges will be made:
 - (a) in compliance with clause 2.2 of the Constitution (unless that clause is amended in accordance with clause 10.3); and
 - (b) having regard to the pricing principles set out in Schedule 7.
- 10.3 Notwithstanding clauses 10.1 and 10.2:
 - (a) if the Shareholders agree otherwise as a Reserved Matter, the Board may adopt harmonisation of pricing between any Service Areas despite the provisions of clause 2.2 of the Constitution; and
 - (b) promptly after the ninth anniversary of the date of this agreement the Shareholders will, with the input of the Board, review whether clause 2.2 of the Constitution should be amended to change the way charges are set for water users away from reflecting the costs to serve those water users. Any change will only take effect if the Shareholders agree as a Reserved Matter.
- 10.4 The Board may, within six weeks of 1 July 2030, 1 July 2033 and 1 July 2036, put forward a business case to Shareholders proposing to adopt a harmonisation pricing strategy for consideration by Shareholders under clause 10.3(a) above. The business case will consider, among other things, the following factors:

- (a) whether there is sufficient reliable information available about future investment requirements to provide reliable and transparent estimates of costs to ratepayers;
- (b) the impact of any proposed changes on each Shareholder's ratepaying population (including distributional impacts within and between Council districts);
- (c) other benefits and costs of the new proposed approach relative to current approach (e.g., impact on operating costs/efficiencies for the entity); and
- (d) whether other compensatory measures could be put in place to manage any significant impact (if any) on subsets of ratepayers.

Nothing in any such proposal or in this clause 10.4 obliges any Shareholder to agree to any such proposal.

11. DISTRIBUTIONS

11.1 The Board may authorise dividends and other distributions (as those terms are defined in the Companies Act) only in accordance with a dividend policy adopted by the Shareholders in accordance with this clause 11.

11.2 Each Shareholder acknowledges and agrees that:

- (a) the initial dividend policy of the Company will be to re-invest all profits of the Company into the Business and, accordingly, the Company does not intend to pay dividends to Shareholders; and
- (b) it is the Shareholders' intention that the initial dividend policy will be maintained for at least nine years from the Incorporation Date.

11.3 The Shareholders may agree by a unanimous resolution of Shareholders to the Company adopting an updated dividend policy from time to time. Unless otherwise agreed by that unanimous resolution of Shareholders, the payment of any dividend (including if made under an updated dividend policy) will be:

- (a) subject to the Company being able to:
 - (i) comply with its then current business plan;
 - (ii) comply with its obligations to any third party;
 - (iii) comply with its legal obligations, including under the LG(WS) Act (including the obligation not to not pay a dividend amount that could compromise the Company's ability to act in accordance with the financial principle that it 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);
 - (iv) meet the solvency test set out in the Companies Act; and
 - (v) maintain prudential capital reserves,

(as determined in each case by the Board);

- (b) made on a pro-rata basis, in proportion to the Shares then held by each Shareholder.

12. STATEMENT OF EXPECTATIONS

12.1 **Preparation:** The Stakeholders' Forum will be responsible for preparing the Statement of Expectations in accordance with the LG(WS) Act, within the time periods required by the LG(WS) Act.

12.2 **Process:** Unless the Shareholders otherwise agree, or an alternative process is provided for in the LG(WS) Act (in which case that alternative process will be followed):

- (a) The Stakeholders' Forum will meet eight months before the date on which the Company is required to prepare a Water Services Strategy under the LG(WS) Act, to discuss and agree to the process for preparing the next Statement of Expectations. That process must comply with the requirements of the LG(WS) Act including in respect of liaising with the Company.
- (b) The Stakeholders' Forum Members will procure that one or more Shareholders publish the process agreed in accordance with clause 12.2(a) on their website in accordance with the LG(WS) Act.
- (c) The Stakeholders' Forum Members will then work collectively to prepare a draft Statement of Expectations in accordance with the process agreed under clause 12.2(a) and the requirements of this agreement and the LG(WS) Act.
- (d) In addition to the requirements specified in the LG(WS) Act, the Statement of Expectations shall also include the matters set out in Schedule 8. However, for clarity, section 228(3) of the LG(WS) Act applies.
- (e) The Shareholders must approve and adopt (as a Shareholder Reserved Matter) the draft Statement of Expectations prepared in accordance with clause 12.2(c), subject to any amendments they consider necessary, at least six months prior to the date on which the Company is required to prepare a Water Services Strategy under the LG(WS) Act.

Promptly after the Statement of Expectations has been approved and adopted in accordance with clause 12.2(e), the Statement of Expectations will be circulated to the Chairperson of the Board, the Chief Executive of the Company and the Stakeholders' Forum.

12.3 **Compliance:** The Shareholders, the Stakeholders' Forum and the Board will ensure that the business of the Company is conducted in accordance with its Statement of Expectations.

13. SECURITY INTERESTS, AMALGAMATION

13.1 **No Security Interest:** A Shareholder must not grant a Security Interest over any of its Shares.

13.2 **Amalgamation of Local Authorities:** In the event of an amalgamation or any other change in the governance structure of a Shareholder, the Shareholders will meet and discuss the

effect of the amalgamation on the shareholding structure of the Company and will exercise their voting rights to ensure that the shareholding percentages for the Shares remain reasonable as agreed by all Shareholders.

14. TERM AND TERMINATION

14.1 **Term:** This agreement commences on the date signed by all parties and continues until the first date on which:

- (a) only one Shareholder owns all Shares;
- (b) none of the Shareholders hold Shares; or
- (c) the date on which the Company is removed from the Companies Register.

15. CONSEQUENCES OF TERMINATION

15.1 **Effect of termination:** Any termination of this agreement with respect to a Shareholder does not affect any accrued rights that Shareholder may have against the other parties to this agreement or which the other parties to this agreement may have against it.

15.2 **Survival:** Termination of this agreement will not affect the rights and obligations of the Shareholders set out in clauses 1, 15, 17, 18, 19 and 20 which are intended to survive the termination of this agreement.

16. SUSPENSION OF RIGHTS

16.1 **Consequences:** If an Event of Default occurs in respect of a Shareholder (the "**Defaulting Shareholder**") the Non-Defaulting Shareholders may, while that Event of Default continues, by notice in writing to the Defaulting Shareholder require that the Defaulting Shareholder is suspended as follows:

- (a) all rights of the Defaulting Shareholder under this agreement (including the right to vote on a Reserved Matter and to participate in the Stakeholders' Forum) and all rights attaching to the Defaulting Shareholder's Shares ("**Default Shares**") (including voting) are suspended and the Default Shares are not to be counted for the purpose of determining a quorum for a Shareholders' meeting; and
- (b) all Director appointment rights of the Defaulting Shareholder are suspended,
with any period of suspension only lasting for such time as:
- (c) in the case of a breach or failure is capable of remedy, the Event of Default is continuing; and
- (d) in the case of a breach or failure that is not capable of remedy, the consequences of the Event of Default have been mitigated to the fullest extent practicable and (without imposing on any Shareholder an obligation to offer compensation) the Company and Shareholders have been compensated for the consequences of the Event of Default to the reasonable satisfaction of each shareholder.

- 16.2 **Non-Defaulting Shareholder:** For the purposes of clause 16.1:
- (a) "Non-Defaulting Shareholders" means all Shareholders which are not the Defaulting Shareholder, other than any such Shareholder which is a Related Party of the Defaulting Shareholder; and
 - (b) any notice which may be given by the Non-Defaulting Shareholders may be given by a Shareholder or Shareholders which holds or hold more than half of the Shares held by all Non-Defaulting Shareholders.
- 16.3 **Default interest:** If either party does not pay any amount payable under this agreement on the due date for payment ("**Due Date**") that party shall pay to the other party interest (both before and after judgment) on that amount. That interest:
- (a) shall be paid at the rate set out in Schedule 1;
 - (b) shall be paid by instalments at intervals of 10 Business Days from the Due Date; and
 - (c) shall be calculated on a daily basis from and including the Due Date until the unpaid amount is paid in full.
- The right of a party to require payment of interest under this clause does not limit any other right or remedy of that party.
- 16.4 **Other remedies:** Clauses 16.1 and 16.3 are without prejudice to any other right, power or remedy under this agreement, at law, or otherwise, that any Shareholder has in respect of a default by any other Shareholder.
- 17. DISPUTE RESOLUTION**
- 17.1 **Notice in writing:** If a party claims that a dispute has arisen, that party must give written notice to the other parties. The written notice must specify the nature of the dispute.
- 17.2 **Negotiation:**
- (a) On receipt of a notice delivered in accordance with clause 17.1 and before any party may refer a dispute to mediation, the representatives must, in good faith and acting reasonably, do their best to resolve the dispute quickly and efficiently through negotiation.
 - (b) If any representative considers that the dispute is not being resolved in a timely manner, such representative may serve written notice on the other parties' representatives to escalate the dispute to the Chief Executives or equivalent (where the representatives are not the Chief Executive or equivalent) of the applicable Shareholders for resolution.
 - (c) If the dispute has not been resolved within 20 Business Days (or within such other period as agreed by the parties) of the date of the notice referred to in clause 17.2, any party may submit the dispute to mediation.
- 17.3 **Mediation:**

- (a) If the parties do not resolve the dispute by negotiation, the parties must, in good faith and acting reasonably, do their best to resolve the dispute by participating in mediation with an independent mediator.
- (b) If the parties do not agree on a mediator, then the mediator will be appointed by the New Zealand Dispute Resolution Centre.
- (c) The parties must mediate the dispute in accordance with principles agreed between them or, if no agreement can be reached, the New Zealand Dispute Resolution Centre Mediation Rules.
- (d) Unless the parties agree otherwise, the mediator's fee and any other costs of the mediation itself (such as for venue hire or refreshments) will be shared equally between the parties, but the parties will each pay their own costs of preparing for and participating in the mediation (such as for travel and legal representation).

17.4 **Arbitration**

- (a) If the dispute has not been resolved within 40 Business Days (or within such other period as agreed by the parties) of the dispute being referred to mediation, any party (the "**Initiating Party**") may refer such dispute to binding arbitration by issuing a written notice ("**Arbitration Notice**") to the other Party or Parties (together with the Initiating Party, the "**Disputing Parties**") for final resolution in accordance with the provisions of this clause 17.4 and in accordance with the provisions of the Rules of Arbitration of the New Zealand Dispute Resolution Centre, as amended or modified from time to time ("**NZDRC Rules**").
- (b) The arbitral panel shall consist of one arbitrator. The arbitrator will be appointed by the agreement of the Disputing Parties or, failing agreement within 10 Business Days of the date of the Arbitration Notice, in accordance with the NZDRC Rules.
- (c) The seat of arbitration shall be Wellington, New Zealand and the arbitration shall be conducted in the English language.
- (d) The award of the arbitration shall be in writing and must include reasons for the decision.
- (e) The award of the arbitration shall be final and binding on the parties. No party may appeal to the High Court under Clause 5 of Schedule 2 of the Arbitration Act 1996 on any question of law arising out of an award.
- (f) The award shall allocate or apportion the costs of the arbitration as the arbitrator deems fair.
- (g) Neither the existence of any dispute nor the fact that any arbitration is pending hereunder shall relieve any of the parties of their respective obligations under this agreement.

17.5 **Implementation of agreement:** The parties must do whatever is reasonably necessary to put into effect any negotiated or mediated agreement, arbitral award or other resolution. This includes exercising voting rights and other powers as required.

- 17.6 **Rights and obligations during a dispute:** During a dispute, each party must continue to perform its obligations under this agreement.
- 17.7 **Interlocutory relief and right to terminate:** This clause does not restrict or limit the right of a party to obtain interlocutory relief, or to immediately terminate this agreement where this agreement provides such a right.

18. CONFIDENTIAL INFORMATION AND PUBLIC ANNOUNCEMENTS

- 18.1 **Confidentiality:** Each party must keep confidential the Confidential Information, and must not disclose or permit the disclosure of such Confidential Information to any other person. If a party becomes aware of a breach of this obligation, that party will immediately notify the other parties.
- 18.2 **Further permitted use and disclosure:** This agreement does not prohibit the disclosure of Confidential Information by a party in the following circumstances:
- (a) the other parties have consented to the disclosure of the relevant Confidential Information;
 - (b) the disclosure is specifically contemplated and permitted by this agreement;
 - (c) the disclosure of Confidential Information is to an employee, subcontractor, agent or representative who needs it for the purposes of this agreement;
 - (d) the disclosure is to a professional adviser in order for it to provide advice in relation to matters arising under or in connection with this agreement;
 - (e) the disclosure is required by a court or governmental or administrative authority; or
 - (f) the disclosure is required by applicable law or regulation, including under the Local Government Official Information and Meetings Act 1987.
- 18.3 **Public announcements and media releases:** Each Shareholder agrees that it will not make any public announcements or issue media releases in connection with, or on behalf of, the other Shareholders or the Company in relation to the Company or Water Services, except with the written consent of the other Shareholders. Nothing in this provision shall prohibit or restrict a Shareholder from making a public announcements or media releases in connection with the Shareholder's own involvement with, or policies in relation to, the Company.

19. NOTICES

- 19.1 **Giving notices:** Any notice or communication given to a party under this agreement is only given if it is in writing and sent in one of the following ways:
- (a) Delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out in Schedule 1.
 - (b) Emailed to that party at its email address and marked for the attention of the representative set out in Schedule 1.

- 19.2 **Change of details:** If a party gives the other party three Business Days' notice of a change of its postal address or email address, any notice or communication is only given by that other party if it is delivered, posted or emailed to the latest postal address or email address.
- 19.3 **Time notice is given:** Any notice or communication is to be treated as given at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, five Business Days after it is posted.
 - (c) If it is sent by email, when it is received in readable form addressed in the manner specified above.

However, if any notice or communication is given, on a day that is not a Business Day or after 5pm on a Business Day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next Business Day.

20. GENERAL

- 20.1 **No partnership, joint venture:** Nothing in this agreement shall create or evidence any partnership, joint venture, agency, trust or employer/employee relationship between any of the Shareholders, and a Shareholder may not make, or allow to be made, any representation that any such relationship exists between any of the Shareholders. A Shareholder shall not have authority to act for, or to incur any obligation on behalf of, any other Shareholder, except as expressly provided for in this agreement.
- 20.2 **No privity:** Other than as expressly provided for in this agreement, this agreement is not intended to confer a benefit on any person or class of persons who is not a party to it.
- 20.3 **Board action:** Wherever this agreement requires the Board to do anything, each Shareholder shall take all steps available to it to ensure that the Director or Directors appointed by that Shareholder takes all necessary steps to do that thing.
- 20.4 **Counterparts:** This agreement is deemed to be signed by a Shareholder if that Shareholder has signed or attached that Shareholder's signatures to any of the following formats of this agreement:
- (a) an original; or
 - (b) a photocopy; or
 - (c) an electronic copy;
- and if every Shareholder has signed or attached that Shareholder's signatures to any such format and delivered it in any such format to the other Shareholders, the executed formats shall together constitute a binding agreement between the Shareholders.
- 20.5 **Entire agreement:** This agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written agreement or anything said or done by or on behalf of another party before this agreement was executed.

- 20.6 **Severance:** If any provision of this agreement is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this agreement without affecting the validity of the remainder of this agreement and shall not affect the enforceability, legality, validity or application of any other provision of this agreement.
- 20.7 **Further assurance:** Each Shareholder shall make all applications, execute all documents and do or procure all other acts and things reasonably required to implement and to carry out its obligations under, and the intention of, this agreement.
- 20.8 **Variation:** No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- 20.9 **Assignments and transfer:** A party must not assign or transfer any of its rights or obligations under this agreement without the prior written consent of each of the other parties.
- 20.10 **Costs:** Except as otherwise set out in this agreement, each party must pay its own costs and expenses, including legal costs and expenses, in relation to preparing, negotiating, executing and completing this agreement and any document related to this agreement.
- 20.11 **Inconsistency with Constitution:** If there is any inconsistency between this agreement and the Constitution then the parties agree to abide by this agreement and to do everything required to change the Constitution so that it is consistent with this agreement.
- 20.12 **Waivers:**
- (a) A waiver of any right, power or remedy under this agreement must be in writing signed by the Council granting it. A waiver only affects the particular right, obligation or breach for which it is given. It is not an implied waiver of any other right, obligation or breach or an implied waiver of that right, obligation or breach on any other occasion.
 - (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement does not amount to a waiver.
- 20.13 **Governing law:** This agreement is governed by the laws of New Zealand.

SCHEDULE 3
MATTERS REQUIRING SHAREHOLDER APPROVAL

Matter or transaction	Approval threshold
Statement of Expectations	
A decision to approve and adopt the draft Statement of Expectations pursuant to clause 12.2(e).	More than half the number of Shareholders (i.e., as at the date this agreement was first entered into, approved by at least 3 out of 4 Shareholders)
Material transactions	
"Major transactions" as that term is defined in the Companies Act.	Special Resolution
"Major transactions", being any transaction to acquire, sell, lease (whether as lessor or lessee), exchange or otherwise (except by way of charge) dispose of assets where the transaction involves an aggregate value (including over the term of the contract, if applicable) above \$100,000,000 ¹ .	Special Resolution
Changes to structure	
Any alteration to, or revocation of, the Constitution.	Special Resolution
Any issue of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares.	All of the Shareholders
Any alteration of rights, privileges or conditions attaching to the Shares.	All of the Shareholders
Any arrangement, dissolution, reorganisation, liquidation, merger or amalgamation of the Company.	All of the Shareholders
Any transfer by the Company of Shares held by the Company or any purchase or other acquisition by the Company of its own Shares.	All of the Shareholders
Any cancellation, buy-back or reduction of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares.	All of the Shareholders
The giving of any financial assistance for the purpose of, or in connection with, the purchase of Shares.	All of the Shareholders
Making a Material change in the nature of the Company's business or engaging in business activities other than the Business.	All of the Shareholders
Starting or settling any legal or arbitration proceedings, except in the ordinary course of business.	All of the Shareholders
Any decision for the ceasing operations, liquidation, winding-up, dissolution, restructuring or assignment to its creditors or any similar transaction of the Company.	75% of the number of Shareholders

¹ Subject to indexing from June 2025 in accordance with changes to the Producers Price Index (All Industries) (as published by Statistics New Zealand) – SQU900000 June 2025 = 1483.

Any decision to admit a new Shareholder, as set out in clause 8.2 of this agreement.	All of the Shareholders
Any decision to approve the exit of an existing Shareholder, as set out in clause 8.3 of this agreement.	All of the Shareholders, other than the exiting Shareholder
Pricing	
Any amendments or replacements to the pricing principles set out in Schedule 7 to this agreement or to clause 2.2 of the Constitution during the period of nine years commencing from 1 July 2027.	All of the Shareholders
Any amendments or replacements to the pricing principles set out in Schedule 7 to this agreement or to clause 2.2 of the Constitution during the period following 1 July 2036.	Special Resolution

SCHEDULE 4**FORM OF STAKEHOLDERS' FORUM TERMS OF REFERENCE****Stakeholders' Forum****Purpose**

The Stakeholders' Forum ("**Stakeholders' Forum**") is established to:

- provide governance oversight of the Company which provides Water Services in the Service Area set out in Schedule 1; and
- provide a forum for the representatives of the Company's shareholders ("**Shareholders**") and Iwi to meet, discuss and co-ordinate on relevant issues and, through their representatives, exercise their powers in respect of the Company.

Status

The Stakeholders' Forum is a representative forum of the Shareholders and Iwi representatives. For clarity, it is not a "joint committee" for the purposes of the LGA.

Definitions

In these Terms of Reference:

"**Full Forum Matter**" means a matter set out in this Schedule 4 that is identified with an asterisk (*).

"**Council Forum Matter**" means a matter set out in this Schedule 4 that is not identified with an asterisk (*).

Specific responsibilities

The Stakeholders' Forum's responsibilities are:

Governance oversight responsibilities

Governance oversight of the Company, including by:

- receiving and considering the half-yearly and annual reports of the Company;
- receiving and considering such other information from the Company as the Stakeholders' Forum may request on behalf of the Shareholders and/or receive from time to time;
- undertaking performance and other monitoring of the Company;
- considering and providing recommendations to the Shareholders on proposals from the Company;
- providing co-ordinated feedback, and recommendations as needed, on any matters requested by the Company or any Shareholder;

- providing recommendations to the Shareholders regarding the relevant network infrastructure owned by each Shareholder and/or the Company;
- providing recommendations to the Shareholders regarding water conservation;
- preparing the three yearly Statement of Expectations in accordance with the process and other requirements of the Shareholders' Agreement and the LG(WS) Act;*
- seeking and interviewing candidates for the Company's board as needed;*
- monitoring the performance of the board of the Company;* and
- providing recommendations to the Shareholders regarding changes to these terms of reference, the Shareholders' Agreement and the Constitution.

Stakeholders' Forum decision making responsibilities

Considering and making decisions on the following:

- approving the three yearly Statement of Expectations in accordance with the process and other requirements of the Shareholders' Agreement and the LG(WS) Act;
- approving director appointments and/or removals;* and
- approving the remuneration of directors of the Company*.

Shareholders' responsibilities

To the extent that each Shareholder delegates its relevant powers to the Stakeholders' Forum Member it appoints, the Stakeholders' Forum will provide a forum for the Shareholders to meet and exercise their powers in relation to the Company.

Chairperson

The Chairperson and Deputy Chairperson will be elected by the Stakeholders' Forum once all Stakeholders' Forum Members have been appointed.

Quorum

A quorum for meetings of the Stakeholders' Forum will be met:

- where the agenda includes consideration of a Full Forum Matter– if a majority of Stakeholders' Forum Members (or Alternates, other than Alternates attending as an observer) are present; and
- where the agenda includes consideration of a Council Forum Matter– if a majority of those Stakeholders' Forum Members (or Alternates, other than Alternates attending as an observer) appointed by Shareholders are present.

Where the Stakeholders' Forum is providing a forum for the Shareholders to meet and exercise their powers in relation to the Company, the requirements of the Constitution and this agreement will prevail.

Alternates

Each Stakeholders' Forum Member must have an Alternate appointed by the relevant Shareholder or Iwi. The Alternate may attend as an observer without rights of participation or voting at all meetings of the Stakeholders' Forum. In the event that the primary Stakeholders' Forum Member is unable to attend any meeting of the Stakeholders' Forum, the Alternate may attend that meeting with full rights of participation and may exercise the vote of its primary Stakeholders' Forum Member.

Decision-making

The Stakeholders' Forum will strive to make all decisions by consensus.

In the event that a consensus on a particular matter before the Stakeholders' Forum is not able to be reached, each Stakeholders' Forum Member has a deliberative vote.

A vote of the Stakeholders' Forum is passed if a majority (i.e., more than 50%) of the votes cast are in favour of the matter. In the situation where there is an equality of votes cast on a matter, the Chairperson does not have a casting vote and therefore the matter subject to the vote is defeated and the status quo is preserved.

Iwi representatives

In relation to any decisions of the Stakeholders' Forum, notwithstanding anything to the contrary, Iwi representatives will only have voting rights at meetings of a Stakeholders' Forum in respect of Full Forum Matters.

Policies

The Stakeholders' Forum will develop and agree:

- (a) a process to manage actual, potential and perceived conflicts of interest of Stakeholders' Forum Members and Alternates, Shareholders and Iwi;
- (b) a code of conduct for all Stakeholders' Forum Members and Alternates;
- (c) confidentiality protocols and disclosure policies;
- (d) standing orders relating to the operation of Stakeholders' Forum meetings; and
- (e) such other policies as the Stakeholders' Forum determines.

Remuneration

Each Shareholder and Iwi appointor will be responsible for the payment of remuneration (if any) to its representative on the Stakeholders' Forum and for any costs associated with that person's membership of the Stakeholders' Forum. To ensure consistency, where remuneration is to be paid to a representative on the Stakeholders' Forum, the amount of such remuneration must be agreed by the Stakeholders' Forum.

Administration

Reports to be considered by the Stakeholders' Forum may be submitted by any of the Shareholders or the Company.

Procedures

Unless otherwise specified in this agreement, the Rules for Shareholder Meetings set out in clauses 1 – 6 (inclusive) and clause 10 of Schedule 1 of the Constitution will apply to the procedures of the Stakeholders' Forum as if the relevant references were to the Stakeholders' Forum and its members and Alternates.

Appendix to Schedule 4**Common delegations**Governance oversight responsibilities

- Each Shareholder will delegate to the Stakeholders' Forum the responsibilities and powers necessary to participate in and carry out the Stakeholders' Forum governance oversight responsibilities.

Shareholders' responsibilities

- Each Shareholder will delegate to its appointed Stakeholders' Forum Member and, in accordance with these terms of reference, that person's Alternate, all responsibilities and powers in relation to the agreement of:
 - when Shareholder meetings, or resolutions in lieu of Shareholder meetings, are required (without prejudice to Shareholder and Board rights to call meetings under the Constitution); and
 - the appointment, removal and remuneration of directors.

SCHEDULE 5**SHAREHOLDER ENTRY PRINCIPLES****Process for admission as new Shareholder**

A territorial authority (as defined in the LG(WS)Act who is not an existing Shareholder (**Proposed Shareholder**) may be admitted as an additional Shareholder (**Admission**) in accordance with the following process:

- (a) a Proposed Shareholder must submit a proposal to the Board setting out the Proposed Shareholders' credentials and the rationale for its proposed shareholding (a **Proposal**);
- (b) following receipt of a Proposal, the Board will assess the merits of the Proposal, consider the implications of it for the Company, its then current Water Services Strategy under the LG(WS) Act and make a recommendation to the Stakeholders' Forum as to whether or not the Shareholders should approve the Admission and any suggested terms and conditions of Admission (a **Recommendation**);
- (c) following receipt of a Recommendation:
 - (i) the Stakeholders' Forum will consider the Proposal and the Shareholders will determine if the Recommendation should proceed to be consulted on as a change proposal in accordance with the requirements of the LG(WS)Act;
 - (ii) the Shareholders must comply with any required consultation in respect of the change proposal under the LG(WS)Act;
 - (iii) following completion of the change proposal requirements under the LG(WS)Act, the Shareholders may, at their discretion, approve the Admission as a Reserved Matter. The Proposed Shareholder will not be admitted if the Shareholders consider that its Admission would be likely to:
 - (aa) materially worsen the Company's financial position or forecast financial position; or
 - (bb) result in the Company failing to meet its regulatory obligations to be financially sustainable; and
- (d) the parties must comply with all applicable legislative requirements.

Terms of admission of new Shareholder

Unless otherwise agreed by all Shareholders in writing, if the Shareholders approve the Admission of a new Shareholder under paragraph (c):

- (a) the Proposed Shareholder's shareholding in the Company as a proportion of total Shares will be equivalent to the number of Water Service Connections in the Proposed Shareholder's Service Area as a proportion of total Water Service Connections in the Service Area following Admission. The Shareholders may agree to adjust the number of Shares through a process consistent with clause 7.1 shortly before or at Admission, to ensure proportionality between all Shareholders immediately following Admission;

- (b) on or shortly after Admission, the Proposed Shareholder will be required to transfer its relevant assets to the Company pursuant to a Transfer Agreement, with the terms of such transfer to be no more favourable to the Proposed Shareholder than the terms of transfer applying to the initial Shareholders under the Transfer Agreement and otherwise on terms that the Board is satisfied are fair and reasonable in the circumstances;
- (c) prior to (but conditional on) Admission, the parties will negotiate, agree and implement any changes to this agreement and the Constitution that may be necessary or desirable as a result of Admission, including to:
 - (i) maintain the intended balance of rights powers and liabilities of Shareholders and Stakeholders' Forum Members; and
 - (ii) ensure appropriate iwi participation for the expanded Service Area,with each party to bear its own costs and expenses of negotiating, agreeing and implementing any changes, including legal costs and expenses; and
- (d) prior to (and with effect on and from) Admission, the Proposed Shareholder must accede to this agreement (as it may be amended in accordance with paragraph (c));
- (e) the Admission will be given effect by the issue of new Shares to the Proposed Shareholder, with the existing Shareholders to take all steps necessary to issue those Shares, with at least one year's lead time between the approval of Admission under paragraph (c) and the giving effect to of the Admission under this paragraph (i) (or such other period as the Parties may agree with the Proposed Shareholder); and
- (f) promptly after the approval of Admission under paragraph (c), the Board and Stakeholders' Forum will develop and agree a transition plan which sets out the process and timeframes for giving effect to Admission, including the steps set out above.

SCHEDULE 6**SHAREHOLDER EXIT PRINCIPLES****Process for Exit**

A Shareholder who wishes to exit from its shareholding in the Company (**Exit**) (**Exiting Shareholder**) may do so in accordance with the following process:

- (a) the Exiting Shareholder must submit a notice to the Board and the Stakeholders' Forum stating its intention to Exit (**Exit Notice**);
- (b) following receipt of an Exit Notice:
 - (i) the Stakeholders' Forum will consider the Proposal and the Shareholders will determine if the Exit should proceed to be consulted on as a change proposal in accordance with the requirements of the LG(WS)Act;
 - (ii) the Shareholders must comply with any required consultation in respect of the change proposal under the LG(WS)Act; and
 - (iii) following completion of the change proposal requirements under the LG(WS)Act, the Board and the Stakeholders' Forum will work collaboratively to develop a detailed exit plan (**Exit Plan**) setting out a proposed process and timeline for Exit, including to address the treatment of assets and joint assets, consideration, stranded assets and liabilities and transactions costs, and reflecting the Terms of Exit set out below;
- (c) a finalised Exit Plan will be presented to the Stakeholders' Forum who will consider the Exit Plan and the Shareholders may, at their discretion, approve the Exit as a Reserved Matter. The Exit will not be approved if the Shareholders consider that the Exit would be likely to:
 - (i) materially worsen the Company's financial position or forecast financial position; or
 - (ii) result in the Company failing to meet its regulatory obligations to be financially sustainable; and
- (d) the parties must comply with all applicable legislative requirements, including in respect of consultation.

Terms of Exit

Unless otherwise agreed by all Shareholders in writing, if the Shareholders approve the Exit under paragraph (c):

- (e) the Exiting Shareholder will be entitled to transfer its relevant assets out of the Company for an agreed price;
- (f) prior to (but conditional on) Exit, the parties will negotiate, agree and implement any changes to this agreement and the Constitution that may be necessary or desirable as a result of the Exit, including to:

- (i) maintain the intended balance of rights powers and liabilities of Shareholders and Stakeholders' Forum Members; and
- (ii) ensure appropriate iwi participation for the reduced Service Area,

with each party to bear its own costs and expenses of negotiating, agreeing and implementing any changes, including legal costs and expenses; and
- (g) with effect on and from Exit, the Exiting Shareholder will be released from its obligations under this agreement (except in respect of any breaches up to the date of Exit); and
- (h) the Exit will be given effect by the transfer of the Exiting Shareholder's Shares to the remaining Shareholders or by the Company acquiring and cancelling the Exiting Shareholder's Share, with the remaining Shareholders to take all steps necessary to give effect to this step, with at least three year's lead time between the giving of an Exit Notice under paragraph (a) and the giving effect to of the Exit under this paragraph (h).

SCHEDULE 7

PRICING PRINCIPLES

- Transparency between pricing and investment requirements.
- Engagement with communities in setting or changing pricing in a material manner.
- Managing/smoothing the transition impact of any changes to pricing.
- Balancing affordability for customers with investment and financial sustainability requirements.
- Consideration of distributional impacts of pricing decisions.
- Pricing to be on a cost-to-serve basis.

SCHEDULE 8**STATEMENT OF EXPECTATIONS**

The parties agree that the Statement of Expectations must include the content required under the LG(WS) Act. As at the date of this agreement, that is:

- (a) the outcomes that the Shareholders expect the Company to achieve by providing Water Services;
- (b) requirements relating to the Shareholders' resource management planning and land use planning that are relevant to the Service Area;
- (c) a requirement that the Company must act in accordance with any relevant statutory obligation that applies to a Shareholder that is a territorial authority; and
- (d) the information that the Company must include in its half-yearly report.

A statement of expectations may contain a matter that applies to all or a specified part of:

- (a) the Water Services provided by the Company (for example, a matter that applies only to wastewater); and/or
- (b) the Service Area (for example, a matter that applies only to a Shareholder's Service Area rather than all Service Areas).

The parties agree that the Statement of Expectations may also include one or more of the following:

- (a) how the Shareholders require the Company to conduct its relationships with:
 - (i) the Shareholders;
 - (ii) the Shareholders' communities or any specified stakeholders within those communities;
 - (iii) hapū, iwi, and other Māori organisations; and
 - (iv) consumers in the Service Area;
- (b) performance indicators and measures that the Shareholders may use to monitor the Company
- (c) expectations relating to the strategic priorities to be included in the Water Services Strategy;
- (d) a requirement that the Company must act in accordance with an obligation that a Shareholder that is a territorial authority may have with a third party (including with hapū, iwi, or other Māori organisations) under a contract or other agreement;
- (e) a requirement that the water organisation undertake a specified obligation on behalf of a Shareholder that is a territorial authority;
- (f) a requirement to undertake community or consumer engagement, and the contents of that engagement;

- (g) expectations in relation to collaborating with the Shareholders and other parties when providing Water Services; and
- (h) a requirement that part or all of the Water Services Strategy must be independently reviewed or audited.

9 EXCLUSION OF THE PUBLIC

Nil

10 KARAKIA WHAKAMUTUNGA

Kia whakairia te tapu

Kia wātea ai te ara

Kia turuki whakataha ai

Kia turuki whakataha ai

Haumi ē, hui ē, taiki ē