
4. Monitoring

AMENDMENT TO CCO CORPORATE DOCUMENTS - WELLINGTON WATER LIMITED

Purpose

1. This report asks the City Strategy Committee to approve the amended Corporate Documents of Wellington Water Limited (WWL), which will enable other Councils within the GWRC catchment to join the organisation and Mana Whenua entities to participate on the Water Committee.

Summary

2. WWL is a CCO, owned collectively by five councils in the region. WWL's current Constitution and Shareholder Agreement sets out the way we own and oversee the operation of the company. The corporate documents have been amended to provide flexibility that would allow other councils within the GWRC region to join the organisation. In recognition of the special relationship Mana Whenua has with water it is intended demonstrate partnership by creating a mechanism for Mana Whenua entities within the region to be represented on the Water Committee.

Recommendation/s

That the City Strategy Committee:

1. Receives the information.
2. Agrees to the proposed changes to the company corporate documents.
3. Delegates to Council Water Committee Representative/ Chief Executive the ability to agree to minor amendments that may be required as other Shareholder Councils consider the documents.

Background

3. These changes have been discussed at the Water Committee and recommended to shareholder councils by its members, including our WCC elected representative. The proposals have been discussed by all of the councils in the collective who have expressed support for the intent of the changes. There has been some technical wording discussions to reconcile Companies Act, Local Government Act and other matters refining the documents over time.

Discussion

4. The proposed changes are a good evolution of the WWL model; it recognises the taonga of water and the challenges that smaller councils face in the provision of safe and healthy water services. The changes are consistent with the government direction of travel in the 3 Waters Review and specifically the recommendations post the Havelock North enquiry. The stated government policy is to encourage voluntary

uptake of a shared service models and to have greater input and recognition of Mana Whenua special interest in water matters.

5. For the region it will see the enhanced deployment of specialised technical capability that individual councils (especially smaller ones) cannot afford. The WWL model will continue to operate with each shareholding council owning, maintaining and growing their assets and their own cost. The overhead costs will continue to be shared proportionally across the shareholder councils.

Options

6. Three of the other five councils have already approved the intent of the changes with some minor amendments being made along the way. The final versions of the documents are being considered by WCC and UHCC in June with no major changes expected as part of that consideration. The changes do require unanimous agreement by all shareholder Councils.

Next Actions

7. These changes create the mechanisms for the additional councils and entities. Once approved, it is expected that two Iwi and SWDC will look to participate soon after approval. The documents formalising this will come back to shareholding councils.

Attachments

Attachment 1.	Updated WWL Constitution - Final	Page 266
Attachment 2.	Updated WWL Shareholders Agreement	Page 298

Author	Derek Baxter, City Engineer
Authoriser	Moana Mackey, Acting Chief City Planner

SUPPORTING INFORMATION

Engagement and Consultation

The Water Committee has met with the two Iwi that WCC has MOU's with and they are supportive of these changes and have indicated that once the mechanism is in place they are intending to participate. South Wairarapa District Council has also indicated that if these changes are approved they intend to take up the opportunity to participate in the collective.

Treaty of Waitangi considerations

This proposal is directly aligned with the principles and intentions of Te Tiriti as well as with the MOU's WCC has in place with local Iwi.

Financial implications

There will be minor financial impacts for WCC contribute to the costs of Mana Whenua representatives attendance at Water Committee meetings. This will partially offset by a small reduction on overhead costs at WWL from additional councils contributing. It is intended that any changes would be managed within the existing 3 Waters budget.

Policy and legislative implications

These proposals are consistent with WCC and Government policies and direction of travel in the provision of 3 Waters services.

Risks / legal

There are multiple Acts that impact on these documents. Companies Act, Local Government Act and shareholder requirements. Professional external legal advice has been involved in the development and refinement of the documents.

Climate Change impact and considerations

Not Applicable

Communications Plan

It is recommended that Council Delegate to our Water Committee representative to be the spokesperson for what is likely to be joined up communications from the Water Committee about this.

Health and Safety Impact considered

Not applicable

~~Draft 9 November 2018~~ Draft 4 June 2019

DRAFT
Constitution
Wellington Water Limited

Table of contents

1	Objectives and activities of the Company	1
	Objectives of the Company	1
2	Rights attaching to Shares	1
3	Shareholders	1
4	Other matters relating to Shares	221
	Board may issue Shares	221
	Restriction on issue and transfer	2
	Consolidation and subdivision of Shares	2
	Share repurchases	2
5	Pre-emptive rights on issue of new Shares	332
	Section 45 applies	332
	Transfer of Shares by the Company	332
6	Alteration of Shareholders' rights	332
	Special Resolution required	332
7	Transfer of Shares	3
	Right to transfer	3
	Restriction on transfer	3
	Transferor to remain holder until registration	43
	Form of transfer	43
	Delivery to Company	443
	Registration of transfer	443
	Power of Board to refuse or delay registration	4
8	Shareholder matters	554
9	Meetings of Shareholders	5
	Annual meetings	5
	Special meetings	5
	Resolution in lieu of meeting	65
	Shareholder Representatives	65
	Chairperson	665
	Management of the Company	6
	Notice of meetings to Class A Shareholders	76
	Entitlement to notice of meetings	776
	Methods of holding meetings	776
	Quorum	7
	Voting	87
	Poll	887
	Minutes	98
	Other proceedings	98
10	Shareholder proposals	98
	Notice to the Board	98
	Written statement	998

	Costs.....	<u>109</u>
11	Directors	<u>109</u>
	The Board	<u>109</u>
	Minimum and maximum number.....	<u>10409</u>
	Appointment and removal.....	<u>10409</u>
	Skills of Directors.....	<u>10409</u>
	Collective skills of Board.....	<u>1140</u>
	Vacation of office.....	<u>1140</u>
	Authorisation of payment or other benefit	<u>11440</u>
12	Directors' meetings	<u>11410</u>
	Third Schedule to the Act not to apply	<u>11410</u>
	Notice of meeting	<u>1211</u>
	Methods of holding meetings.....	<u>134241</u>
	Quorum	<u>1312</u>
	Chairperson.....	<u>1312</u>
	Voting.....	<u>1342</u>
	Minutes	<u>141312</u>
	Written resolution	<u>1413</u>
	Committees	<u>1413</u>
	Validity of actions	<u>1413</u>
	Other proceedings	<u>1413</u>
13	Powers of Directors.....	<u>14413</u>
	Role of Directors.....	<u>14413</u>
	Management of Company	<u>154413</u>
	Exercise of powers by Board	<u>1514</u>
	Delegation of powers.....	<u>1514</u>
14	Interested Transactions.....	<u>1514</u>
	Disclosure of interests	<u>1514</u>
	Company's best interests	<u>1514</u>
	Use of Company information	<u>1514</u>
	Procedure for disclosure and use	<u>161514</u>
15	Indemnity and insurance	<u>1615</u>
	Indemnity for Directors.....	<u>1615</u>
	Indemnities and insurance.....	<u>1615</u>
	Definitions	<u>1615</u>
16	Reporting.....	<u>1615</u>
	Half yearly report	<u>1615</u>
	Annual report.....	<u>174615</u>
	Contents of reports on operations of the Company	<u>174615</u>
	Protection from disclosure of sensitive information	<u>1746</u>
	Statement of Intent	<u>184746</u>
17	Auditor	<u>1847</u>
18	Official information.....	<u>1847</u>
19	Dividends.....	<u>1917</u>
	Power to authorise.....	<u>1917</u>

	Deductions	<u>191817</u>
	Entitlement Date	<u>191817</u>
	Unclaimed dividends	<u>1918</u>
20	Method of contracting	<u>1918</u>
	Deeds	<u>1918</u>
	Written contracts	<u>2018</u>
	Other contracts	<u>201918</u>
21	Definitions and Interpretation	<u>201918</u>
	Definitions	<u>201918</u>
	Interpretation	<u>2120</u>
	Conflict between the Act and this constitution	<u>222120</u>

DRAFT

Constitution

1 Objectives and activities of the Company

Objectives of the Company

- 1.1 The Company was incorporated on 9 July 2003.
- 1.2 The principal objectives of the Company are to:
 - 1.2.1 manage drinking water, wastewater and storm water services in the greater Wellington region for local authority Shareholders;
 - 1.2.1.2.2 achieve the objectives of its Shareholders, both commercial and non-commercial as specified in the Statement of Intent;
 - 1.2.1.2.3 be a good employer;
 - 1.2.3.1.2.4 exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which the Company operates and by endeavouring to accommodate or encourage these when able to do so; and
 - 1.2.4.1.2.5 conduct its affairs in accordance with sound business practice.

2 Rights attaching to Shares

- 2.1 The Class A Shares shall confer on the holder the rights specified in section 36(1)(a) of the Act
- 2.2 The Class B Shares shall confer on the holder the rights specified in section 36(1)(b) and section 36(1)(c) of the Act.
- 2.3 The Class B Shares will be issued at a subscription price of \$2000 per share.

3 Shareholders

3.1 The Shares in the Company are structured in two classes, being Class A Shares and Class B Shares. Each Shareholder holds the Shares as set out in the share register for the Company below:

<u>Name of Shareholder</u>	<u>Number of Class A Shares held</u>	<u>Number of Class B Shares held</u>	<u>Value of Class B Shares held (\$'000)</u>
<u>Wellington City Council</u>	<u>150</u>	<u>200</u>	<u>400</u>
<u>Hutt City Council</u>	<u>150</u>	<u>100</u>	<u>200</u>

Constitution

<u>Name of Shareholder</u>	<u>Number of Class A Shares held</u>	<u>Number of Class B Shares held</u>	<u>Value of Class B Shares held (\$'000)</u>
<u>Upper Hutt City Council</u>	<u>150</u>	<u>40</u>	<u>80</u>
<u>Porirua City Council</u>	<u>150</u>	<u>60</u>	<u>120</u>
<u>Wellington Regional Council</u>	<u>150</u>	<u>75</u>	<u>150</u>
<u>South Wairarapa District Council</u>	<u>x</u>	<u>x</u>	<u>x</u>

Formatted: Highlight

4 Other matters relating to Shares

Board may issue Shares

4.1 Subject to the provisions of the Act and this constitution, the Board may issue, in such classes and on such terms as the Board thinks fit, any of the following:

- 4.1.1 Shares;
- 4.1.2 Securities that are convertible into or exchangeable for Shares;
- 4.1.3 Options to acquire Shares; or
- 4.1.4 Shares that are redeemable by the Shareholder;

provided that any such issue must first be approved by a Special Resolution of the holders of Class A Shares.

Restriction on issue and transfer

4.2 No shares may be issued or transferred to any person other than a Local Authority or a Council Controlled Organisation.

Consolidation and subdivision of Shares

4.3 The Board may do any of the following:

- 4.3.1 Consolidate and divide the Shares or the Shares of any Class in proportion to those Shares or the Shares in that Class.
- 4.3.2 Subdivide the Shares or the Shares of any Class in proportion to those Shares or the Shares in that Class.

Share repurchases

4.4 The Company may purchase or otherwise acquire Shares issued by it from one or more Shareholders and hold its own Shares.

Constitution

Shareholders' [and Partnership](#) Agreement

- 4.5 Each Shareholder shall be party to the Shareholders' [and Partnership](#) Agreement, either by signing the Shareholders' [and Partnership](#) Agreement when it was first put in place or by acceding to it by way of entry into a deed of accession in a form required by the Shareholders.

5 Pre-emptive rights on issue of new Shares**Section 45 applies**

- 5.1 The pre-emptive provisions of section 45 of the Act apply to a new issue of Shares, unless waived in writing by a Special Resolution.

Transfer of Shares by the Company

- 5.2 Clause 5.1 applies to the transfer by the Company of Shares held by the Company in itself as if the transfer was an issue of new Shares by the Company.

6 Alteration of Shareholders' rights**Special Resolution required**

- 6.1 Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this constitution, the Act, or the terms on which the Shares were issued, must be approved by a Special Resolution.

7 Transfer of Shares**Right to transfer**

- 7.1 Subject to the restrictions contained in this constitution, a Shareholder may transfer any Share by an instrument of transfer that complies with this constitution.

Restriction on transfer

- 7.2 A Shareholder who wishes to sell, transfer or otherwise dispose of the legal or beneficial interest in any Shares may only do so if:
- 7.2.1 that sale, transfer or disposal is first approved by Special Resolution; and
- 7.2.2 the transferee or recipient of the Shares is a Local Authority or a Council Controlled Organisation approved by all the other Shareholders.
- 7.3 A Shareholder must not do anything that has the purpose or effect of undermining or circumventing the restriction on the transfer of Shares set out in clause 7.2.

Constitution

Transferor to remain holder until registration

- 7.4 The transferor of a Share will remain the holder of the Share until the name of the transferee is entered in the Share register of the Company.

Form of transfer

- 7.5 Every instrument of transfer of Shares must comply with all of the following provisions:
- 7.5.1 The form of the instrument of transfer must be any usual or common form or any other form approved by the Board.
 - 7.5.2 The instrument of transfer must be signed or executed by or on behalf of the transferor.
 - 7.5.3 Where the Shares being transferred are not fully paid up, the instrument of transfer must also be signed by, or on behalf of, the transferee.

Delivery to Company

- 7.6 An instrument transferring Shares must be delivered to the Company or to the agent of the Company who maintains the Share register of the Company, together with the Share certificate (if any) relating to the Shares to be transferred. The transferee must provide such evidence as the Board or the agent reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.

Registration of transfer

- 7.7 On receipt of a form of transfer in accordance with clause 7.6, the Company must as soon as practicable enter the name of the transferee on the Share register as holder of the Shares, unless:
- 7.7.1 the Board resolves within 30 working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so;
 - 7.7.2 notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the resolution being passed by the Board; and
 - 7.7.3 the refusal or delay in the registration is permitted by clause 7.8.

Power of Board to refuse or delay registration

- 7.8 Notwithstanding that a transfer of any Share may have been approved by Special Resolution, the Board may refuse or delay the registration of a transfer of any Share for any of the reasons set out below.
- 7.8.1 The Company has a lien on the Share.

Constitution

- 7.8.2 The Share is not fully paid up.
- 7.8.3 The form of transfer in respect of the Share relates to more than one Class.
- 7.8.4 The form of transfer is not accompanied by the certificate for the Share to which it relates (if a certificate has been issued) and such other evidence as the Directors may reasonably require of the right of the transferor to make the transfer.
- 7.8.5 The holder of the Share has failed to comply with the terms of any contract with the Company relating to the Share.
- 7.8.6 The Board considers that it would not be in the best interests of the Company to do so.

7.9 Pursuant to clause 7.2, the Board must refuse the registration of a transfer of any Share:

- 7.9.1 if the transfer has not been approved by Special Resolution of the Shareholders (excluding the transferor); or
- 7.9.2 if the transferee is not a Local Authority or Council Controlled Organisation.

8 Shareholder matters

- 8.1 In the event of an amalgamation or any other change in the regional 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 both classes of shares remain reasonable as agreed by all Shareholders.

9 Meetings of Shareholders

Annual meetings

- 9.1 An annual meeting of Shareholders is to be held not later than 6 months after the balance date of the Company, and not later than 15 months after the previous annual meeting.
- 9.2 It will not be necessary for the Company to hold an annual meeting of Shareholders under clause 9.1 if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with clause 9.4.

Special meetings

- 9.3 A special meeting of Class A Shareholders entitled to vote on an issue:
- 9.3.1 may be called at any time by the Board; and

5

Constitution

- 9.3.2 must be called by the Board on the written request of a Class A Shareholder.

Resolution in lieu of meeting

- 9.4 A resolution in writing signed by the requisite number of Class A Shareholders in accordance with section 122 of the Act is as valid as if it had been passed at a meeting of Class A Shareholders.

Shareholder Representatives

- 9.5 The Chief Executive of each Class A Shareholder is the Representative to receive notices of Shareholder meetings. They may appoint by notice in writing an alternate to act as the Representative. The notice must state whether the appointment is for a particular meeting or a specified term.
- 9.6 Class A Shareholders may participate at Shareholder meetings and exercise the right to vote by a Representative.
- 9.7 The Representative for a Class A Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the Representative were the Class A Shareholder.
- 9.8 No Representative's appointment is effective in relation to a meeting unless it is produced to the Company before the start of the meeting.

Chairperson

- 9.9 If the chairperson of the Board is present at a meeting of Shareholders, he or she must chair the meeting.
- 9.10 If at any meeting of Shareholders, the chairperson of the Board is not present within 15 minutes of the time appointed for the meeting, or if the chairperson absences himself or herself from the meeting, the Class A Shareholders present may choose one of their number to be chairperson of the meeting.

Management of the Company

- 9.11 The chairperson of a meeting of Shareholders must allow a reasonable opportunity for Class A Shareholders at the meeting to question, discuss or comment on the management of the Company.
- 9.12 Class A Shareholders at a meeting of Shareholders may pass a resolution relating to the management of the Company. A resolution relating to the management of the Company passed by Class A Shareholders, other than as specifically set out in this constitution or the Shareholders' [and Partnership Agreement](#), at a meeting of Shareholders is not binding on the Board.

Constitution

Notice of meetings to Class A Shareholders

- 9.13 An irregularity in a notice of a meeting is waived if all the Class A Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Class A Shareholders agree to the waiver.
- 9.14 Written notice of the time and place of a meeting (including an adjourned meeting) of Shareholders must be given to every Class A Shareholder entitled to receive notice of the meeting and to every Director and an auditor of the Company not less than 10 working days before the meeting (including an adjourned meeting).
- 9.15 The notice must state all of the following:
- 9.15.1 the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgement in relation to it; and
 - 9.15.2 the text of any resolution to be submitted to the meeting.
- 9.16 The failure to receive notice of a meeting by a Class A Shareholder, if correctly sent to their Representative, does not invalidate the proceedings at that meeting.

Entitlement to notice of meetings

- 9.17 The Shareholders who are entitled to receive notice of a meeting of Shareholders are, if the Board:
- 9.17.1 fixes a date for the purpose, those Shareholders whose names are registered in the Share register on that date; or
 - 9.17.2 does not fix a date for the purpose, those Shareholders whose names are registered in the Share register at the close of business on the day immediately preceding the day on which the notice is given.

Methods of holding meetings

- 9.18 A meeting of Shareholders may be held either:
- 9.18.1 by a number of Class A Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - 9.18.2 by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

Quorum

- 9.19 No business may be transacted at a meeting of Shareholders if a quorum is not present.

7

Constitution

- 9.20 A quorum for a meeting of Shareholders is present if Class A Shareholders or their Representatives are present who between them hold or represent a majority of the votes entitled to be cast on the business to be transacted at the Meeting.
- 9.21 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- 9.21.1 In the case of a meeting called by the Board on the written request of Class A Shareholders pursuant to section 121(b) of the Act, the meeting is dissolved; and
- 9.21.2 In the case of any other meeting, the meeting is adjourned to the same day two weeks later at the same time and place or to such other date, time and place as the Directors may appoint, provided that appropriate notice is given. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Class A Shareholders or their Representatives present are a quorum.

Voting

- 9.22 In the case of a meeting of Shareholders assembled together in accordance with clause 9.18.1, unless a poll is demanded, voting by Class A Shareholders will be by whichever of the following methods is determined by the chairperson of the meeting, by:
- 9.22.1 voice; or
- 9.22.2 show of hands.
- 9.23 In the case of a meeting of Shareholders held by means of audio, or audio and visual communication, unless a poll is demanded, voting at the meeting shall be by the Class A Shareholders signifying individually their assent or dissent by voice.
- 9.24 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 9.25.

Poll

- 9.25 At a meeting of Shareholders a poll may be demanded by a Class A Shareholder having the right to vote at the meeting, or the chairperson of the meeting.
- 9.26 A poll may be demanded either before or after the vote is taken on a resolution.
- 9.27 If a poll is taken, votes must be counted according to the votes attached to the Class A Shares of each Class A Shareholder present in person or by Representative and voting.
- 9.28 The chairperson of a Shareholders' meeting is not entitled to a casting vote.

Constitution

Minutes

- 9.29 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.
- 9.30 Minutes that have been signed correct by each of the Class A shareholders present at the meeting are prima facie evidence of the proceedings.

Other proceedings

- 9.31 Except as provided in this constitution, a meeting of Shareholders may regulate its own procedure.

10 Shareholder proposals**Notice to the Board**

- 10.1 A Class A Shareholder may give written notice to the Board of a matter the Class A Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Class A Shareholder is entitled to vote.
- 10.2 If the notice is received by the Board not less than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Class A Shareholders entitled to receive notice of the meeting.
- 10.3 If the notice is received by the Board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Class A Shareholder, give notice of the Class A Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 10.4 If the notice is received by the Board less than 5 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board may, if practicable, and at the expense of the Class A Shareholder, give notice of the Class A Shareholder proposal and the text of any proposed resolution to all Class A Shareholders entitled to receive notice of the meeting.

Written statement

- 10.5 If the Directors intend that Class A Shareholders may vote on the proposal by Representative or by postal vote, they must give the proposing Class A Shareholder the right to include with the notice given by the Board a statement of not more than 1,000 words prepared by the proposing Class A Shareholder in support of the proposal, together with the name and address of the proposing Class A Shareholder.

9

Constitution

- 10.6 The Board is not required to include with the notice given by the Board a statement prepared by a Class A Shareholder which the Directors consider to be defamatory, frivolous or vexatious.

Costs

- 10.7 Where the costs of giving notice of the Class A Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Class A Shareholder, the proposing Class A Shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

11 Directors

The Board

- 11.1 All Directors shall be Independent Directors.
- 11.2 Each Class A Shareholder is entitled to jointly appoint and remove Directors, subject to the maximum number of Directors permitted under this constitution.
- 11.3 Directors shall be appointed and removed by the unanimous resolution of the Class A Shareholders.
- 11.4 An appointee must not be a person disqualified from acting as a Director under the Companies Act 1993.

Minimum and maximum number

- 11.5 The minimum number of Directors shall be four and the maximum number of Directors shall be eight, or such other number fixed by Special Resolution.

Appointment and removal

- 11.6 Subject to clause 11.5, a Director may be appointed and removed from office at any time by the Class A Shareholders by written notice to the Company.

Skills of Directors

- 11.7 Class A Shareholders may appoint a person to be a Director of the Company only if the person has, in the opinion of the Class A Shareholders, the skills, knowledge, or experience to:
- 11.7.1 guide the Company, given the nature and scope of its activities; and
 - 11.7.2 contribute to the achievement of the objectives of the Company.

Constitution

- 11.8 All Director appointments must be made in accordance with the Shareholders' [and Partnership Agreement](#), including the Board Skills Matrix.

Collective skills of Board

- 11.9 The Board must collectively have relevant knowledge and experience of finance, Water Services, public bodies, the Wellington region, the environment and resource management, [the Local Government Act 2002](#), and relevant issues affecting mana whenua, and appropriate skills to assist the Company to contribute to relevant plans and strategies of the Shareholders in respect to the management and provision of Water Services.
- 11.10 The Board collective skills requirements are detailed in the Board Skills Matrix [in the Shareholders' Agreement](#).

Vacation of office

- 11.11 A Director vacates office if that Director:

- 11.11.1 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;
- 11.11.2 is removed from office in accordance with clause 11.6;
- 11.11.3 becomes disqualified from being a Director pursuant to section 151 of the Act; or
- 11.11.4 dies.

- 11.12 Each Director can serve a maximum of 6 years after which they must either resign or be removed as Director by the Class A Shareholders, unless the Class A Shareholders agree to extend that Director's term of office.

Authorisation of payment or other benefit

- 11.13 Subject to clause 11.14, the Board may only exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section with the prior written approval of the Shareholder.
- 11.14 Payments or other benefits of the kind referred to in section 161 of the Act which are approved by the Board as at the date of adoption of this constitution are confirmed.

12 Directors' meetings**Third Schedule to the Act not to apply**

- 12.1 The Third Schedule to the Act (relating to the proceedings of a board) does not apply to the Company except to the extent included in this constitution.

11

Constitution

Notice of meeting

- 12.2 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 clause 12.3.
- 12.3 The following provisions apply in relation to meetings of the Board:
- 12.3.1 Not less than two working days' notice of a meeting of the Board is to be sent to each Director, unless the Director waives that right.
- 12.3.2 Notice to a Director of a meeting of the Board may be:
- (a) delivered to the Director;
 - (b) posted to the address given by the Director to the Company for such purpose;
 - (c) sent by facsimile transmission to the facsimile number given by the Director to the Company for such purpose; or
 - (d) sent by electronic means in accordance with any request made by the Director from time to time for such purpose.
- 12.3.3 A notice of meeting shall specify the date, time and place of the meeting and, in the case of a meeting by means of audio, or audio and visual communication, the manner in which each Director may participate in the proceedings of the meeting.
- 12.3.4 A notice given to a Director pursuant to this clause 12.3 is deemed to be given:
- (a) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
 - (b) in the case of posting, three days after it is posted;
 - (c) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director; or
 - (d) in the case of electronic means, at the time of transmission.
- 12.4 An irregularity in the notice of a meeting or a failure to give notice is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors agree to the waiver.
- 12.5 Notice of a meeting of the Board may be given to the public.

Constitution

Methods of holding meetings

- 12.6 A meeting of the Board may be held either:
- 12.6.1 by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - 12.6.2 by means of audio, or audio and visual, communications by which all Directors participating and constituting a quorum can simultaneously hear each other during the meeting.
- 12.7 Board meetings will be open to the public to attend although the Board at its sole discretion may exclude the public if it believes that the matters under discussion should not be made public.

Quorum

- 12.8 A quorum for a meeting of the Board, other than an adjourned meeting, is a majority of the Directors.
- 12.9 No business may be transacted at a meeting of the Board if a quorum is not present.

Chairperson

- 12.10 The Directors shall elect one of the Independent Directors as chairperson of the Board to hold office until he or she resigns or dies or until the Directors elect a different Independent Director in his or her place.
- 12.11 If at a meeting of the Board the chairperson is not present within 10 minutes after the time appointed for the meeting, or if the chairperson absences himself or herself from the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

Voting

- 12.12 Every Director has one vote.
- 12.13 The chairperson does not have a casting vote.
- 12.14 A resolution of the Board is passed if a majority of the votes cast on it are in favour of it.
- 12.15 A Director present at a meeting of the Board will be presumed to have voted in favour of a resolution of the Board unless he or she:
- 12.15.1 expressly abstains from voting; or
 - 12.15.2 dissents from or votes against the resolution.

Constitution

Minutes

- 12.16 The Board must ensure that minutes are kept of all proceedings at meetings of the Board.

Written resolution

- 12.17 A unanimous resolution in writing, signed or assented to in written form by all of the Directors, is as valid as if it had been passed at a meeting of the Board duly convened and held.
- 12.18 A resolution pursuant to clause 12.17 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.
- 12.19 A copy of any such resolution must be entered in the minute book of Board proceedings.

Committees

- 12.20 A committee of Directors must, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.

Validity of actions

- 12.21 An act or decision of the Board shall not be invalid by reason only of:
- 12.21.1 a fault, default or irregularity in or in connection with the appointment of a Director; or
- 12.21.2 a vacancy in the number of Directors including a vacancy arising because of the failure to appoint a Director.

Other proceedings

- 12.22 Except as provided in this constitution, the Board may regulate its own procedure.

13 Powers of Directors

Role of Directors

- 13.1 The role of a Director is to assist the Company to meet its objectives and any other requirements in the Company's Statement of Intent. This clause does not limit or affect the other duties that a Director has.

Constitution

Management of Company

- 13.2 The business and affairs of the Company must be managed by, or under the direction of, the Board.
- 13.3 All decisions relating to the operation of the Company must be made by, or under the authority of, the Board in accordance with:
- 13.3.1 the Statement of Intent; and
- 13.3.2 this constitution.

Exercise of powers by Board

- 13.4 The Board may exercise all the powers of the Company which are not required, either by the Act or this constitution, to be exercised by the Shareholders.

Delegation of powers

- 13.5 The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Act.

14 Interested Transactions**Disclosure of interests**

- 14.1 A Director must comply with the disclosure requirements of section 140 of the Act but failure to comply with that section does not affect the validity of any contract or arrangement entered into by the Company.

Company's best interests

- 14.2 When exercising powers or performing duties as a Director, a Director must act in what the Director believes to be the best interests of the Company.

Use of Company information

- 14.3 A Director who has information in his or her capacity as a Director or employee of the Company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:
- 14.3.1 for the purposes of the Company; or
- 14.3.2 as required by law; or
- 14.3.3 in accordance with clause 14.4 of this constitution; or
- 14.3.4 in complying with clause 14.1 of this constitution.

15

Constitution

Procedure for disclosure and use

- 14.4 A Director may disclose, make use of or act on the information if:
- 14.4.1 particulars of the disclosure, use or act in question are entered in the interests register; and
 - 14.4.2 the Director is first authorised to do so by the Board; and
 - 14.4.3 the disclosure, use or act in question will not, or will not be likely to, prejudice the Company.

15 Indemnity and insurance

Indemnity for Directors

- 15.1 Every Director will be indemnified by the Company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act.

Indemnities and insurance

- 15.2 In addition to the indemnity set out in clause 15.1, the Company may with the prior written approval of the Board do any of the following:
- 15.2.1 Indemnify a Director or employee of the Company for any costs referred to in section 162(3) of the Act.
 - 15.2.2 Indemnify a Director or employee of the Company in respect of any liability or costs referred to in section 162(4) of the Act.
 - 15.2.3 Effect insurance for a Director or employee of the Company in respect of any liability or costs referred to in section 162(5) of the Act.

Definitions

- 15.3 Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 15.

16 Reporting

Half yearly report

- 16.1 Within 2 months after the halfway point of the Company's financial year, the Board must deliver to the Shareholders a report on the Company's operations during that half year. That report must include the information required to be included by the Company's Statement of Intent.

Constitution

Annual report

16.2 Within 3 months after the end of the Company's financial year, the Board must deliver to the Shareholders, and make available to the public, a report on the Company's operations during that year. That report must include the information required to be included by:

- 16.2.1 clause 16.3;
- 16.2.2 the Company's Statement of Intent;
- 16.2.3 the Local Government Act 2002; and
- 16.2.4 the Act.

Contents of reports on operations of the Company

16.3 The annual report on the operations of the Company under clause 16.2 must:

16.3.1 contain the information that is necessary to enable an informed assessment of the operations of the Company and its subsidiaries (if any), including:

- (a) a comparison of the performance of the Company and its subsidiaries (if any) with the Statement of Intent;
- (b) an explanation of any material variances between that performance and the Statement of Intent;
- (c) state the dividend (if any) authorised to be paid or the maximum dividend proposed to be paid by the Company for its equity securities (other than fixed interest securities) for the financial year to which the report relates;

16.3.2 include audited consolidated financial statements for that financial year for that organisation and its subsidiaries;

16.3.3 include an auditor's report on:

- (a) those financial statements; and
- (b) the performance targets and other measures by which performance was judged in relation to the Company's objectives.

16.4 The audited financial statements under clause 16.3.2 must be prepared in accordance with generally accepted accounting practice.

Protection from disclosure of sensitive information

16.5 Nothing in this clause 16 requires the inclusion in any Statement of Intent, annual report, financial statement, or half yearly report required to be produced under this constitution by the Company of any information that may be properly withheld if a

Constitution

request for that information were made under the Local Government Official Information and Meetings Act 1987.

Statement of Intent

- 16.6 Without limiting the obligations of the Board and the Company under the Local Government Act 2002 in respect to the Company's Statement of Intent, the Board must:
- 16.6.1 deliver to the Shareholders a draft Statement of Intent on or before 1 March each year;
 - 16.6.2 consider any comments on the draft Statement of Intent that are made to it within 2 months of 1 March by the Shareholders or by any one of them; and
 - 16.6.3 deliver the completed Statement of Intent to the Shareholders on or before 30 June each year.
- 16.7 The Shareholders must each make a decision as to whether or not to approve the Statement of Intent and to provide modifications to each Statement of Intent within the time limits prescribed by the Local Government Act 2002 (or such earlier limits agreed to) so as to enable the Company to comply with applicable time limits.

17 Auditor

- 17.1 So long as the Company remains a Council Controlled Organisation, the Auditor-General shall be the auditor of the Company, and of every subsidiary of the Company (if any) and shall have all of the functions, duties and powers:
- 17.1.1 of an auditor appointed under the Act; and
 - 17.1.2 that the Auditor-General has under the Public Audit Act 2001.

18 Official information

- 18.1 Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987 apply to the Company as if it were a local authority under that act.
- 18.2 The Ombudsman Act 1975 applies to the Company as if the Company were listed in Part 3 of the First Schedule of that act.

Constitution

19 Dividends**Power to authorise**

- 19.1 The Board may, subject to the Act and this constitution, authorise the payment of dividends by the Company at times, and of amounts, and in such form as it thinks fit and may do everything that is necessary or expedient to give effect to the payment of such dividends. Prior to authorising the payment of a dividend, the Board must be satisfied on reasonable grounds that the Company will immediately after payment of the dividend satisfy the solvency test.

Deductions

- 19.2 The Board may deduct from dividends payable to any Shareholder in respect of any Shares any of the following:

19.2.1 Unpaid calls, instalments or other amounts, and any interest payable on such amounts, relating to the specific Shares.

19.2.2 Amounts the Company may be called upon to pay under any legislation in respect of the specific Shares.

Entitlement Date

- 19.3 Dividends and other Distributions or payments to Shareholders will be payable to the persons who are registered as Shareholders on an entitlement date fixed by the Board.

Unclaimed dividends

- 19.4 Dividends or other monetary Distributions unclaimed for one year after having been authorised may be used for the benefit of the Company until claimed. All dividends or other monetary Distributions unclaimed for 5 years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board may, nevertheless, agree to pay a claimant who produces evidence of entitlement.

20 Method of contracting**Deeds**

- 20.1 A deed to be entered into by the Company may be signed on behalf of the Company by any of the following:

20.1.1 By 2 or more Directors of the Company.

20.1.2 A Director, or other person or persons authorised to do so by the Board, whose signature or signatures must be witnessed.

20.1.3 One or more attorneys appointed by the Company in accordance with section 181 of the Act.

Constitution

Written contracts

- 20.2 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 a person acting under the Company's express or implied authority.

Other contracts

- 20.3 An obligation or contract may be entered into on behalf of the Company orally by a person acting under the Company's express or implied authority.

21 Definitions and Interpretation

Definitions

- 21.1 In this constitution the following definitions apply:

Act means the Companies Act 1993 as amended from time to time.

Auditor-General means the Controller and Auditor-General appointed under the Public Audit Act 2001.

Board in relation to the Company means those Directors who number not less than the required quorum acting together as a board of directors.

Board Skills Matrix means the board skills matrix set out in Schedule 1 of [this Shareholders' Agreement.constitution](#).

Class means a class of Shares having attached to them identical rights, privileges, limitations and conditions.

Class A Shareholders means the holders of the Class A Shares.

Class A Shares means Shares in the Company entitling the holder of those Shares to vote at a meeting of the Shareholders on any resolution pursuant to clause 2.1. No other rights or obligations attach to the Class A Shares.

Class B Shareholders means the holders of the Class B Shares.

Class B Shares means Shares in the Company entitling the holder to an equal share in any dividends authorised by the Board and an equal share in the Distribution of surplus assets of the Company pursuant to clause 2.2. No other rights or obligations attach to the Class B Shares.

Company means Wellington Water Limited.

Council Controlled Organisation has the meaning given to that term by the Local Government Act 2002.

Constitution

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

Distribution has the meaning set out in section 2(1) of the Act.

Independent Director means a Director appointed by the Shareholders jointly by agreement and who is neither a member (including Councillors and Mayors) of nor a person employed by any local authority (as defined under the Local Government Act 2002).

Local Authority has the meaning given to that term by the Local Government Act 2002.

Representative means a person appointed as a Shareholder's Representative under clause 9.5.

Share means a share issued, or to be issued, by the Company including Class A Shares and Class B Shares.

Shareholder means a person whose name is entered in the share register of the Company as the holder for the time being of one or more Shares.

Shareholders' and Partnership Agreement means any Shareholders' and Partnership Agreement between, among others, the Shareholders of the Company governing the conduct of the Shareholders in relation to the Company that is notified by the Shareholders to the Board, as amended from time to time.

Special Resolution means a resolution approved by 75% of those Class A Shareholders entitled to vote and voting on the resolution.

Statement of Intent means each statement of intent to be completed by the Board in terms of the Local Government Act 2002.

Water Services has the meaning given that term by the Local Government Act 2002.

Interpretation

21.2 In this constitution, unless the context otherwise requires:

- 21.2.1 Except as specified in clause 21.1, words or expressions used in this constitution that are defined in the Act or the Local Government Act 2002 have the meaning given by the applicable act.
- 21.2.2 A reference to writing includes facsimile and electronic communications resulting in visible reproduction.
- 21.2.3 An expression referring to a natural person includes a company, trust, partnership, association, body corporate, Local Authority, Council Controlled Organisation or public authority.

Constitution

- 21.2.4 A reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
- (a) that legislation or provision as from time to time amended, re-enacted or substituted; and
 - (b) any statutory instruments, regulations, rules and orders issued under that legislation or provision.
- 21.2.5 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this constitution.
- 21.2.6 A reference to the word 'include' or 'including' is to be construed without limitation.
- 21.2.7 A reference to a working day means a day other than a Saturday or Sunday on which banks are open for business generally in Wellington, New Zealand.

Conflict between the Act and this constitution

- 21.3 If there is any conflict between:
- 21.3.1 a provision in this constitution and a mandatory provision in the Act or the Local Government Act 2002; or
 - 21.3.2 a word or expression defined or explained in the Act or the Local Government Act 2002 and a word or expression defined or explained in this constitution,
- the provision, word or expression in the applicable act prevails.

[Constitution](#)

Schedule 1

BOARD SKILLS MATRIX [Note: the below has been cut and pasted from latest version of draft Shareholders and Partnership Agreement, with only new changes marked up]

Each Director of the Company must have the skills, knowledge, or experience to:

- guide the Company, given the nature and scope of its activities; and
- contribute to the achievement of the objectives of the Company.

In making all Director appointments, the *parties to the Shareholders' Agreement* should ensure that the Board collectively has the following attributes:

COLLECTIVE BOARD ATTRIBUTES

Candidates with the ability and willingness to:	Desirable but not mandatory	At least one director	Multiple directors	All directors
1 Chair the Board		√		
2 Participate fully in the life of the Board and on subcommittees as required				√
3 Demonstrate the individual attributes outlined below				√
Relevant knowledge and experience in/of:				
4 Governance and leadership experience				√
5 Commercial strategic and business acumen			√	
6 Engineering, infrastructure asset planning and management		√	√	

1364812_3:1364634_5

17

Formatted: PF Level 1

Formatted: Font:

[Constitution](#)

7	A strong understanding of the Wellington region and the local government context, including appreciation of public accountability		√	√	
8	Practical, and preferably leadership experience in Water Services		√		
9	Resource and environmental management and the RMA	√			
10	Commercial law and/or contract management	√			
11	Accounting/finance and/or risk management	√			
12	Relationship management skills and experience.	√			
13	<ul style="list-style-type: none"> - Demonstrates a familiarity with the geographic area in which the Company is operating and iwi interests in that area - Demonstrates an understanding of Te Ao Māori and Tikanga Māori - Maintains, upholds, and proactively engages with, the principles of the Treaty of Waitangi - Demonstrates a commitment to kaitiakitanga and stewardship in relation to the natural environment. 		√		

REQUIRED INDIVIDUAL ATTRIBUTES FOR DIRECTORS

13	Professionalism	- Demonstrates behaviours and commitment to the vision and values of the Company and its objectives and strategic direction
----	-----------------	---

1364812_31364634_5

18

[Constitution](#)

		<ul style="list-style-type: none"> - Empathy and clear understanding of the objectives of the parties to the Shareholders' and Partnership Agreement - Common sense, integrity and a strong sense of public service ethic - Applies knowledge of the Companies Act and Local Government Act and knows when to seek advice - Recognises perceived and real conflict of interest situations, when to declare an interest and acts accordingly and appropriately
14	Communication	<ul style="list-style-type: none"> - Mediates constructively and effectively to resolve differences and conflict - Listens and asks questions to maximise own understanding of situations and contributes constructively to meetings - Applies political instinct and knowledge of the political context to relevant situations - Exhibits open and transparent communications skills
15	Decision Making	<ul style="list-style-type: none"> - Makes decisions honestly and in good faith - Ability to take a wide perspective on issues and think strategically and critically - Encourages new initiatives and tries to be inventive and original when tackling issues and solving problems. - Establishes decision-making criteria to determine the best outcome in line with Company and values of the parties to the Shareholders' and Partnership Agreement - Undertakes effective analysis of both qualitative and quantitative data for problem solving, planning and decision making

1364812_31364634_5

19

[Constitution](#)

		<ul style="list-style-type: none"> - Acquaints themselves fully with all the relevant facts, and consider whether expert advice is needed - Applies fluency with financial concepts to the review of internal financial reports - Contributes to the development of stretching but achievable goals, objectives and KPIs - Implements and monitors performance against KPIs and budgets in order to achieve outcomes and respond to changes in the Company's operating environment
16	Team Work	<ul style="list-style-type: none"> - Ability to work positively honestly and proactively with the Chief Executive, Chair and other directors of the Company - Maintains oversight of the Company's organisational culture and the depth of management - Ability to work positively with the parties to the Shareholders' and Partnership Agreement, with an appreciation of their role as customers, shareholders and mana whenua representatives (including recognising demands on them for transparency and accountability)
17	Strategic Leadership	<ul style="list-style-type: none"> - Understands director responsibilities and can distinguish governance from management - Takes a proactive and forward thinking approach, identifying possible risks and opportunities, and encourages the continuous improvement of service provision to the client councils - Demonstrates an affiliation with and passion for the geographic area in which the Company is operating and maintains a commitment to the principles of the Treaty of Waitangi - Keeps up-to-date on Company and industry issues and opportunities and maintains relevant technical and professional expertise

1364812_31364634_5

20

[Constitution](#)

	<ul style="list-style-type: none">- Responds to and influences constructively future-focused strategic change management within the Company- Strives to identify relevant financial, operating, market, health and safety, and legal risks and to ensure that best practice risk management is in place for the time- Assists with the high level development and oversight of resilience planning- Contributes to the Company's strategic and business planning including championing the Company's vision and values
--	---

1364812_31364634_5

21

1364812_3

1

~~Draft 7 December 2018~~ Version 4 June 2019

**Shareholders' and Partnership Agreement
relating to
Wellington Water Limited**

Wellington City Council
Hutt City Council
Upper Hutt City Council
Porirua City Council
Wellington Regional Council

And any other Shareholder and Mana Whenua Partner Entity
acceding to this Shareholders' and Partnership Agreement

Table of contents

Te Taki o Wellington Water	1
Parties	2
Background	2
Operative provisions	3
1 Shareholder and other obligations	3
Shareholder and customer	3
Duty to comply with Constitution	3
2 Treaty of Waitangi / Te Tiriti o Waitangi	4
3 Wellington Water Committee	4
Establishment and Terms of Reference	4
Attendance of Committee Members at meetings	5
4 Shareholder decisions	6
5 Composition of the Board	6
The Board	6
6 Statement of Intent	6
7 Shareholder amalgamation	7
8 Conduct by the parties	7
Spirit of collaborative working	7
9 Dispute resolution	8
Application of procedures	8
Notice in writing	8
Escalation	8
Negotiation in good faith	8
Mediation	8
Implementation of agreement reached through negotiation or mediation	9
Rights and obligations during a dispute	9
Interlocutory relief and right to terminate	9
10 Termination	9
Duration	9
Termination for default	9
Termination by notice	9
Right of first refusal	9
Effect of termination	10
11 Confidential Information	10
Confidentiality	10
Further permitted use and disclosure	10
Obligations to continue after agreement ends	10
12 Announcements	11
13 Notices	11

1364634_5

Giving notices.....	11
Change of details.....	11
Time notice is given.....	11
14 Miscellaneous.....	12
Assignments and transfers.....	12
Costs.....	12
Entire agreement.....	12
Execution of separate documents.....	12
Further acts.....	12
Inconsistency with Constitution.....	12
No partnership or agency.....	12
Privity.....	12
No reliance on other matters.....	13
Severability.....	13
Variation.....	13
Waivers.....	13
15 Definitions and interpretation.....	13
Definitions.....	13
Interpretation.....	15
Execution and date.....	17
Parties.....	1
Background.....	2
Operative provisions.....	3
1 Shareholder obligations.....	3
Shareholder and customer.....	3
Duty to comply with Constitution.....	3
2 Shareholders.....	3
3 Wellington Water Committee.....	4
Establishment and Terms of Reference.....	4
Delegations to Committee Members.....	5
Attendance of Committee Members at meetings.....	5
4 Shareholder decisions.....	5
5 Composition of the Board.....	6
The Board.....	6
6 Statement of Intent.....	6
7 Shareholder amalgamation.....	7
8 Conduct by the Shareholders.....	7
Spirit of collaborative working.....	7
9 Dispute resolution.....	8
Application of procedures.....	8
Notice in writing.....	8
Escalation.....	8
Negotiation in good faith.....	8

1364634_5

Mediation.....	8
Implementation of agreement reached through negotiation or mediation	9
Rights and obligations during a dispute	9
Interlocutory relief and right to terminate	9
10 Termination	9
Duration	9
Termination for default.....	9
Termination by notice.....	9
Right of first refusal.....	9
Effect of termination.....	10
11 Confidential Information.....	10
Confidentiality.....	10
Further permitted use and disclosure.....	10
Obligations to continue after agreement ends.....	10
12 Announcements.....	11
13 Notices.....	11
Giving notices.....	11
Change of details.....	11
Time notice is given.....	11
14 Miscellaneous.....	12
Assignments and transfers.....	12
Costs.....	12
Entire agreement.....	12
Execution of separate documents.....	12
Further acts.....	12
Inconsistency with Constitution.....	12
No partnership or agency.....	12
No reliance on other matters.....	12
Severability.....	13
Variation.....	13
Waivers.....	13
15 Definitions and interpretation.....	13
Definitions.....	13
Interpretation.....	15
Execution and date.....	17
Schedule 1.....	17
Board Skills Matrix.....	17
Schedule 2.....	22
Matters requiring Shareholder approval or reflection in Statement of Intent	22
Schedule 3.....	23
Form of Wellington Water Committee Terms of Reference	23

1364634_5

Shareholders and Partnership Agreement
Shareholders' and Partnership Agreement

Te Taki o Wellington Water

He wai, he wai

He wai herenga tāngata

He wai herenga whenua

He wāirua

He waiora

Tihei Mauri ora

Tis water, tis water

Water that joins us

Water that necessitates the land

Soul of life

Life forever

Tis life

~~Shareholders and Partnership Agreement~~
~~Shareholders' and Partnership Agreement~~

Parties

Wellington City Council (WCC)

Hutt City Council (HCC)

Upper Hutt City Council (UHCC)

Porirua City Council (PCC)

Wellington Regional Council (WRC)

[South Wairarapa District Council](#)

Any other Shareholder(s) acceding to this document in accordance with clause 1.6 below

Any Mana Whenua Partner Entity(ies) acceding to this document in accordance with clause 2.3 below (MWPE)

Background

A. Wellington Water Limited (**Company**) manages drinking water, wastewater and storm water services [in the greater Wellington region](#) for its local authority shareholders, working in partnership with mana whenua, through the MWPEs, to provide leadership across water issues.

B. The parties are:

- a. shareholders in the Company; and~~or~~
- b. mana whenua partner entities,

and wish to enter into this document for the purpose of recording the agreements they have reached in relation to managing their shareholdings in the Company, mana whenua's partnership with the Shareholders in relation to governance of the Company, and their respective relationships with each other.

C. The existing parties to this document acknowledge that additional parties may accede to this document in the manner described in clause 2.3 below, either as additional shareholders in the Company or as MWPEs.

~~Shareholders and Partnership Agreement~~
~~Shareholders' and Partnership Agreement~~**Operative provisions****1 Shareholder and other obligations****Shareholder and customer**

- 1.1 Each Shareholder acknowledges that all Shareholders are expected to also be customers of the Company under a Service Level Agreement.

Duty to comply with Constitution

- 1.2 Each Shareholder shall comply with the Company's Constitution. Each MWPE shall, in the exercise of its role as contemplated in this document, ~~agree ensure~~ that the Company ~~is obliged to~~ comply ~~ies~~ with the Constitution.

Council controlled organisation

- 1.3 The Shareholders and MWPEs acknowledge that the Company is a council controlled organisation and accordingly:
- 1.3.1 the Shareholders will each use their best endeavours to ensure that they each comply with their, and the Company complies with its, obligations under the LGA and the Companies Act; and
- 1.3.2 each of the MWPEs will, when undertaking its role as contemplated in this document, ~~agree use its best endeavours to ensure~~ that the Company ~~is obliged to~~ comply ~~ies~~ with its obligations under the LGA and the Companies Act.

Security Interest

- 1.4 A Shareholder must not grant a Security Interest over any of its Shares without the written consent of the other Shareholders.

Shareholding

- 1.5 Each Shareholder holds the Shares as set out in the share register for the Company.

New Shareholder accession to this document

- 1.6 The Shareholders acknowledge that from time to time one or more local authorities or council controlled organisations may become shareholders of the Company, by being issued Shares in the Company in accordance with the Constitution. In such event, the new Shareholder will be required under the Constitution to ~~become a party accede~~ to this document as a Shareholder and ~~may te~~ do so by way of entry into a deed of accession in a form required by the Shareholders.

~~Shareholders and Partnership Agreement~~
~~Shareholders' and Partnership Agreement~~

2 Treaty of Waitangi / Te Tiriti o Waitangi

2.1 The Shareholders acknowledge the importance of the Treaty of Waitangi / Te Tiriti o Waitangi as a founding document of Aotearoa New Zealand and are committed to the principles it contains. In giving effect to the Treaty of Waitangi / Te Tiriti o Waitangi principles, the Shareholders agree that mana whenua, through the MWPEs, will have an important role in the governance of the Company, as contemplated in this document, including by nominating members on the Wellington Water Committee and by jointly [\(as part of the Wellington Water Committee\) appointing-recommending the appointment of](#) the Directors of the Company [\(such Director appointments to be made by the Class A Shareholders as required under the Constitution\).](#)

2.2 Each MWPE:

2.2.1 is a Māori authority in the geographical area in which the Company operates;

2.2.2 has been jointly approved by all Shareholders as a MWPE for the purposes of this document (as contemplated in clause 2.3 below); and

2.2.3 has acceded to this document as a MWPE by way of entry into a deed of accession in a form required by the Shareholders.

2.3 The Shareholders acknowledge that they, any of them and/or the Company may from time to time receive request(s) from any group(s) or entity(ies) seeking recognition as a MWPE for the purposes of this document. The Shareholders agree to consider such request(s) in good faith, and may, by unanimous resolution, agree to recognise as a MWPE under this document any Māori authority within the geographical area in which the Company operates. On such resolution, the relevant Māori authority shall become a MWPE upon acceding to this document as a MWPE by way of entry into a deed of accession as required in clause 2.2.3 above.

3 Wellington Water Committee

Establishment and Terms of Reference

3.1 The Shareholders will jointly establish, maintain and operate a Wellington Water Committee in accordance with the Terms of Reference and the provisions of this document, to provide overarching governance in relation to Water Services in the [greater](#) Wellington region and to assist the Shareholders to fulfil their obligations under this document.

Committee Membership

3.2 The Wellington Water Committee will comprise Committee Members appointed as follows:

~~Shareholders and Partnership Agreement~~
~~Shareholders' and Partnership Agreement~~

- 3.2.1 Each Shareholder will appoint one of its elected members as a Committee Member;
- 3.2.2 Each MWPE will nominate, and the Shareholders will unanimously appoint, a person to be a Committee Member on the Wellington Water Committee; and
- 3.2.3 In relation to each Committee Member, whether appointed under clause ~~3.2.13.2-14.1.1~~ or 3.2.2, an Alternate will be appointed in the same way as the relevant primary Committee Member.
- 3.3 Any Committee Member and/or Alternate may be replaced from time to time as follows:
- 3.3.1 a Committee Member who is also an elected member of a Shareholder, by the relevant Shareholder; and
- 3.3.2 a Committee Member who is not also an elected member of a Shareholder, by the relevant nominating MWPE,
- in each case, by the relevant party providing written notice to the Wellington Water Committee and the Shareholders.

Delegations to Committee Members

- 3.4 Each ~~Shareholder~~ party agrees to delegate to its nominated or appointed Committee Member, and their Alternate, those responsibilities and powers set out in the Appendix to the Terms of Reference.

Attendance of Committee Members at meetings

- 3.5 Each:
- 3.5.1 Shareholder agrees to use its reasonable endeavours to ensure that its appointed elected member Committee Member (or their Alternate); and
- 3.5.2 MWPE agrees to use its reasonable endeavours to ensure that its nominated Committee Member (or their Alternate),
- attends each meeting of the Wellington Water Committee.
- 3.6 It shall be considered a breach of this document if an appointed Committee Member or their Alternate is not present at three consecutive meetings of the Wellington Water Committee.

~~Shareholders and Partnership Agreement~~
~~Shareholders' and Partnership Agreement~~

4 Shareholder decisions

- 4.1 The matters contained in part 1 of Schedule 2 must be approved by unanimous agreement of the Shareholders, which may be approved through their elected members who are on the Wellington Water Committee.

5 Composition of the Board

The Board

- 5.1 The parties agree that ~~the appointment of the~~all Directors must be independent Directors selected by the Wellington Water Committee meet the requirements in accordance with the Board Skills Matrix, subject to the maximum number of Directors permitted under the Constitution.
- 5.2 An appointee must not be a person disqualified from acting as a Director under the Companies Act.
- 5.3 Otherwise, the Directors are to be appointed in accordance with the terms of the Constitution and this document.
- 5.4 A performance evaluation of the Board will be undertaken by the Board on an annual basis, in line with accepted good governance principles and practices, and the results will be reported directly to the Wellington Water Committee and to the Chief Executives of the Shareholders.

6 Statement of Intent

- 6.1 The parties agree that the business of the Company is expected to be conducted in accordance with its Statement of Intent, which must be prepared in accordance with the LGA.
- 6.2 Each Shareholder retains its rights under the LGA to comment on and decide whether to approve a Statement of Intent, but will use its best endeavours to co-ordinate its feedback in accordance with the procedure set out in this clause 6.
- 6.3 Unless the parties agree an alternative date, no later than 1 December each year, the Wellington Water Committee will meet to discuss and recommend to the Shareholders details to be included in the Letter of Expectation to the Company in relation to its Statement of Intent.
- 6.4 The parties agree that the Letter of Expectation will request the Company to include in its Statement of Intent appropriate restrictions on the activities set out in part 2 of Schedule 2.
- 6.5 The parties will exercise their power to agree the Letter of Expectation via the Wellington Water Committee.

Shareholders and Partnership Agreement
Shareholders' and Partnership Agreement

- 6.6 No later than 15 December in each year, or an alternative date agreed by the Shareholders, the chairperson of the Wellington Water Committee will circulate the agreed Letter of Expectation to the Chairperson of the Board, the Chief Executive of the Company and to all Shareholders.
- 6.7 The Shareholders will procure that the draft Statement of Intent prepared by the Company is provided to the Wellington Water Committee and will exercise its powers in relation to the draft Statement of Intent via the Wellington Water Committee.
- 6.8 The Wellington Water Committee will, in accordance with the Terms of Reference, consider the draft Statement of Intent and will agree feedback and recommendations in respect of the draft Statement of Intent to be provided to the Company.
- 6.9 Subject to clause 6.2, no later than 30 April in each year, the Wellington Water Committee will circulate to the Chairperson of the Board, the Chief Executive of the Company and to all Shareholders a letter outlining Wellington Water Committee's agreed combined feedback to the draft Statement of Intent.
- 6.10 The Wellington Water Committee will, in accordance with the Terms of Reference, consider the final Statement of Intent when it is received from the Company and agree recommendations in respect of the final Statement of Intent to be provided to the Shareholders.
- 6.11 Each Shareholder must formally consider the final Statement of Intent taking into account the recommendations of the Wellington Water Committee.
- 6.12 The parties acknowledge that under the LGA, the Shareholders may jointly, by resolution, require the Board to modify its Statement of Intent.

7 Shareholder amalgamation

- 7.1 In the event of an amalgamation or any other change in the regional governance structure of a Shareholder, the parties 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 both classes of shares remain reasonable as agreed by all Shareholders.

8 Conduct by the parties**Spirit of collaborative working**

- 8.1 The parties must at all times act in a spirit of co-operation and collaborative working, endeavouring to act together to allow for the effective communications for and on, and governance of, the Company.
- 8.2 The parties 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. If any decision under this document has a material impact on a Shareholder's Service Level

~~Shareholders and Partnership Agreement~~
~~Shareholders' and Partnership Agreement~~

Agreement with the Company, that Shareholder must immediately notify the other parties of the change.

9 Dispute resolution

Application of procedures

- 9.1 The procedures set out below must be followed in relation to the resolution of a dispute amongst the parties concerning either of the following:
- 9.1.1 this document, its subject matter, the rights or liabilities under this document or the negotiations leading to it; or
 - 9.1.2 the conduct of the business or affairs of the Company.

Notice in writing

- 9.2 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.

Escalation

- 9.3 The Representatives shall be responsible for dealing with any disputes in a timely manner.

Negotiation in good faith

- 9.4 On receipt of a notice delivered in accordance with clause 9.2 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 difficulty quickly and efficiently through negotiation.
- 9.5 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 (where the Representatives are not the Chief Executive) of the applicable Shareholders for resolution.
- 9.6 If the issue has not been resolved within 30 days (or within such other period as agreed by the parties) of the date of the notice referred to in clause 9.4, any party may submit the dispute to mediation.

Mediation

- 9.7 If the parties do not resolve the difficulty by negotiation, the parties must, in good faith and acting reasonably, do their best to resolve the difficulty by participating in mediation with an independent mediator.
- 9.8 If the parties do not agree on a mediator, then the mediator will be appointed by the President of the New Zealand Law Society.
- 9.9 The parties must mediate the difficulty in accordance with principles agreed between them or, if no agreement can be reached, the principles determined by the mediator.

1364634_5

8

Shareholders and Partnership Agreement~~Shareholders' and Partnership Agreement~~

- 9.10 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).

Implementation of agreement reached through negotiation or mediation

- 9.11 The parties must do whatever is reasonably necessary to put into effect any negotiated or mediated agreement or other resolution. This includes exercising voting rights and other powers as required.

Rights and obligations during a dispute

- 9.12 During a dispute, each party must continue to perform its obligations under this document.

Interlocutory relief and right to terminate

- 9.13 This clause does not restrict or limit the right of a party to obtain interlocutory relief, or to immediately terminate this document where this document provides such a right.

10 Termination**Duration**

- 10.1 This document commences on its execution date in accordance with its terms and continues until:
- 10.1.1 one Shareholder holds all of the Shares or none of the Shareholders hold Shares, and there are no then current MWPEs; or
- 10.1.2 terminated earlier in accordance with clause 10.2.

Termination for default

- 10.2 This document will terminate if an Insolvency Event occurs in relation to the Company.

Termination by notice

- 10.3 Any Shareholder may withdraw from being a Shareholder and a party to this document if the Service Level Agreement in respect of such Shareholder is terminated.
- 10.4 Any Shareholder may withdraw from being a Shareholder and a party to this document by giving 36 months' prior written notice to the Company and to all other Shareholders.

Right of first refusal

- 10.5 If a Shareholder ceases to be a Shareholder in the Company for any reason, the Shareholder must offer its Shares to the remaining Shareholders pro rata to their respective shareholdings.

~~Shareholders and Partnership Agreement~~
~~Shareholders' and Partnership Agreement~~

- 10.6 No Shareholder is entitled to terminate this document except as expressly permitted in this document.

Effect of termination

- 10.7 Any termination of this document with respect to a Shareholder or a MWPE does not affect any accrued rights that Shareholder or that MWPE may have against the other parties to this document or which the other parties to this document may have against it.
- 10.8 Clause 11 continues to apply to the parties despite any termination of this document.

11 Confidential Information

Confidentiality

- 11.1 Each party must keep, and must ensure that its nominated and/or appointed Committee Member and Representative shall keep, confidential the terms of this document, the contents of all negotiations leading to its preparation and any other information relating to the Company or to another Shareholder or MWPE that it obtains as a result of this document or anything done under it (**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.

Further permitted use and disclosure

- 11.2 This document does not prohibit the disclosure of Confidential Information by a party in the following circumstances:
- 11.2.1 The other parties have consented to the disclosure of the relevant Confidential Information.
 - 11.2.2 The disclosure is specifically contemplated and permitted by this document.
 - 11.2.3 The disclosure of Confidential Information is to an employee, subcontractor, agent or representative who needs it for the purposes of this document.
 - 11.2.4 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 document.
 - 11.2.5 The disclosure is required by a court or governmental or administrative authority.
 - 11.2.6 The disclosure is required by applicable law or regulation, including under the Local Government Official Information and Meetings Act 1987.

Obligations to continue after agreement ends

- 11.3 All obligations of confidence set out in this document continue in full force and effect after this document ends.

~~Shareholders and Partnership Agreement~~
~~Shareholders' and Partnership Agreement~~

12 Announcements

- 12.1 Each party agrees that it will not make any public announcements or issue media releases in connection with, or on behalf of, the other parties or the Wellington Water Committee in relation to the Company or Water Services. Nothing in this provision shall prohibit or restrict a Shareholder from making public announcements or media releases in connection with the Shareholder's own involvement with, or policies in relation to, the Wellington Water Committee or the Company.
- 12.2 Only the Chairperson of the Wellington Water Committee or their nominee shall be authorised to make public announcements or media releases in connection with or on behalf of the Wellington Water Committee in relation to the Company or any Water Services.

13 Notices

Giving notices

- 13.1 Any notice or communication given to a party under this document is only given if it is in writing and sent in one of the following ways:
- 13.1.1 Delivered or posted to that party at its address and marked for the attention of the Representative; or
- 13.1.2 Emailed to that party at its email address and marked for the attention of Representative,

in each case using the contact details notified by each party to the other parties and the Company from time to time (although subject to clause 13.2).

Change of details

- 13.2 If a party gives the other parties and the Company 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.

Time notice is given

- 13.3 Any notice or communication is to be treated as given at the following time:
- 13.3.1 If it is delivered, when it is left at the relevant address.
- 13.3.2 If it is sent by post, two business days after it is posted.
- 13.3.3 If it is sent by email, when it is received in readable form addressed in the manner specified above.

Shareholders and Partnership Agreement~~Shareholders' and Partnership Agreement~~

- 13.4 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.

14 Miscellaneous

Assignments and transfers

- 14.1 A party must not assign or transfer any of its rights or obligations under this document without the prior written consent of each of the other parties.

Costs

- 14.2 Except as otherwise set out in this document, each party must pay its own costs and expenses, including legal costs and expenses, in relation to preparing, negotiating, executing and completing this document and any document related to this document.

Entire agreement

- 14.3 This document contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this document was executed.

Execution of separate documents

- 14.4 This document is properly executed if each party executes either this document or an identical document. In the latter case, this document takes effect when the separately executed documents are exchanged between the parties.

Further acts

- 14.5 Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this document and all transactions incidental to it.

Inconsistency with Constitution

- 14.6 If there is any inconsistency between this document and the Constitution then the parties agree to abide by this document and to do everything required to change the Constitution so that it is consistent with this document.

No partnership or agency

- 14.7 Nothing contained or implied in this document will create or constitute, or be deemed to create or constitute, a partnership between the parties. A party must not act, represent or hold itself out as having authority to act as the agent of or in any way bind or commit the other parties to any obligation.

Privity

- 14.8 Nothing in this agreement gives any right to a person not named as a party to this agreement, and no such person is entitled to make a claim against any party to this agreement.

~~Shareholders and Partnership Agreement~~
~~Shareholders' and Partnership Agreement~~

No reliance on other matters

- 14.9 Each of the parties acknowledges that in agreeing to enter into this document it has not relied on any representation, warranty or other assurance except those set out in this document.

Severability

- 14.10 Each provision of this document is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected.

Variation

- 14.11 No variation of this document will be of any force or effect unless it is in writing and signed by the parties to this document.

Waivers

- 14.12 A waiver of any right, power or remedy under this document must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 14.13 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this document does not amount to a waiver.

15 Definitions and interpretation

Definitions

- 15.1 In this document the following definitions apply:

Alternate means in relation to a Committee Member, an alternate to that Committee Member, to attend and vote at meetings of the Wellington Water Committee but only where the relevant primary Committee Member is unable to do so.

Board means the board of directors for the time being of the Company.

Board Skills Matrix means the board skills matrix set out in Schedule 1 [of the Constitution as amended from time to time by approval of the Wellington Water Committee](#).

Class A Shares means Shares in the Company entitling the holder of those Shares to vote at a meeting of the Shareholders on any resolution. No other rights or obligations attach to the Class A Shares.

Class B Shares means Shares in the Company entitling the holder to an equal share in any dividends authorised by the Board and an equal share in the distribution of surplus assets of the Company. No other rights or obligations attach to the Class B Shares.

~~Shareholders and Partnership Agreement~~
~~Shareholders' and Partnership Agreement~~

Committee Member means a member of the Wellington Water Committee.

Companies Act means the Companies Act 1993.

Confidential Information has the meaning set out in clause 11.1.

Constitution means the constitution of the Company.

~~**Director** means a director for the time being of the Company.~~

Independent Director means a ~~d~~Director for the time being of the Company, who is jointly appointed by the ~~Shareholders holding Class A Shares~~ parties (including pursuant to authority delegated to those ~~Shareholders' respectively appointed Committee Member and, in accordance with these terms of reference, that person's Alternate, on the~~ Wellington Water Committee) and who is neither a member (including Councillors and Mayors) of ~~any Shareholder~~, nor a person employed by, any Local Authority (as defined under the LGA), or ~~a person employed by~~ any MWPE.

Insolvency Event in relation to a party means anything that reasonably indicates that there is a significant risk that that party is or will become unable to pay its debts as they fall due. This includes any of the following:

- (a) The party's liabilities exceed its assets.
- (b) A meeting of the party's creditors being called or held.
- (c) A step being taken to liquidate the party.
- (d) A step being taken to have a receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed to the party or any of its assets or such an appointment taking place.
- (e) The party entering into any type of arrangement with, or assignment for, the benefit of all or any of its creditors including any formal arrangement or compromise under the Companies Act.
- (f) The party ceases or threatens to cease to carry on its main business.

Letter of Expectation means a letter to the Board setting out the expectations of the parties in relation to the Company's Statement of Intent. The process for agreeing such a letter is set out in clause 6.

LGA means the Local Government Act 2002.

Mana Whenua Partner Entity or **MWPE** means a Māori authority jointly approved by the Shareholders as contemplated in clauses 2.2 and 2.3.

Related Person has in relation to companies and natural persons, the same meaning as 'Related company' and 'Relative' under the Companies Act 1993 and in relation to the trustees of a trust includes the settlor and beneficiaries of the trust and any person holding the power to appoint and remove trustees or beneficiaries of the trust.

~~Shareholders and Partnership Agreement~~
~~Shareholders' and Partnership Agreement~~

Representative means any person appointed by a party to this document as its representative for the purposes of this document, including as the primary point of contact for the other parties and to the Wellington Water Committee and, ~~at the date of this document,~~ means:

(a) ~~in relation to each Shareholder, the person who is the "Representative" for that Shareholder pursuant to the Constitution, or as applicable, the alternate to that person appointed pursuant to the Constitution; the Chief Executive of each Shareholder and~~

(b) ~~in relation to each MWPE, the Chair of that~~ each MWPE (or such other representative as notified in writing by the relevant MWPE to all other parties).

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 Level Agreement means a contract for provision of management services relating to Water Services between the Company and a Shareholder.

Shareholder means, at the relevant time, a shareholder in the Company. Where Shares are held by persons jointly, those persons are considered one Shareholder for the purpose of this document.

Shares means shares in the Company.

Statement of Intent means each statement of intent to be completed annually by the Board in accordance with the LGA.

Terms of Reference means the terms of reference of the Wellington Water Committee in the form set out in Schedule 3 as amended from time to time by agreement of the parties.

Water Services means the network infrastructure for the delivery of bulk water, water reticulation, wastewater and stormwater services in the Wellington region, for which the Company is responsible for managing and operating.

Wellington Water Committee means the joint committee formed by the Shareholders, together with Mana Whenua Partner Entities as contemplated in this document, pursuant to clauses 3.1 and 3.2.

Interpretation

15.2 In the interpretation of this document, the following provisions apply unless the context otherwise requires:

15.2.1 Headings are inserted for convenience only and do not affect the interpretation of this document.

~~Shareholders and Partnership Agreement~~
~~Shareholders' and Partnership Agreement~~

- 15.2.2 A reference in this document to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Wellington, New Zealand.
- 15.2.3 If the day on which any act, matter or thing is to be done under this document is not a business day, the act, matter or thing must be done on the next business day.
- 15.2.4 A reference in this document to dollars or \$ means New Zealand dollars and all amounts payable under this document are payable in New Zealand dollars.
- 15.2.5 A reference in this document to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 15.2.6 A reference in this document to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
- 15.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document. Any schedules and attachments form part of this document.
- 15.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 15.2.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 15.2.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 15.2.11 References to the word 'include' or 'including' are to be construed without limitation.
- 15.2.12 A reference to this document includes the agreement recorded in this document.

Shareholders and Partnership Agreement
~~Shareholders' and Partnership Agreement~~

Execution and date

Executed as an agreement.

Date:

Wellington City Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

.....
Name of authorised signatory (print)

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Hutt City Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

.....
Name of authorised signatory (print)

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Upper Hutt City Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

.....
Name of authorised signatory (print)

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Shareholders and Partnership Agreement
~~Shareholders' and Partnership Agreement~~

Porirua City Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

.....
Name of authorised signatory (print)

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Wellington Regional Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

.....
Name of authorised signatory (print)

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

~~Shareholders and Partnership Agreement~~ Shareholders' Agreement

Schedule 1 -

[NOT USED] Board Skills Matrix

BOARD SKILLS MATRIX

Each Director of the Company must have the skills, knowledge, or experience to:

- guide the Company, given the nature and scope of its activities; and
- contribute to the achievement of the objectives of the Company.

In making all Director appointments, the parties to the Shareholders' Agreement should ensure that the Board collectively has the following attributes:

COLLECTIVE BOARD ATTRIBUTES

Candidates with the ability and willingness to:		Desirable but not mandatory	At least one director	Multiple directors	All directors
1	Chair the Board	-	✓	-	-
2	Participate fully in the life of the Board and on subcommittees as required	-	-	-	✓
3	Demonstrate the individual attributes outlined below				✓
Relevant knowledge and experience in/of:					
4	Governance and leadership experience	-	-	-	✓
5	Commercial strategic and business acumen	-	-	✓	-

1364634_5

17

Shareholders and Partnership Agreement Shareholders' Agreement

6	Engineering, infrastructure asset planning and management	-	£	£	-
7	A strong understanding of the Wellington region and the local government context, including appreciation of public accountability	-	£	£	-
8	Practical, and preferably leadership experience in Water Services	-	£	-	-
9	Resource and environmental management and the RMA	£	-	-	-
10	Commercial law and/or contract management	£	-	-	-
11	Accounting/finance and/or risk management	£	-	-	-
12	Relationship management skills and experience.	£	-	-	-
13	<ul style="list-style-type: none"> — Demonstrates a familiarity with the geographic area in which the Company is operating and iwi interests in that area — Demonstrates an understanding of Te Ao Māori and Tikanga Māori — Maintains, upholds, and proactively engages with, the principles of the Treaty of Waitangi — Demonstrates a commitment to kaitiakitanga and stewardship in relation to the natural environment. 		£		

Shareholders and Partnership Agreement ~~Shareholders' Agreement~~

REQUIRED INDIVIDUAL ATTRIBUTES FOR DIRECTORS

13	Professionalism	<ul style="list-style-type: none"> — Demonstrates behaviours and commitment to the vision and values of the Company and its objectives and strategic direction — Empathy and clear understanding of the objectives of the parties to the Shareholders' Agreement — Common sense, integrity and a strong sense of public service ethic — Applies knowledge of the Companies Act and Local Government Act and knows when to seek advice — Recognises perceived and real conflict of interest situations, when to declare an interest and acts accordingly and appropriately
14	Communication	<ul style="list-style-type: none"> — Mediates constructively and effectively to resolve differences and conflict — Listens and asks questions to maximise own understanding of situations and contributes constructively to meetings — Applies political instinct and knowledge of the political context to relevant situations — Exhibits open and transparent communications skills
15	Decision-Making	<ul style="list-style-type: none"> — Makes decisions honestly and in good faith — Ability to take a wide perspective on issues and think strategically and critically — Encourages new initiatives and tries to be inventive and original when tackling issues and solving problems — Establishes decision-making criteria to determine the best outcome in line with Company

1364634_5

19

Shareholders and Partnership Agreement ~~Shareholders' Agreement~~

		<p>and values of the parties to the Shareholders' Agreement</p> <ul style="list-style-type: none"> — Undertakes effective analysis of both qualitative and quantitative data for problem solving, planning and decision making — Acquaints themselves fully with all the relevant facts, and consider whether expert advice is needed — Applies fluency with financial concepts to the review of internal financial reports — Contributes to the development of stretching but achievable goals, objectives and KPIs — Implements and monitors performance against KPIs and budgets in order to achieve outcomes and respond to changes in the Company's operating environment
16	Team Work	<ul style="list-style-type: none"> — Ability to work positively honestly and proactively with the Chief Executive, Chair and other directors of the Company — Maintains oversight of the Company's organisational culture and the depth of management — Ability to work positively with the parties to the Shareholders' Agreement, with an appreciation of their role as customers, shareholders and mana whenua representatives (including recognising demands on them for transparency and accountability)
17	Strategic Leadership	<ul style="list-style-type: none"> — Understands director responsibilities and can distinguish governance from management — Takes a proactive and forward thinking approach, identifying possible risks and opportunities, and encourages the continuous improvement of service provision to the client councils — Demonstrates an affiliation with and passion for the geographic area in which the Company is operating and maintains a commitment to the principles of the Treaty of Waitangi

1364634_5

20

Shareholders and Partnership Agreement~~Shareholders' Agreement~~

	<ul style="list-style-type: none">— Keeps up-to-date on Company and industry issues and opportunities and maintains relevant technical and professional expertise— Responds to and influences constructively future-focused strategic change management within the Company— Strives to identify relevant financial, operating, market, health and safety, and legal risks and to ensure that best practice risk management is in place for the time— Assists with the high level development and oversight of resilience planning— Contributes to the Company's strategic and business planning including championing the Company's vision and values
--	---

[Shareholders and Partnership Agreement](#)~~Shareholders' Agreement~~

Schedule 2

Matters requiring approval or reflection in Statement of Intent

Part 1 - Matters requiring unanimous resolution of Shareholders

The unanimous agreement of the Shareholders is required for:

- changes to the Constitution;
- increases in share capital and the issue of further securities, share buybacks and financial assistance, excluding buybacks created as a result of the agreed termination provisions in the Service Level Agreement;
- any alteration of rights, privileges or conditions attaching to the Shares;
- any arrangement, dissolution, reorganisation, liquidation, merger or amalgamation of the Company; and
- "major transactions" as that term is defined in the Companies Act.

Part 2 - Matters to be restricted in the Statement of Intent

The parties to the Shareholders' Agreement agree that the Letter of Expectation will request that the Company ensures its Statement of Intent includes appropriate restrictions on the following matters:

- making a loan or borrowing money, except for any borrowings in the ordinary course of business of no more than \$1,000,000 in total;
- granting security over the assets of the Company, or granting an indemnity or guarantee other than in the ordinary course of business;
- making a material change in the nature of the Company's business or engaging in business activities outside the ordinary course of business;
- entering a new customer service level agreement, except in the form already agreed by the parties to the Shareholders' Agreement;
- entering into a partnership or joint venture, except in the ordinary course of business;
- acquiring a new business or shares in another company;
- starting or settling any legal or arbitration proceedings, except in the ordinary course of business; and
- transferring or disposing of real or intellectual property with a value of over \$200,000.

~~Shareholders and Partnership Agreement~~
~~Shareholders' Agreement~~

Schedule 3

Form of Wellington Water Committee Terms of Reference

Wellington Water Committee

Purpose

The Wellington Water Committee ("the Committee") is established to:

- Provide governance and leadership across issues which are related to the planning, delivery and management of water services to communities serviced by Wellington Water Limited;
- Provide governance oversight of Wellington Water Limited, including by exhibiting good governance practice;
- Provide a forum for the representatives of Wellington Water Limited's shareholders and mana whenua to meet, discuss and co-ordinate on relevant issues and, through their representatives, to exercise their powers; and
- Strive for consistency across all client councils so all customers receive a similar level of service.

Status

The Committee is, for the purposes of the Local Government Act 2002, a joint committee of the Lower Hutt City Council, Porirua City Council, Upper Hutt City Council, Wellington City Council, Wellington Regional Council and the South Wairarapa District Council.

Specific responsibilities

The Committee's responsibilities are:

Governance oversight responsibilities

Shareholder ~~and~~ mana whenua ~~stakeholder~~ governance oversight of Wellington Water Limited and of the network infrastructure for the delivery of bulk water, water reticulation, wastewater and stormwater services in the geographical areas of Wellington Water Limited's operations, including by:

- Receiving and considering the half-yearly and annual reports of Wellington Water Limited;
- Receiving and considering such other information from Wellington Water Limited as the Committee may request on behalf of the parties to the Shareholders' and Partnership Agreement and/or receive from time to time;

1364634_5

23

Shareholders and Partnership Agreement~~Shareholders' Agreement~~

- Undertaking performance and other monitoring of Wellington Water Limited;
- Considering and providing recommendations to the parties to the Shareholders' and Partnership Agreement on proposals from Wellington Water Limited;
- Providing co-ordinated feedback, and recommendations as needed, on any matters requested by Wellington Water Limited or any of the parties to the Shareholders' and Partnership Agreement;
- Providing recommendations to the parties to the Shareholders' and Partnership Agreement regarding regional studies which the Shareholders need to be cognisant of;
- Providing recommendations to the parties to the Shareholders' and Partnership Agreement regarding water conservation;
- Agreeing the annual Letter of Expectation to Wellington Water Limited;
- Receiving, considering and providing agreed feedback and recommendations to Wellington Water Limited on its draft statement of intent;
- Receiving, considering and providing recommendations to the parties to the Shareholders' and Partnership Agreement regarding Wellington Water Limited's final statement of intent.
- Agreeing when Shareholder meetings, or resolutions in lieu of Shareholder meetings, are required, without prejudice to Shareholder and Board rights to call meetings under Wellington Water Limited's constitution and;
- Seeking and interviewing candidates for Wellington Water Limited's Board as needed and recommending to the holders of Class A Shares~~approving director~~ appointments and/or removals of directors of Wellington Water Limited;
- Approving-Recommending the remuneration of directors of Wellington Water Limited;
- Monitoring the performance of the Board of Wellington Water Limited; and
- Providing recommendations to the parties to the Shareholders' and Partnership Agreement regarding changes to these terms of reference, the Shareholders' and Partnership Agreement and the constitution of Wellington Water Limited.

Membership

The membership of the Committee will be as- specified in the Shareholders' and Partnership Agreement.

With the exception of the Committee Members nominated by the Mana Whenua Partners Entities, each appointee must be an elected member of the appointing Shareholder.

~~Shareholders and Partnership Agreement~~~~Shareholders' Agreement~~

Chairperson

The Chairperson and Deputy Chairperson will be elected by the Committee once all Committee members have been appointed.

Quorum

Subject to the below for Committee meetings to appoint directors of Wellington Water Limited, for a meeting of the Committee to have a quorum, a majority of Committee Members, or their appointed Alternates, must be present, and the number making up the majority must include at least an equal number of Shareholder appointed Committee Members as MWPE nominated Committee Members.

Where the Committee is providing a forum for the Shareholders to meet and exercise their powers in relation to Wellington Water Limited, the requirements of Wellington Water Limited's constitution will prevail.

~~[Note: Clause 11.3 of the company's constitution provides that Directors shall be appointed and removed by the unanimous resolution of the Shareholders holding Class A Shares. For this matter the quorum for the Committee meeting is therefore attendance by all Committee Members (or their Alternates) for the holders of the Class A Shares.]~~

Alternates

Each Committee Member appointed to the Committee must have an Alternate.

Other Shareholder attendee

Each Shareholder-appointed elected member Committee member will be entitled to invite an officer attendee to Committee meetings, provided however that the additional attendee will not have any voting rights on the Committee.

Decision-making

The Committee will strive to make all decisions by consensus.

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

Other than for those matters for which the Committee has effective decision-making capacity through these Terms of Reference, each Shareholder retains its full

~~Shareholders and Partnership Agreement~~
~~Shareholders' Agreement~~

powers to make its own decisions on matters referred to it by the Committee and on matters specified in Part 1 of Schedule 2 to the ~~Shareholders' and Partnership Agreement~~ (for clarity, this means that only Shareholders have voting rights in relation to the matters specified in Part 1 of Schedule 2).

Secretariat services

Unless otherwise agreed from time to time by all of the elected member Committee Members, the Council for which the Chairperson is an elected member will provide secretariat services to the Committee.

The Chairperson will be responsible for managing the agenda at Committee meetings.

Standing Orders

The Standing Orders of the ~~party providing~~Council providing secretariat services to the Committee will apply to Committee meetings, subject to the provisions for meeting quorum and decision making as set out in these terms of reference taking precedence.

Remuneration

Each Shareholder will be responsible for remunerating the elected member Committee Member appointed by its to representative on the Committee, and their Alternate, for any costs associated with ~~those~~at persons'~~s~~ membership on the Committee.

~~Wellington Water Limited~~The Shareholders will also be responsible for remunerating (in equal shares) the Committee Members nominated by Mana Whenua Partner Entities, and their Alternates, and appointed to the Committee by the Shareholders, for any costs associated with those persons' membership on the Committee.

Administration

Reports to be considered by the Committee may be submitted by any of the Shareholders, any of the Mana Whenua Partner Entities, or Wellington Water Limited.

Duration of the Committee

In accordance with clause 30(7) of Schedule 7 to the Local Government Act 2002, the Committee is not deemed to be discharged following each triennial election.

~~Shareholders and Partnership Agreement~~
~~Shareholders' Agreement~~

Appendix

Common delegations by Shareholders

Governance oversight responsibilities

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

Shareholders' responsibilities

- Each Shareholder will delegate to its appointed elected member Committee 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 Wellington Water Limited's constitution); and
 - the appointment, removal and remuneration of Wellington Water Limited's directors.

UPDATED FORWARD PROGRAMME FOR CITY STRATEGY COMMITTEE MEETING FOR 2019

Purpose

1. This report provides an updated copy of the City Strategy Committee's Forward Programme for 2019.

Summary

2. This updated Forward Programme sets out the strategy, policy and briefing reports that are planned for the City Strategy Committee meetings for 2019.
3. The Forward Programme includes both large scale strategy and policy documents, projects, unit work streams, and also a number of operational reports that require committee consideration.
4. The Forward Programme is a working document that is subject to change on a regular basis.
5. A number of items are listed which do not have as yet agreed reporting timeframes. These have been added separately to ensure that the Committee has visibility of the fuller work programme. These will be included as scheduled items, as dates are confirmed.
6. As requested at the last City Strategy Committee we have endeavoured to indicate in the to be scheduled section what quarter we believe a paper will be considered. Through this exercise a number of papers were identified as being considered post-election. These papers have been taken off of the City Strategy Committee forward programme and have been captured in a separate list which will be scheduled after the election when the governance structure is confirmed.

Recommendation/s

That the City Strategy Committee:

1. Receives the information.
2. Notes the attached forward programme.

Attachments

Attachment 1. Forward Programme for City Strategy Committee

Page 333

Author	Prebashni Naidoo, Senior Democracy Advisor
Authoriser	Anusha Guler, Head of Governance Hayley Evans, Director, Strategy and Governance (Acting)

SUPPORTING INFORMATION

Engagement and Consultation
Not applicable.

Treaty of Waitangi considerations
Not applicable.

Financial implications
Not applicable.

Policy and legislative implications
Timeframes and deliverables are reliant on organisational resourcing and priorities.

Risks / legal
Not applicable.

Climate Change impact and considerations
Not applicable.

Communications Plan
Not applicable.

Health and Safety Impact considered
Not applicable.