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Thursday, 2 April 2026

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*Te Hui o Te Kaunihera ā-Rohe o Heretaunga*  
**Hastings District Council**  
**Council Meeting**

*Kaupapataka*

# Attachments

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*Te Rā Hui:*  
Meeting date: **Thursday, 2 April 2026**

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*Te Wā:*  
Time: **1:00 PM**

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*Te Wāhi:*  
Venue: **Council Chamber  
Ground Floor  
Civic Administration Building  
Lyndon Road East  
Hastings**

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streamed live on our website  
[www.hastingsdc.govt.nz](http://www.hastingsdc.govt.nz)**

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# Shareholders' Agreement relating to [Water Hawke's Bay] Limited

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## PARTIES

Central Hawkes Bay District Council  
Hastings District Council  
Napier City Council  
[Water Hawke's Bay] Limited

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AGREEMENT dated

2026

**PARTIES**

Central Hawke's Bay District Council

Hastings District Council

Napier City Council

(Each a "Council" and together the "Councils")

[Water Hawke's Bay] Limited

("Company")

**BACKGROUND**

- A. Central Hawke's Bay District Council, Hastings District Council and Napier City Council are Shareholders in the Company and have entered into this agreement to record how the parties will manage their shareholdings in the Company and their respective relationships with each other.
- B. The Company is party to this agreement to record certain obligations to it by, and owed by it to, the Shareholders.
- C. The terms and conditions of this agreement are set out in Schedule 1 (Agreement Details) and Schedule 2 (Terms and Conditions).

**SIGNATURES**

**CENTRAL HAWKE'S BAY DISTRICT COUNCIL**

By:

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

**HASTINGS DISTRICT COUNCIL**

By:

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

**NAPIER CITY COUNCIL**

By:

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

**[WATER HAWKE'S BAY] LIMITED**

By:

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_

SCHEDULE 1

AGREEMENT DETAILS

<p><b>Initial share issue and shareholding</b> <i>(Clause 2.2, Schedule 2)</i></p>	<p>Shares on issue in the Company as at incorporation: [100] fully paid ordinary shares at an issue price of \$1.00 per share.</p> <p>Shareholdings as at incorporation:</p> <table border="1" data-bbox="632 577 1150 723"> <thead> <tr> <th>Shareholder</th> <th>Number of Shares</th> </tr> </thead> <tbody> <tr> <td>Central Hawke's Bay District Council</td> <td>[10] (10%)</td> </tr> <tr> <td>Hastings District Council</td> <td>[45] (45%)</td> </tr> <tr> <td>Napier City Council</td> <td>[45] (45%)</td> </tr> </tbody> </table>		Shareholder	Number of Shares	Central Hawke's Bay District Council	[10] (10%)	Hastings District Council	[45] (45%)	Napier City Council	[45] (45%)
Shareholder	Number of Shares									
Central Hawke's Bay District Council	[10] (10%)									
Hastings District Council	[45] (45%)									
Napier City Council	[45] (45%)									
<p><b>Other matters to be included in the Statement of Expectations</b> <i>(Clause 8.2(b), Schedule 2)</i></p>	<p>As set out in Schedule 5.</p>									
<p><b>Interest rate payable on payment default</b> <i>(Clause 14.3(a), Schedule 2)</i></p>	<p>Bill Rate plus [5]% per annum.</p>									
<p><b>Place of arbitration</b> <i>(Clause 15.5(c), Schedule 2)</i></p>	<p>Hawke's Bay.</p>									
<p><b>Address for notices</b> <i>(clause 17.1, Schedule 2)</i></p>	<p><b>Central Hawke's Bay District Council</b></p>	<p><b>Hastings District Council</b></p>								
	<p>28/32 Ruataniwha Street Waipawa 4210</p> <p>Email: [Insert details]</p> <p>Attention: [Insert details]</p>	<p>207 Lyndon Road East Hastings 4122</p> <p>Email: [Insert details]</p> <p>Attention: [Insert details]</p>								
	<p><b>Napier City Council</b></p>	<p><b>[Water Hawke's Bay Limited]</b></p>								

	215 Hastings Street Napier South Napier 4110  Email: [Insert details]  Attention: [Insert details]	[insert physical and postal address details of Company]  Email: [Insert details]  Attention: [Insert details]
<p><b>Shareholders                  Representative Forum                  membership</b></p> <p><i>(Schedule 4)</i></p>	<p>Each Shareholder will have the right to appoint up to 3 members of the Shareholders' Representative Forum.</p> <p>Each Shareholder shall appoint its members to the Shareholders' Representative Forum by notice to each other Shareholder as soon as practicable following the adoption of this Agreement.</p> <p>The SRF Members will appoint the Chairperson of the SRF as set out in Schedule 4.</p>	

SCHEDULE 2

TERMS AND CONDITIONS

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this agreement the following definitions apply:

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

"**Business**" means the business and activities set out in clause 2.2 – 2.5 of the Constitution.

"**Business Day**" means any day other than a Saturday, Sunday or statutory public holiday in Hawke's Bay, New Zealand.

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

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

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

"**Director**" means a director of the Company.

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

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

"**Financial Year**" means:

- (a) the period from the Incorporation Date to 30 June immediately following the Incorporation Date;
- (b) each subsequent period commencing on 1 July and ending on the next 30 June during the Term; and

- (c) the period from 1 July immediately preceding the end of the Term, to the end of the Term.

**"Heads of Agreement"** means the Regional WSCCO Heads of Agreement between the Shareholders dated 4 September 2025.

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

**"Independent Director"** means a person who, in the determination of the Shareholders Representative Forum, is free from any association that could materially interfere with the exercise of their independent judgement as a director of the Company, including that the person:

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

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

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

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

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

**"Operational Date"** has the meaning given to it in the Constitution.

**"Ordinary Resolution"** means a resolution approved by:

- (a) a majority of at least 67% of the votes (with one vote per Share) of the Shareholders; and
- (b) at least two of the three Shareholders,

entitled to vote and voting on the question.

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

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

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

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

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

**"Shareholders Representative Forum"** or **"SRF"** means the joint committee formed by the Shareholders pursuant to clause 6.1.

"**SRF Member**" means a member of the Shareholders Representative Forum.

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

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

"**Terms of Reference**" means the terms of reference of the Shareholders Representative Forum in the form set out in Schedule 4 as amended from time to time by agreement of the Shareholders.

"**Transfer Agreement**" means the agreement to be entered into between each Shareholder and the Company in accordance with the requirements of the LG(WS) Act.

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

"**Water Service Connection**" means a physical connection to the drinking water network within the Service Area (excluding connections that are not serviced, whether or not such connections are serviceable).

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

"**Water Services**" has the meaning set out in the LG(WS) Act, which shall be the water services transferred to the Water Organisation in accordance with the Transfer Agreement between the Water Organisation and each Shareholder.

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

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) words in this agreement have the same meaning as in the Companies Act unless inconsistent with the context;
- (e) a reference to a party, person or entity includes:
  - (i) an individual, firm, company, trust, partnership, joint venture, association, corporation, body corporate, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
  - (ii) an employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person, entity;
- (f) a reference to dollars or \$ is to New Zealand currency and excludes every tax and duty;
- (g) a reference to a clause or schedule is to a clause or schedule of this agreement;

- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them;
  - (i) references to the word 'include' or 'including' are to be construed without limitation;
  - (j) references to any form of law is to New Zealand law, including as amended or re-enacted;
  - (k) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
  - (l) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
  - (m) any obligation falling due for performance on or by a day other than a Business Day shall be performed on or by the Business Day immediately following that day; and
  - (n) an obligation not to do something includes an obligation not to allow or cause that thing to be done.
- 1.3 **Subsidiaries of the Company:** If at any time the Company has a subsidiary (as defined in the Companies Act) or subsidiaries, clauses 3.1, 5.1 and 6.1 shall be read so as to relate to the group of companies consisting of the Company and its subsidiaries, rather than to the Company alone.
- 1.4 **Constitution:** In the event of any inconsistency between this agreement and the Constitution, this agreement will (as between the parties) prevail over the Constitution to the extent of the inconsistency (and consistent with the Companies Act) and the Shareholders Representative Forum will take such steps necessary to resolve the inconsistency.
- 2. ESTABLISHMENT OF COMPANY**
- 2.1 **Incorporation:** The Shareholders shall immediately after signing this agreement take all steps necessary (including signing documents) to incorporate the Company as a New Zealand registered company, as follows:
- 2.2 **Initial Issue of Shares:** The Company shall immediately upon incorporation have the number of shares set out in Schedule 1 which, on issue, will be held by the Shareholders set out in Schedule 1.
- 2.3 **Subsequent Adjustments to Shareholdings:** Subject to clause 2.4, the Shareholders agree that their intention is that each Shareholders' shareholding following the Operational Date will be calculated as follows:
- (a) the number of Water Service Connections that can be attributed to that Shareholder, as a percentage of the total number of Water Service Connections in the Service Areas, multiplied by 70%; plus
  - (b) 33% (being an equal allocation to each of the Shareholders), multiplied by 30%.
- 2.4 **Minimum and Maximum Shareholdings:** If:

- (a) the application of the formula in clause 2.3 would at the relevant time result in any Shareholder holding 50% or more of the total Shares:
  - (i) that Shareholder's shareholding will be reduced to 49.9%; and
  - (ii) the remaining Shareholders percentages will be increased pro-rata as to their respective shareholdings to get to 100% in total shareholdings;
- (b) the application of the formula in clause 2.3 would at the relevant time result in any Shareholder having a shareholding of less than 10%:
  - (i) that Shareholder's shareholding will be increased to 10%; and
  - (ii) the remaining Shareholders shareholding percentages will be reduced pro-rata as to their respective shareholdings to get to 100% in aggregate of the percentage shareholdings of all of the Shareholders.

### 3. PURPOSE OF COMPANY

- 3.1 **Purpose:** It is the intention of the Shareholders that the Company is to carry on the Business, in accordance with the LG(WS) Act, the Constitution and this agreement.
- 3.2 **Treaty of Waitangi:** The Shareholders must comply with all applicable statutory and regulatory obligations relating to Māori and the Treaty of Waitangi, including those set out in the LGA and LG(WS) Act.
- 3.3 **Ringfencing:** The Company will ensure that it:
  - (a) operates the Business in a way that ringfences the operational and financing costs (including debt repayments) of its operations in respect of each Council's region; and
  - (b) sets its water charges in respect of each Council's region based on the funding required by the Company to deliver the Water Services in that region.
- 3.4 **Retention of Public Ownership:** The Shareholders agree that all water services infrastructure and related assets owned by the Company shall remain in public ownership. This does not preclude the Company from accessing or benefiting from private funding or financing arrangements, provided such arrangements do not result in any transfer of ownership of those assets. No Shareholder will take any steps to approve or otherwise give effect to any action which is inconsistent with this clause.

### 4. BOARD AND DIRECTORS

- 4.1 **Initial Directors:** The Directors of the Company as at incorporation are: [names]
- 4.2 **Board:**
  - (a) The Shareholder Representative Forum will appoint each Director in accordance with the Board Skills Matrix, with the aim of ensuring that the Board as a whole has the skills required by the Board Skills Matrix.

- (b) The Company will have the number of Directors that comply with in the Constitution.
- (c) The Directors will be appointed and removed in accordance with the Constitution.
- (d) All Directors will be Independent Directors. A Director who ceases to be an Independent Director must be replaced as soon as practicable, in accordance with the Constitution, by another person who satisfies the requirements of an Independent Director.

4.3 **Performance evaluation:** The Board will undertake an annual self-assessment of its performance, in accordance with good governance principles and practices.

## 5. SHAREHOLDERS' OBLIGATIONS

### 5.1 Voting and Shareholder reserved matters:

- (a) Subject to clause 5.1(b) and any resolution that is required by the Companies Act or the Constitution to be passed as a Special Resolution, all resolutions of the Shareholders may be passed by Ordinary Resolution.
- (b) The Company will not enter into any transaction or matter which is a Reserved Matter unless the entry into of that transaction or matter is approved in accordance with the applicable decision-making thresholds for that Reserved Matter set out in Schedule 3.

5.2 **Duty to comply with Constitution:** Each Shareholder shall comply with the Company's Constitution.

5.3 **Compliance with laws:** The Shareholders will each ensure they comply with their, and the Company complies with its, obligations under the LGA, Local Government (Water Services Preliminary Arrangements) Act 2024, the LG(WS) Act and the Companies Act.

5.4 **Spirit of collaborative working:** The Shareholders must at all times act in a spirit of co-operation and collaborative working, endeavouring to act together to allow for the effective communication of the Shareholders' intentions or requirements to the Company.

5.5 **No surprises:** The Shareholders shall use best endeavours to act under the principle of "no surprises", both with the Company and with each other in relation to their respective interests.

## 6. SHAREHOLDERS REPRESENTATIVE FORUM

6.1 **Establishment and Terms of Reference:** Promptly after the date of this agreement, the Shareholders will jointly establish, maintain and operate a Shareholders Representative Forum in accordance with the Terms of Reference to provide overarching governance of the Company, including:

- (a) in relation to the appointment of Directors to the Board of the Company;
- (b) to assist the Shareholders to fulfil their obligations under this agreement; and

(c) where the Company has any obligation to consult with the Shareholders under the LG(W/S) Act or other applicable law, to allow the Company to meet such obligation by consulting with the Shareholders Representative Forum.

6.2 **SRF Members:** Each Shareholder will appoint and may subsequently remove and replace its appointed SRF Members from time to time by that Shareholder providing written notice to the Shareholders Representative Forum and the other Shareholders.

6.3 **Delegations to a SRF Member:** Each Shareholder agrees to delegate to its appointed SRF Member those responsibilities and powers set out in the Appendix to the Terms of Reference.

6.4 **Authority of SRF Members:** Subject to the delegations under clause 6.3, the Shareholders agree that any matter for a Shareholder under this agreement may be exercised by a duly authorised SRF Member.

6.5 **Attendance of SRF Members at meetings:** Each Shareholder shall ensure that its appointed SRF Members attend each meeting of the Shareholders Representative Forum.

6.6 **SRF Meeting Arrangements:**

(a) the SRF will meet at least quarterly, or at such other times and frequency as it determines;

(b) the location of meetings will rotate between each of the Councils;

(c) meetings will be rotated amongst the Councils and supported by Hastings District Council as set out in the Terms of Reference; and

(d) agendas will be circulated at least three days in advance of a meeting, and minutes will be recorded and confirmed.

Agendas will be circulated at least three days in advance of a meeting, and minutes will be recorded and confirmed.

6.7 **Failure to attend:** If a Shareholder's appointed SRF Member is not present at [2] consecutive meetings of the Shareholders Representative Forum, then that Shareholder will be required, on notice by any other Shareholder, to replace that Shareholder's appointed SRF Member.

## 7. LOANS AND GUARANTEES BY SHAREHOLDERS

7.1 **Loans and guarantees:** No Shareholder will be required to make any loans to the Company or guarantee the obligations of the Company, to any creditor or other party except with the express prior agreement of such Shareholder or as set out in clause 7.2 and 7.3 below.

7.2 **Establishment Funding:** The Shareholders acknowledge and agree that, in advance of the Company receiving revenue from the Business, Hastings District Council will provide working capital funding to the Company for the purpose of meeting the establishment and operating costs of the Company. The terms on which such funding will be provided to the Company (which will include that this funding will be repaid by the Company upon the Company

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entering into its own funding arrangements) will be as agreed in writing between the Shareholders and the Company. Each of Central Hawkes Bay District Council and Napier City Council guarantees, and is liable to Hastings District Council for, the amount of such funding, in proportion to its shareholding percentage as at the incorporation of the Company.

- 7.3 **Debt Guarantee:** Each Shareholder will guarantee the LGFA debt of the company on a pro-rata basis based on the number of Water Service Connections attributable to that Shareholder. This pro-rata allocation will be reassessed annually as at 30 June in each year. The guarantee to LGFA will be joint and several. .

## 8. STATEMENT OF EXPECTATIONS

- 8.1 **Preparation:** The Shareholders will be responsible for ensuring that a jointly prepared Statement of Expectations is adopted in accordance with the LG(W.S) Act, within the time periods required by the LG(W.S) Act. Each Council will provide input into the proposed form of the Statement of Expectations, which will be reviewed and refined by the Shareholders Representative Forum to ensure a jointly agreed Statement of Expectations is adopted by the Shareholders. The Shareholders acknowledge that the first Statement of Expectations needs to be adopted by a date that is not later than 6 months from incorporation of the Company.
- 8.2 **Process:** Unless the Shareholders agree otherwise, or an alternative process is provided for in the LG(W.S) Act (in which case that alternative process will be followed):
- (a) the SRF will meet within the timeframes required for the Company to adopt a Water Services Strategy under the LG(W.S) Act, to discuss and agree to the process for preparing the next Statement of Expectations, which will include the input provided by each Shareholder for the Statement of Expectations and will be consistent with the Constitution and include consulting with the Company;
  - (b) the SRF Members will ensure that one or more Shareholders publish the process agreed in accordance with clause 8.2(a) on their website in accordance with the LG(W.S) Act;
  - (c) the SRF Members will prepare a draft Statement of Expectations in accordance with the process agreed under clause 8.2(a) and the requirements of this agreement and the LG(W.S) Act;
  - (d) in addition to the requirements specified in the LG(W.S) Act, the draft Statement of Expectations shall also include the matters set out in Schedule 5;
  - (e) the Shareholders must approve and adopt (as a Reserved Matter) the draft Statement of Expectations prepared in accordance with this clause, at least six months prior to the date on which the Company is required to adopt a Water Services Strategy under the LG(W.S) Act.

Promptly after the Statement of Expectations has been approved and adopted in accordance with clause 8.2(e), the Statement of Expectations will be provided to the Chairperson of the Board, the Chief Executive of the Company and the Shareholders Representative Forum.

8.3 **Amendments to the Statement of Expectations:** If the SRF considers that the Statement of Expectations, or any part of it, should be amended at any time, either on its own initiative or after request by any Shareholder, the SRF will follow the process set out in clause 8.2(b) to (e) above (with all necessary modifications). If any amendments to the Statement of Expectations are made out of cycle with the timing anticipated by the LG(W/S) Act, the Shareholders acknowledge that the amended Statement of Expectations may not inform the Water Services Strategy required to be adopted by the Company, and also acknowledge that the Company is not required to amend its Water Services Strategy as a result of the amendments made.

8.4 **Compliance:** As far as practicable, the Board will ensure that the business of the Company is conducted in a manner that gives effect to the Statement of Expectations.

## 9. ADDITIONAL SHARES AND ADJUSTMENTS TO SHAREHOLDINGS

9.1 **Share Issue:** Additional Shares in the Company may be issued:

- (a) with the written approval of all Shareholders;
- (b) to an existing Shareholder in accordance with the process set out in clause 9.2; or
- (c) to a third party in accordance with the process set out in clause 10.2.

9.2 **Periodic adjustment to Shareholdings:** The Shareholders agree that their intention is for each Shareholder's shareholding in the Company to be consistent with the provisions of clauses 2.3 and 2.4. To maintain this equivalency over time:

- (a) the Company will conduct a review of Water Service Connections across the Service Areas of the Shareholders every five years, with the first review to occur five years after the Operational Date. This review will ensure that the allocation of Shares continues to reflect the number of Water Service Connections and is adjusted to account for any material changes in a Shareholder's Service Area, including (but not limited to) changes arising from population growth, boundary adjustments, amalgamations, or other relevant factors. The requirement to carry out such a review may be waived by a Special Resolution of the Shareholders; and
- (b) if there has been a material change in the number of Water Service Connections in the Service Areas of two or more Shareholders, including as a result of an amalgamation affecting an existing Shareholder or a change to the Service Area boundary, the Shareholders may, by a Special Resolution, agree to undertake a review of Water Service Connections and shareholdings at a time other than the scheduled five-yearly reviews under clause 9.2(a).
- (c) at least 10 Business Days after notifying the Shareholders and the Shareholders Representative Forum under clause 9.2(b), but promptly thereafter, the Board and the Shareholders must take all steps necessary to issue and/or acquire and cancel Shares in the Company in such number and in respect of such Shareholders as is required to ensure that, immediately following such issuance and/or cancellation, each Shareholder holds the proportion of Shares calculated under clause 9.2(b); and

- (d) all shares acquired or issued under this clause 9.2 as part of any periodic adjustment to shareholdings shall be acquired or issued for nil consideration.

9.3 **Disputes:** Any dispute as to the operation of, and calculations under, clause 9.2 will be resolved in accordance with clause 15, provided that if the Board receives a notice of dispute pursuant to clause 15 within 5 Business Days after notice has been given under clause 9.2(b), the Board will not proceed to take any action under clause 9.2(c) until the dispute has been resolved under clause 15, following which the Board may take such action or make such adjustments as it deems necessary to give effect to any change in shareholdings, including in respect of transactions that may have occurred prior to the resolution of the dispute but on a basis consistent with the determined outcome of the dispute.

#### 10. SHAREHOLDER ENTRY AND EXIT

10.1 **No sale:** No Shareholder shall directly or indirectly sell, transfer, or dispose of the legal or beneficial ownership of, or the control of, any of its Shares otherwise than in compliance with this clause 10, the Constitution and LG(WS) Act.

10.2 **New Shareholders:** A Local Authority who is not an existing Shareholder may be admitted as an additional Shareholder in accordance with the process and requirements set out in Schedule 6.

10.3 **Shareholder Exit:** A Shareholder who wishes to exit from its shareholding in the Company may do so in accordance with the process and requirements set out in Schedule 7.

#### 11. SECURITY INTERESTS, AMALGAMATION

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

11.2 **Amalgamation of Local Authorities:** In the event of an amalgamation or any other change in the governance structure of a Shareholder, the Shareholders will meet and discuss the effect of the amalgamation on the shareholding structure of the Company and will exercise their voting rights to ensure that the shareholding percentages for the Shares remain reasonable as agreed by all Shareholders.

#### 12. TERM AND TERMINATION

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

- (a) only one Shareholder owns all Shares;
- (b) none of the Shareholders hold Shares; or
- (c) the date on which the Company is liquidated or otherwise wound-up.

**13. CONSEQUENCES OF TERMINATION**

- 13.1 **Effect of termination:** Any termination of this agreement with respect to a Shareholder does not affect any accrued rights that Shareholder may have against the other parties to this agreement or which the other parties to this agreement may have against it.
- 13.2 **Survival:** Termination of this agreement will not affect the rights and obligations of the Shareholders set out in clauses [1, 13, 15, 16, 17 and 18] which are intended to survive the termination of this agreement.

**14. DEFAULT**

- 14.1 **Suspension:** If an Event of Default occurs in respect of a Shareholder (the "**Defaulting Shareholder**") the Non-Defaulting Shareholders may, while that Event of Default continues, by notice in writing to the Defaulting Shareholder require that the Defaulting Shareholder is suspended as follows:
- (a) all rights of the Defaulting Shareholder under this agreement (including the right to vote on a Reserved Matter) and all rights attaching to the Defaulting Shareholder's Shares ("**Default Shares**") (including voting) are suspended and the Default Shares are not to be counted for the purpose of determining a quorum for a Shareholders meeting; and
  - (b) all Director appointment rights of the Defaulting Shareholder are suspended; and
  - (c) all voting rights of the Defaulting Shareholder's SRF Members are suspended.,
- provided that such suspension will be lifted by the Non-Defaulting Shareholders if the Event of Default has been remedied to the reasonable satisfaction of the Non-Defaulting Shareholders.
- 14.2 **Non-Defaulting Shareholder:** For the purposes of clause 14.1:
- (a) "Non-Defaulting Shareholders" means all Shareholders which are not the Defaulting Shareholder, other than any such Shareholder which is a Related Party of the Defaulting Shareholder; and
  - (b) any notice which may be given by the Non-Defaulting Shareholders may be given by a Shareholder or Shareholders which holds or hold more than half of the Shares held by all Non-Defaulting Shareholders.
- 14.3 **Default interest:** If any party does not pay any amount payable under this agreement on the due date for payment ("**Due Date**") that party shall pay to the party to which the amount payable, interest (both before and after judgment) on that amount. That interest:
- (a) shall be paid at the rate set out in Schedule 1;
  - (b) shall be paid by instalments at intervals of ten Business Days from the Due Date; and
  - (c) shall be calculated on a daily basis from and including the Due Date until the unpaid amount is paid in full.

The right of a party to require payment of interest under this clause does not limit any other right or remedy of that party.

- 14.4 **Other remedies:** Clauses 14.1 and 14.3 are without prejudice to any other right, power or remedy under this agreement, at law, or otherwise, that any Shareholder has in respect of a default by any other Shareholder.

**15. DISPUTE RESOLUTION**

- 15.1 **Notice in writing:** If a party claims that a dispute has arisen, that party must give written notice to the other parties. The written notice must specify the nature of the dispute.

- 15.2 **Interested Shareholder:** At any time following receipt of the Dispute Notice, a Shareholder may, where they are not directly involved in the dispute, provide notice to the other Shareholders:

- (a) that they are interested in the subject matter of the dispute, in which case they (along with the Shareholders which are directly involved in the dispute) will be considered to be "**Interested Shareholders**"; and
- (b) where they have previously given notice under clause 15.2(a), that they are no longer interested in the dispute, in which case, that Shareholder will not or no longer be considered to be an Interested Shareholder.

- 15.3 **Negotiation:**

- (a) On receipt of a notice delivered in accordance with clause 15.1 and before any party may refer a dispute to mediation, the Chief Executive of each shareholder Council (**CE**) must, in good faith and acting reasonably, do their best to resolve the dispute quickly and efficiently through negotiation.
- (b) If any CE considers that the dispute is not being resolved in a timely manner, that CE may serve written notice on the other parties' CEs to escalate the dispute to the SRF or equivalent (where the Representatives are not a member of the SRF or equivalent) of the applicable Shareholders for resolution.
- (c) If the dispute has not been resolved within 20 Business Days (or within such other period as agreed by the parties) of the date of the notice referred to in clause 15.3, any party may submit the dispute to mediation.

- 15.4 **Mediation:**

- (a) If the parties do not resolve the dispute by negotiation, the parties must, in good faith and acting reasonably, do their best to resolve the dispute by participating in mediation with an independent mediator.
- (b) If the parties do not agree on a mediator, then the mediator will be appointed by the New Zealand Dispute Resolution Centre.
- (c) The parties must mediate the dispute in accordance with principles agreed between them or, if no agreement can be reached, the New Zealand Dispute Resolution Centre Mediation Rules.

- (d) Unless the parties agree otherwise, the mediator's fee and any other costs of the mediation itself (such as for venue hire or refreshments) will be shared equally between the parties, but the parties will each pay their own costs of preparing for and participating in the mediation (such as for travel and legal representation).

15.5 **Arbitration**

- (a) If the dispute has not been resolved within 40 Business Days (or within such other period as agreed by the parties) of the dispute being referred to mediation, any party (the "**Initiating Party**") may refer such dispute to binding arbitration by issuing a written notice ("**Arbitration Notice**") to the other Party or Parties (together with the Initiating Party, the "**Disputing Parties**") for final resolution in accordance with the provisions of this clause 15.5 and in accordance with the provisions of the Rules of Arbitration of the New Zealand Dispute Resolution Centre, as amended or modified from time to time ("**NZDRC Rules**").
- (b) The arbitral panel shall consist of one arbitrator. The arbitrator will be appointed by the agreement of the Disputing Parties or, failing agreement within 10 Business Days of the date of the Arbitration Notice, in accordance with the NZDRC Rules.
- (c) The seat of arbitration shall be as set out in Schedule 1 and the arbitration shall be conducted in the English language.
- (d) The award of the arbitration shall be in writing and must include reasons for the decision.
- (e) The award of the arbitration shall be final and binding on the parties. No party may appeal to the High Court under Clause 5 of the Second Schedule of the Arbitration Act 1996 on any question of law arising out of an award.
- (f) The award shall allocate or apportion the costs of the arbitration as the arbitrator deems fair.
- (g) Neither the existence of any dispute nor the fact that any arbitration is pending hereunder shall relieve any of the Parties of their respective obligations under this agreement.

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

15.7 **Rights and obligations during a dispute:** During a dispute, each party must continue to perform its obligations under this agreement.

15.8 **Interlocutory relief and right to terminate:** This clause does not restrict or limit the right of a party to obtain interlocutory relief, or to immediately terminate this agreement where this agreement provides such a right.

16. **CONFIDENTIAL INFORMATION AND PUBLIC ANNOUNCEMENTS**

16.1 **Confidentiality:** Each party must keep confidential the Confidential Information, and must not disclose or permit the disclosure of such Confidential Information to any other person. If

a party becomes aware of a breach of this obligation, that party will immediately notify the other parties.

16.2 **Further permitted use and disclosure:** This agreement does not prohibit the disclosure of Confidential Information by a party in the following circumstances:

- (a) the other parties have consented to the disclosure of the relevant Confidential Information;
- (b) the disclosure is specifically contemplated and permitted by this agreement;
- (c) the disclosure of Confidential Information is to an employee, subcontractor, agent or representative who needs it for the purposes of this agreement;
- (d) the disclosure is to a professional adviser in order for it to provide advice in relation to matters arising under or in connection with this agreement;
- (e) the disclosure is required by a court or governmental or administrative authority; or
- (f) the disclosure is required by applicable law or regulation, including under the Local Government Official Information and Meetings Act 1987.

16.3 **Public announcements and media releases:** Each Shareholder agrees that it will not make any public announcements or issue media releases in connection with, or on behalf of, the other Shareholders or the Company in relation to the Company or Water Services, except with the written consent of the other Shareholders. Nothing in this provision shall prohibit or restrict a Shareholder from making a public announcements or media releases in connection with the Shareholder's own involvement with, or policies in relation to, the Company.

## 17. NOTICES

17.1 **Giving notices:** Any notice or communication given to a party under this agreement is only given if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out in Schedule 1.
- (b) Emailed to that party at its email address and marked for the attention of the representative set out in Schedule 1.

17.2 **Change of details:** If a party gives the other party three Business Days' notice of a change of its postal address or email address, any notice or communication is only given by that other party if it is delivered, posted or emailed to the latest postal address or email address.

17.3 **Time notice is given:** Any notice or communication is to be treated as given at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, five Business Days after it is posted.

- (c) If it is sent by email, when it is received in readable form addressed in the manner specified above.

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

**18. GENERAL**

- 18.1 **Heads of Agreement:** The Heads of Agreement will be deemed to have been terminated agreement of the Shareholders on the date of this agreement, provide that nothing in this agreement will operate to affect any post-termination obligations on the parties under the Heads of Agreement.
- 18.2 **No partnership, joint venture:** Nothing in this agreement shall create or evidence any partnership, joint venture, agency, trust or employer/employee relationship between any of the Shareholders, and a Shareholder may not make, or allow to be made, any representation that any such relationship exists between any of the Shareholders. A Shareholder shall not have authority to act for, or to incur any obligation on behalf of, any other Shareholder, except as expressly provided for in this agreement.
- 18.3 **No privity:** Other than as expressly provided for in this agreement, this agreement is not intended to confer a benefit on any person or class of persons who is not a party to it.
- 18.4 **Board action:** Wherever this agreement requires the Board to do anything, each Shareholder shall take all steps available to it to ensure that the Director or Directors appointed by that Shareholder takes all necessary steps to do that thing.
- 18.5 **Counterparts:** This agreement is deemed to be signed by a Shareholder if that Shareholder has signed or attached that Shareholder's signatures to any of the following formats of this agreement:
  - (a) an original; or
  - (b) a photocopy; or
  - (c) an electronic copy;and if every Shareholder has signed or attached that Shareholder's signatures to any such format and delivered it in any such format to the other Shareholders, the executed formats shall together constitute a binding agreement between the Shareholders.
- 18.6 **Entire agreement:** This agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written agreement or anything said or done by or on behalf of another party before this agreement was executed.
- 18.7 **Severance:** If any provision of this agreement is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this agreement without affecting the validity of the remainder of this agreement and shall not affect the enforceability, legality, validity or application of any other provision of this agreement.

- 18.8 **Further assurance:** Each Shareholder shall make all applications, execute all documents and do or procure all other acts and things reasonably required to implement and to carry out its obligations under, and the intention of, this agreement.
- 18.9 **Variation:** No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- 18.10 **Assignments and transfer:** A party must not assign or transfer any of its rights or obligations under this agreement without the prior written consent of each of the other parties.
- 18.11 **Costs:** Except as otherwise set out in this agreement, each party must pay its own costs and expenses, including legal costs and expenses, in relation to preparing, negotiating, executing and completing this agreement and any document related to this agreement.
- 18.12 **Waivers:**
- (a) A waiver of any right, power or remedy under this agreement must be in writing signed by the Council granting it. A waiver only affects the particular right, obligation or breach for which it is given. It is not an implied waiver of any other right, obligation or breach or an implied waiver of that right, obligation or breach on any other occasion.
  - (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement does not amount to a waiver.
- 18.13 **Governing law:** This agreement is governed by the laws of New Zealand.

SCHEDULE 3

Matters requiring Shareholder approval

Matter or transaction	Approval requirement
<b>Special Resolution Matters</b>	
Any amendment to, revocation of, or adoption of, the Constitution.	Special Resolution
"Major transactions" as that term is defined in the Companies Act.	Special Resolution
Any resolution to put the Company into liquidation.	Special Resolution
Any resolution to amalgamate the Company with one or more other companies.	Special Resolution
<b>Statement of Expectations</b>	
A decision to approve and adopt the draft Statement of Expectations.	Ordinary Resolution
<b>Shareholdings/Shares</b>	
Any issue of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares.	Ordinary Resolution
Any alteration of rights, privileges or conditions attaching to the Shares	Ordinary Resolution
Any transfer by the Company of Shares held by the Company or any purchase or other acquisition by the Company of its own Shares;	Ordinary Resolution
Any consolidation, division, or subdivision of Shares.	Ordinary Resolution
Any cancellation, buy-back or reduction of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares.	Ordinary Resolution
The giving of any financial assistance for the purpose of, or in connection with, the purchase of Shares.	Ordinary Resolution
Making a material change in the nature of the Company's business or engaging in business activities other than the Business.	Ordinary Resolution
[Starting or settling any legal or arbitration proceedings, except in the ordinary course of business.]	Ordinary Resolution

#### SCHEDULE 4

##### Form of Shareholders Representative Forum Terms of Reference

###### Shareholders Representative Forum

###### Purpose

The Shareholders Representative Forum ("**Shareholders Representative Forum**") is established to:

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

###### Status

The Shareholders Representative Forum is a representative forum of the Shareholders. For clarity, it will be a "joint committee" for the purposes of the LGA.

###### Administration

Hastings District Council shall act as the administering Council for the Shareholders Representative Forum, providing administrative support and coordination, including (but not limited to) assisting the hosting Council with scheduling meetings, preparing agendas and minutes, and maintaining records, until the Shareholders Representative Forum resolves otherwise.

###### Specific responsibilities

The Shareholders Representative Forum's responsibilities are:

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

- providing recommendations to the Shareholders regarding the relevant network infrastructure owned by each Shareholder and/or the Company;
- providing recommendations to the Shareholders regarding water conservation;
- preparing the three yearly Statement of Expectations, with SRF Members to seek direction from their appointing Shareholder as required, in accordance with the process and other requirements of the Shareholders' Agreement and the LG(WS) Act;
- seeking and interviewing candidates for the Company's board as needed;
- monitoring the performance of the board of the Company and the Company itself and reporting to the Shareholders on the performance;
- providing recommendations to the Shareholders regarding changes to these terms of reference, the Shareholders' Agreement and the constitution of the Company; and
- develop and maintain a skills matrix for Directors of the Company.

Shareholders Representative Forum decision making responsibilities

Considering and making decisions on the following:

- approving director appointments and/or removals; and
- approving the remuneration of directors of the Company.

Shareholders' responsibilities

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

**Membership**

The membership of the Shareholders Representative Forum will total the number of persons set out in Schedule 1, with the initial members being as set out in Schedule 1.

At least one member of each Shareholder's appointed members to the SRF must be an elected member.

**Quorum**

No business may be transacted at an SRF meeting if a quorum is not present. A quorum for an SRF meeting is present if at least one representative from each Shareholder (or their proxy) is in attendance, whether in person or via an approved virtual platform. If a quorum is not present within 30 minutes after the scheduled start time for the meeting:

- (a) the meeting is adjourned to:
  - (i) the same day in the following week at the same time and place, or
  - (ii) to another date, time and place to be fixed by the Directors; and

- (b) at the adjourned meeting, those Shareholders present shall constitute a quorum, regardless of the number of Shareholders represented.

#### Independent Chairperson

The Independent Chairperson of the SRF shall be appointed by the Shareholders' Representative Forum once all SRF Members have been appointed. The Chairperson will be an additional SRF Member, who must be independent of the shareholding Councils. The Chairperson shall have no right to vote on any matters. For the purposes of this Schedule, "appointing" means the formal selection and confirmation of a candidate through a structured and transparent recruitment process, which shall include:

- (a) assessment of candidates against an agreed criteria for independence, skills, and experience;
- (b) an interview and evaluation process conducted by the SRF; and
- (c) approval of the successful candidate by a 75% majority vote of SRF Members.

#### Decision-making

The Shareholders Representative Forum will strive to make all decisions by consensus.

In the event that a consensus on a particular matter before the Shareholders Representative Forum is not able to be reached, each member of the Shareholders Representative Forum has a deliberative vote.

A vote of the Shareholders Representative Forum is passed if [a majority] of the votes cast are in favour of the matter. In the situation where there is an equality of votes cast on a matter, the matter subject to the vote is defeated and the status quo is preserved.

#### Policies

The Shareholders Representative Forum will develop and agree:

- a process to manage actual, potential and perceived conflicts of interest of SRF Members and Shareholders;
- a code of conduct for all SRF Members;
- confidentiality protocols and disclosure policies;
- standing orders relating to the operation of Shareholders Representative Forum meetings; and
- such other policies as the Shareholders Representative Forum determines.

#### Remuneration

Each Shareholder will be responsible for remunerating its members on the Shareholders Representative Forum for any costs associated with that person's membership of the Shareholders Representative Forum. To ensure consistency, where remuneration is to be paid to a member of the Shareholders Representative Forum, the amount of such remuneration must be agreed by the Shareholders Representative Forum.

**Administration**

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

**Appendix to Schedule 4**

**Common delegations**

SRF responsibilities

- Each Shareholder will delegate to its appointed SRF Members all:
  - responsibilities and powers necessary to participate in and carry out those responsibilities in accordance with the Shareholders' Agreement and the Terms of Reference; and
  - other matters referred by the Board for approval, excluding those matters described in Schedule 3.

Shareholders' responsibilities

- Each Shareholder will delegate to its appointed SRF Members and, in accordance with the Terms of Reference, all responsibilities and powers in relation to agreement on:
  - when Shareholder meetings, or resolutions in lieu of Shareholder meetings, are required (without prejudice to Shareholder and Board rights to call meetings under the Company's Constitution); and
  - the appointment, removal and remuneration of directors.

**SCHEDULE 5**

**Statement of Expectations**

These are the Shareholders initial strategic priorities or intentions for the Company:

Topic	Initial priorities or intentions
<p><b>Overview of key expectations</b></p>	<p>Initial expectations are as follows:</p> <ul style="list-style-type: none"> <li>• Adopt a regional focus and approach to governance and general decision-making, which recognises and responds to the requirements of urban and rural communities.</li> <li>• Support existing strategic growth policies by aligning strategic planning and service delivery with shareholder Council Long-term plans, and all spatial and strategic growth related plans, including the Napier-Hastings Future Development Strategy, Central Hawke's Bay Integrated Spatial Plan 2050, as far as practicable.</li> <li>• Align strategic planning and service delivery with any future regional deal entered into for the Hawke's Bay region.</li> <li>• Adopt a 30-year timeframe when planning for future infrastructure and water service delivery requirements to provide for housing growth and urban development and comply with all required standards.</li> <li>• Support shareholder Council position on future reform proposals, including in relation to RMA reform.</li> <li>• Adopt policies and strategies that seek to fully recover the costs of growth.</li> <li>• Utilise all available funding tools that can reduce the cost of water services regionally.</li> </ul>

Topic	Initial priorities or intentions
<p><b>Regional focus and approach</b></p>	<p>Adopt a regional focus and approach to all governance arrangements and decision-making, including where applicable procurement processes.</p> <p>This is expected to include:</p> <ul style="list-style-type: none"> <li>• Ensuring that governance and senior leadership has a detailed understanding of the issues facing the wider region.</li> <li>• Emphasising engagement, and developing relationships, with communities and key stakeholders across the region.</li> <li>• Holding meetings across the region as required, with local issues to be canvassed with directly affected communities.</li> <li>• Developing principles to guide decision-making by the WSCCO, which place importance on achieving efficiencies, efficiency gains, community involvement and understanding local and sub-regional needs.</li> <li>• Developing strong working relationships with Māori, along with central government and other external partners.</li> </ul>
<p><b>Strategic planning, including in relation to urban growth</b></p>	<p>Ensure that strategic planning and decision-making is aligned, as far as practicable, with the intentions of shareholding Councils, by specifically considering and engaging with existing Long-term plans, and all spatial and strategic growth related plans, including the Napier-Hastings Future Development Strategy and Central Hawke's Bay Integrated Spatial Plan 2050.</p> <p>Develop a capital and growth programme so that it is aligned with intended sequencing of land release across the region, while also providing for some unanticipated growth to respond to externalities.</p> <p>Any decision-making in relation to new infrastructure should provide a thorough assessment against Long-term Plan strategic priorities, and ensure an integrated and efficient approach to investment.</p>

Topic	Initial priorities or intentions
<b>Service Delivery</b>	<p>Work to optimise service delivery across the region, by designing and delivering water services in a manner that is efficient, cost effective and responsive to local communities.</p> <p>Continue operating under the existing Napier City Council Napier City Services maintenance and delivery model for Napier's network, acknowledging that there is no fixed contractual term. A review will be scheduled to align with the contract renewal timeframes of other council providers in 2029.</p> <p>Accelerate efficiencies where possible in relation to capital and operational expenditure.</p> <p>When undertaking any procurement processes, encourage an open, competitive approach where practicable.</p>
<b>Affordability</b>	<p>When undertaking annual budgeting, financial and growth planning and when setting charges, WSCCO decision-making is to place emphasis on ensuring affordability for consumers (including vulnerable communities across the region).</p> <p>WSCCO, with support from shareholder Councils, is to progress engagement with the Commerce Commission to inform development of guidance that assists with defining and meeting affordability expectations.</p>
<b>Recognition of existing arrangements specific to each shareholder Council</b>	<p>The WSCCO will consider and recognise, as far as possible, any existing commercial or other arrangements entered into by shareholder Councils with third parties.</p> <p>This is particularly where existing arrangements facilitate or ensure ongoing delivery of core public services, or provide significant public economic benefit to shareholder Councils and their community.</p>

## SCHEDULE 6

### Shareholder Entry Principles

#### 1. Process for admission as new Shareholder

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

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

#### 2. Terms of admission of new Shareholder

Unless otherwise agreed by all Shareholders in writing, if the Shareholders approve the Admission of a new Shareholder under paragraph 1(c) of this schedule:

- (a) the Proposed Shareholder's shareholding in the Company as a proportion of total Shares will be calculated in accordance with clauses 2.2 and 2.4, as adjusted in accordance with the Recommendation;

- (b) on or shortly after Admission, the Proposed Shareholder will be required to transfer its relevant assets to the Company pursuant to a Transfer Agreement, with the terms of such transfer to be no more favourable to the Proposed Shareholder than the terms of transfer applying to the initial Shareholders under their respective Transfer Agreements and otherwise on terms that the Board is satisfied are fair and reasonable in the circumstances;
- (c) prior to (but conditional on) Admission, the parties will negotiate, agree and implement any changes to this agreement and the Constitution that may be necessary or desirable as a result of Admission, including to:
  - (i) maintain the intended balance of rights, powers and obligations of Shareholders and SRF Members; and
  - (ii) ensure appropriate iwi participation for the expanded Service Area, with each party to bear its own costs and expenses of negotiating, agreeing and implementing any changes, including legal costs and expenses;
- (d) prior to (and with effect on and from) Admission, the Proposed Shareholder must accede to this agreement (as amended in accordance with paragraph 2(c) of this schedule);
- (e) the Admission will be given effect by the issue of new Shares to the Proposed Shareholder, with the existing Shareholders to take all steps necessary to issue those Shares, with at least one year's lead time between the approval of Admission under paragraph 1(c), and the giving effect to of the Admission under this paragraph 2(e) (or such other period as the Parties may agree with the Proposed Shareholder); and
- (f) promptly after the approval of Admission under paragraph 1(c), the Board and Shareholders Representative Forum will develop and agree a transition plan which sets out the process and timeframes for giving effect to Admission, including the steps set out above.

**3. Merging with other Water Organisations**

The Shareholder Representative Forum may also consider merging the Company with other water organisations under the LG(W.S) Act, provided that any such proposal will require the unanimous consent of the Shareholders.

## SCHEDULE 7

### Shareholder Exit Principles

#### 1. Process for Exit

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

- (a) the Exiting Shareholder must submit at least [**12 months**] prior written notice to the Board and the Shareholders Representative Forum stating its intention to Exit (**Exit Notice**);
- (b) following receipt of an Exit Notice:
  - (i) the Shareholders Representative Forum will consider the proposal set out in the Exit Notice and the Shareholders will determine if the Exit should proceed to be consulted on as a change proposal in accordance with the requirements of the LG(WS)Act;
  - (ii) the Shareholders must comply with any required consultation in respect of the change proposal under the LG(WS)Act; and
  - (iii) following completion of the change proposal requirements under the LG(WS)Act, the Board and the Shareholders Representative Forum will work collaboratively to develop a detailed exit plan (**Exit Plan**) setting out a proposed process and timeline for Exit, including to address the treatment of assets and joint assets, consideration, stranded assets and liabilities and transactions costs, and reflecting the Terms of Exit set out in paragraph 2 of this schedule;
- (c) a finalised Exit Plan will be presented to the Shareholders Representative Forum who will consider the Exit Plan and the Shareholders may, at their discretion, approve the Exit as a Reserved Matter. The Exit will not be approved if the Shareholders consider that the Exit would be likely to:
  - (i) materially worsen the Company's financial position or forecast financial position; or
  - (ii) result in the Company failing to meet its regulatory obligations to be financially sustainable; and
- (d) the parties must comply with all applicable legislative requirements, including in respect of consultation, in respect of considering, approving, and giving effect to any proposed Exit.

#### 2. Terms of Exit

Unless otherwise agreed by all Shareholders in writing, if the Shareholders approve the Exit under paragraph 1(c) of this schedule:

- (a) the Exiting Shareholder will be entitled to transfer the relevant assets and debts out of the Company in respect of that Exiting Shareholder's Service Area for an agreed price based on the Exiting Shareholders Shareholding percentage (in each case, agreed as part of the Exit) at the time of transfer;

- (b) prior to (but conditional on) Exit, the parties will negotiate, agree and implement any changes to this agreement and the Constitution that may be necessary or desirable as a result of the Exit, including to:
  - (i) maintain the intended balance of rights powers and liabilities of Shareholders and SRF Members; and
  - (ii) ensure appropriate iwi participation for the reduced Service Area, with each party to bear its own costs and expenses of negotiating, agreeing and implementing any changes, including legal costs and expenses; and
- (c) on and from the date the Exit takes effect, the Exiting Shareholder will be released from its obligations under this agreement (except in respect of any breaches up to the date of Exit); and
- (d) the Exit will be given effect by the transfer of the Exiting Shareholder's Shares to the remaining Shareholders or by the Company acquiring and cancelling the Exiting Shareholder's Shares, with the remaining Shareholders to take all steps necessary to give effect to this step, with at least [two years] lead time between the giving of an Exit Notice under paragraph 1(a) and the giving effect to of the Exit under this paragraph 2(d).

# Constitution of [Water Hawke's Bay] Limited

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## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Constitution, unless the context otherwise requires:

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

"**Board Skills Matrix**" means the matrix setting out the skills which the Shareholders' Representative Forum determines are required by the Board as a whole, and as may be amended from time to time in accordance with clause 12.7(c).

"**Business Day**" means a day (other than a Saturday, a Sunday or a public holiday) on which registered banks are open for business in Hawke's Bay, New Zealand.

"**Chair**" means the chair of the Board appointed in accordance with clause 12.10.

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

"**Company**" means [Water Hawke's Bay] Limited

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

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

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

"**Independent Director**" means a person who, in the determination of the Shareholders' Representative Forum, is free from any association that could materially interfere with the exercise of their independent judgement as a director of the Company, including that the person:

- (a) is not an elected member of any Shareholder;
- (b) is not employed, and has not previously been employed, in an executive capacity by any Shareholder unless there has been a period of at least two years between ceasing such employment and serving on the board;
- (c) is not employed, and has not previously been employed, in an executive capacity by the Company unless there has been a period of at least two years between ceasing such employment and serving on the board; and

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

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

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

"**Operational Date**" means the first Completion Date reached under a Transfer Agreement between the Company and a Shareholder in accordance with the terms of that Transfer Agreement.

"**Ordinary Resolution**" has the meaning set out in the Shareholders' Agreement.

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

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

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

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

"**Shareholders' Agreement**" means the shareholders' agreement relating to the Company between the Company and the Shareholders dated on or about the date of adoption of this Constitution.

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

"**Significance and Engagement Policy**" means the significance and engagement policy referred to in section 35 of the LG(WS) Act.

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

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

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

"**Transfer Agreement**" means the transfer agreement to be entered into between each Shareholder and the Company in accordance with the requirements of the LG(WS) Act and the Shareholders' Agreement.

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

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

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

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

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

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

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

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;

- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) words in this Constitution have the same meaning as in the Companies Act unless inconsistent with the context;
- (e) a reference to a party, person or entity includes:
  - (i) an individual, firm, company, trust, partnership, joint venture, association, corporation, body corporate, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
  - (ii) an employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person, entity;
- (f) a reference to dollars or \$ is to New Zealand currency and excludes every tax and duty;
- (g) a reference to a clause or schedule is to a clause or schedule of this Constitution;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) references to the word 'include' or 'including' are to be construed without limitation;
- (j) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (k) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (l) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (m) any obligation falling due for performance on or by a day other than a Business Day shall be performed on or by the Business Day immediately following that day; and
- (n) an obligation not to do something includes an obligation not to allow or cause that thing to be done.

1.3 If there is any conflict:

- (a) between a provision of this Constitution and the provisions of the Shareholders' Agreement, the terms of the Shareholders' Agreement will prevail (other than to the extent prohibited by the Companies Act) and the Shareholders must pass such resolutions as may be necessary to amend

the provisions of this Constitution to make it consistent with the Shareholders' Agreement;

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

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

## 2. CAPACITY AND OBJECTIVES

- 2.1 As at the date of its incorporation, the Company is a Water Organisation.
- 2.2 The Company must not carry on any business other than the provision of Water Services and activities that are related to, or necessary for, the provision of Water Services. Such business must be carried on in order to:
  - (a) meet the objectives set out in section 17 of the LG(W.S) Act for each Shareholders' Service Area; and
  - (b) maximise the cost efficiency of providing the Water Services.
- 2.3 The Company must not enter into any franchise or concession agreement that grants a private entity operational control or long-term rights over Water Services infrastructure, as prohibited under section 21 of the LG (WS) Act.
- 2.4 The Company may contract with third parties for the provision of Water Services only where:
  - (a) such contracts do not compromise public ownership or accountability;
  - (b) the requirements of sections 22–24 of the LG (WS) Act are met, including public consultation and transparency obligations; and
  - (c) the Board has assessed and documented that the contract is in the public interest and consistent with the Company's objectives.
- 2.5 All water services infrastructure and related assets owned by the Company shall remain in public ownership. This does not preclude the Company from accessing or benefiting from private funding or financing arrangements, provided such arrangements do not result in any transfer of ownership of those assets.
- 2.6 Any proposed contract or arrangement involving third-party service provision must be disclosed to all Shareholders and made publicly available in accordance with the Company's Significance and Engagement Policy.

- 2.7 Subject to the Shareholder's Agreement, this Constitution, the Companies Act, the LG(WS) Act, the LGA and the Statement of Expectations, the Company has full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter into any transaction.

### 3. WATER ORGANISATION REQUIREMENTS

- 3.1 The Company must comply with:
- (a) its obligations under the LGA and LG(WS) Act, including preparing, adopting and publishing its Water Services Strategy, Water Services Annual Budget and Water Services Half-yearly Report;
  - (b) all applicable statutory and regulatory obligations relating to Māori and the Treaty of Waitangi, including those set out in the LGA and LG(WS) Act; and
  - (c) the applicable parts of the Local Government Official Information and Meetings Act 1987.
- 3.2 In preparing the Company's Water Services Strategy and Water Services Annual Budget, the Shareholders Representative Forum will be able to provide comments on each of the draft strategy and draft budget, but will not have the power to require changes or approve the final strategy or final budget.
- 3.3 In accordance with the LGA, the auditor for the Company shall be the Auditor-General.

### 4. SHARES

- 4.1 **Initial Shares:** The Shares on issue at the date of adoption of this Constitution are ordinary shares. Subject to the Shareholders' Agreement and the rights of Shares which confer special rights, each Share confers on the holder the right to:
- (a) one vote on a poll at a meeting of the Shareholders on any resolution;
  - (b) an equal share in dividends authorised by the Board; and
  - (c) an equal share in the distribution of the surplus assets of the Company.
- 4.2 **Issue of Shares:** Subject to this Constitution, the Shareholders' Agreement and the LG(WS) Act and approval by Ordinary Resolution, the Board may:
- (a) issue Shares at any time, to any Shareholder or to any other person permitted to hold Shares in accordance with the LG(WS) Act and in such numbers as it thinks fit;
  - (b) issue Shares in different classes which have different rights;
  - (c) issue Shares which are redeemable (as defined in section 68 of the Companies Act); and
  - (d) divide existing Shares into different classes which have different rights.

**5. CALLS ON SHARES**

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

5.2 **Interest and expenses:** A person who fails to pay a call on the due date must pay:

- (a) interest on that money from the day payment was due to the day of actual payment at a rate fixed by the Board; and
- (b) all expenses which the Company has incurred or may incur because of non-payment,

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

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

**6. LIEN OVER SHARES**

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

6.2 **Company has first lien:**

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

**7. TRANSFER OF SHARES**

7.1 **Right to transfer:** Subject to any restrictions set out in this clause 7, the LGA, the LG(WS) Act and the Shareholders' Agreement, a Share may be transferred by entry of the name of the transferee in the share register for the Company following receipt by the Company of a validly signed form of transfer.

7.2 **Prior approval required:** No Shareholder may sell, assign, transfer or dispose of, directly or indirectly, the legal or beneficial ownership of any of its Shares except in accordance with the provisions of this clause 7 and unless such sale, assignment, transfer or disposal:

- (a) has first been approved in writing by all Shareholders; or
- (b) is otherwise permitted or contemplated by this agreement.

7.3 **No delay:** The Board may not exercise any powers conferred by this Constitution to refuse or delay the registration of any sale, assignment, transfer or disposal of Shares completed in accordance with clause 7.2.

7.4 **Board may refuse to register:** The Board may refuse or delay the registration of any transfer of a Share to any person if:

- (a) the transfer would result in a breach of law, this Constitution or the Shareholders' Agreement;
- (b) any money payable on that Share is due for payment and has not been paid;
- (c) the Shares are not fully paid and the Board is not satisfied in its sole discretion with the ability of the transferee to pay any call that may be made in the future (whether or not contemplated at that time);
- (d) the Company has an unsatisfied lien on that Share or the proceeds of sale of that Share;
- (e) the transferee is a person without legal capacity to contract or the transfer has not been properly executed;
- (f) the transfer is not accompanied by proof (reasonably required by the Directors) of the right of the transferor to make the transfer;
- (g) the Directors acting in good faith determine that registration of the transfer would not be in the best interests of the Company; or
- (h) the transfer document is not in the usual or common form or otherwise in the form prescribed by the Board from time to time (if any),

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

**8. DISTRIBUTIONS**

8.1 **Distributions:** The Board, if satisfied on reasonable grounds that the Company will, immediately after the distribution, satisfy the solvency test under section 4 of the Companies Act, may, subject to the Companies Act, the Shareholder's Agreement and the LG(WS) Act,

authorise distributions by the Company at times, and of amounts, and in such form, as it thinks fit and may do everything which is necessary or expedient to give effect to any such distribution.

**9. COMPANY ACQUIRING ITS OWN SHARES**

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

**10. SHAREHOLDER MEETINGS**

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

10.2 **Special meetings:** A special Shareholders' meeting:

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

10.3 **Proceedings at Shareholders' meetings:** The provisions of the First Schedule to the Companies Act as modified by this Constitution, including the rules set out in Schedule 1, govern proceedings at Shareholders' meetings.

**11. REPORTING REQUIREMENTS**

11.1 **Reporting:**

- (a) The Board must prepare the reports required by the Shareholders Representative Forum by notice in writing to the Company (such notice must comply with the requirements in section 249(4) of the LG(WS) Act), in accordance with the requirements specified in that notice;
- (b) within eight months of the start of each Financial Year of the Company, the Board must prepare and adopt a Water Services Half-yearly Report in accordance with the LG(WS) Act, which must include information required to be included by the Statement of Expectations; and
- (c) within three months of the end of each Financial Year of the Company, the Board must prepare, adopt and deliver to the Shareholders, and publish in accordance with the LG(WS) Act, its Water Services Annual Report for that Financial Year, which must include the information required to be included by:
  - (i) the Statement of Expectations;

- (ii) the Companies Act; and
- (iii) sections 245 to 248 of the LG(W.S) Act.

## 12. DIRECTORS

- 12.1 **Directors:** On registration of the Company, the Directors are the persons named as Directors in the application for registration of the Company.
- 12.2 **Chair:** The Shareholder Representative Forum will appoint a Chair from the Directors. The Chair will remain as the chair of the Board until a Chair is appointed in accordance with clause 12.10. The Chair at the date of the adoption of this Constitution is Wendie Harvey.
- 12.3 **Independent Directors:** All Directors will be Independent Directors. A Director who ceases to be an Independent Director at any time must be removed as soon as practicable, in accordance with the Shareholders' Agreement.
- 12.4 **Number of Directors:** From the Operational Date, the minimum number of Directors will be three and the maximum number of Directors will be five.
- 12.5 **Appointment and removal by Shareholders Representative Forum:**
- (a) Subject to clause 12.1, the Shareholders Representative Forum will appoint up to the number of Directors set out in clause 12.4, by notice in writing to the Company. Directors may be removed and replaced by the Shareholders Representative Forum in the same way.
  - (b) The Shareholders and the Company shall promptly take such steps as may be necessary to effect the appointment, replacement or removal of any individual (including if a Director fails to vacate office when required to do so) in accordance with this clause 12.5 if applicable, including, in the case of the Shareholders, by exercising their voting rights in the relevant Shareholders' meeting (or by way of written resolution).
- 12.6 **Insufficient Number of Directors:** If and so long as the number of Directors holding office is less than the minimum number in clause 12.4, the continuing Directors may act only for the purposes of calling a meeting of the Shareholders Representative Forum to appoint Directors.
- 12.7 **Skills of Directors:**
- (a) A person may only be appointed to be a Director if the person has, in the opinion of the Shareholders Representative Forum, the skills, knowledge, or experience to:
    - (i) guide the Company, given the nature and scope of its activities; and
    - (ii) contribute to the achievement of the objectives of the Company.
  - (b) All Director appointments must be made in accordance with the Board Skills Matrix, with the aim of ensuring that the Board as a whole has the skills required by the Board Skills Matrix.

- (c) The Shareholders' Representative Forum, in consultation with the Chair, is responsible for preparing, and regularly reviewing and updating as required, the Board Skills Matrix, subject to the provisions of this Constitution, the Shareholders' Agreement, and the Local Government (Water Services) Act 2025.

**12.8 Term of Appointment:**

- (a) Directors may be initially appointed for a term of less than three years, as determined by the Shareholders Representative Forum at the time of appointment, to ensure appropriate Board rotation taking into account the term restriction set out in this clause 12.8.
- (b) The Directors as at the date of the adoption of this Constitution are [insert names].
- (c) No person may be appointed as a Director for a term of more than three years ("Term").
- (d) A Director may be reappointed at the expiry of his or her Term of appointment, provided that no Director may be appointed for more than three consecutive Terms or a consecutive period of more than 9 years, except where the Shareholders' Representative Forum determines that due to extraordinary circumstances a one-off extension to a Director's Term beyond 9 years is appropriate.

**12.9 Vacation of office:** A Director vacates office if that Director:

- (a) resigns by written notice of resignation to the Company. The notice is to be effective when it is received at that address or at a later time specified in the notice;
- (b) is removed from office by in accordance with clause 12.5(a);
- (c) becomes disqualified from being a Director pursuant to section 151 of the Companies Act; or
- (d) dies.

**12.10 Appointment of Chair:**

- (a) From the Operational Date, the Board must appoint a Chair by majority vote of the Board.
- (b) The Chair will hold office until:
  - (i) they cease to be a Director of the Company; or
  - (ii) a new Chair is appointed by the Board.

**12.11 Powers of the Board:**

- (a) Subject to clause 12.11(b) and any restrictions in the Companies Act, the LG(WS) Act, the Shareholders' Agreement and this Constitution, the

business and affairs of the Company must be managed by or under the direction or supervision of the Board.

- (b) The Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the Company except to the extent that this Constitution, the Shareholders' Agreement, the Companies Act or the LG(WS) Act expressly requires those powers to be exercised by the Shareholders or any other person.
- 12.12 **Prohibited Matters:** Notwithstanding clause 12.11(b), the Board must not, and must not cause the Company to:
- (a) incur indebtedness to any person other than the New Zealand Local Government Funding Agency Limited, except where permitted by the LG(WS) Act; or
  - (b) grant a security interest over any of the assets of the Company,
- except to the extent permitted by the LG(WS) Act and the Shareholders' Agreement.
- 12.13 **Shareholder Reserved Matters:** Notwithstanding clause 12.11(b), but subject to any restrictions in the LG(WS) Act, the Board must not, and must not cause the Company to enter into any transaction or matter that is a Reserved Matter, unless first approved in writing by the Shareholders in accordance with the Shareholders' Agreement.
- 12.14 **Solvency test:** Notwithstanding any approval attained pursuant to clause 12.12, the Board must not cause the Company to borrow or raise any money, or enter into or incur any guarantee or other liability of any nature, if the effect of doing so would be that the Company will not satisfy the solvency test (as that term is defined in the Companies Act).
- 12.15 **Proceedings of the Board:** The provisions of the Schedule 3 to the Companies Act as modified by this Constitution, including the rules set out in Schedule 2, govern proceedings at meetings of Directors.
- 12.16 **Directors duties:** In addition to the duties set out in the Companies Act, the Directors must assist the Company to meet the objective set out in clause 2.2 and any other requirements set out in the Statement of Expectations or the LG(WS) Act.
- 12.17 **Directors to act in good faith:** A Director, when exercising powers or performing duties, must act in a manner which that Director believes to be in the best interests of the Company (notwithstanding that it may not be in the best interests of any particular Shareholder) and consistent with section 59 of the LGA.
- 12.18 **Indemnity and insurance of Directors and employees:** The Company may indemnify and effect insurance in accordance with any part or all of section 162 of the Companies Act provided that:
- (a) the Board must ensure that particulars of any indemnity given to, or insurance taken out for, any director, or employee of the Company are immediately entered in the interests register; and
  - (b) the Board may impose any conditions in relation to any indemnity or insurance if the conditions do not contravene the Companies Act.

For the purposes of this clause 12.18 "director" includes any former director, "employee" includes any former employee and "Company" includes any related company.

- 12.19 **Disqualification of Directors:** A person will be disqualified from holding the office of Director if he or she:
- (a) is or becomes disqualified from being a Director under any provision of the Companies Act or the LG(W.S) Act; or
  - (b) dies; or
  - (c) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
  - (d) is an undischarged bankrupt.
- 12.20 **Remuneration of Directors:**
- (a) The Shareholders Representative Forum shall determine the total sum available to the Board each year to make remuneration payments in accordance with clause 12.20(b).
  - (b) The Board may not authorise any form of remuneration to be paid to a Director without Board approval and unless such payment is made and authorised in accordance with the provisions of the Companies Act and the approval of the Shareholders Representative Forum.
  - (c) The Board may authorise the reimbursement by the Company of reasonable travelling, hotel and other expenses incurred by Directors in attending Board meetings, Shareholder meetings or in relation to any other affairs of the Company.
- 12.21 **Other offices held by Director:** Any Director may act by himself or herself or by the Director's firm in a professional capacity for the Company, and the Director or the Director's firm will be entitled to remuneration for professional services as if the Director were not a Director. Nothing in this clause authorises a Director or the Director's firm to act as auditor of the company.
- 13. INTERESTS OF DIRECTORS**
- 13.1 **Disclosure of interests:** A Director must disclose particulars of any interest in a transaction or proposed transaction of the Company in accordance with section 140 of the Companies Act.
- 13.2 **Interested Directors may act:** A Director who is interested in a transaction entered into, or to be entered into, by the Company must not do any of the following:
- (a) sign a document relating to that transaction on behalf of the Company; or
  - (b) do any other thing in their capacity as a Director in relation to that transaction,

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

- (c) any payment or other benefit of the kind referred to in section 161 of the Companies Act in respect of that Director in accordance with clause 12.20;
- (d) the entry into an indemnity or insurance arrangement in respect of that Director in their capacity as a director of the Company in accordance with clause 12.18; or
- (e) transactions in which a Director is interested solely in their capacity as a director of a Subsidiary of the Company.

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

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

#### 14. NOTICES

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

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

- (a) when given personally, on delivery;
- (b) when sent by post or document exchange, five Business Days after (but exclusive of) posting; and
- (c) when sent by email, at the time of transmission, if (in the event receipt is disputed) the sender produces a printed copy of the email which evidences that the email was sent to the email address of the recipient.

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

#### 15. LIQUIDATION

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

- (a) distribute to the Shareholders in kind the whole or any part of the assets of the Company; and

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

**16. METHODS OF CONTRACTING**

16.1 A deed which is to be entered into by the Company may be signed on behalf of the Company by:

- (a) two or more Directors;
- (b) a Director, and any person authorised by the Board, whose signatures must be witnessed; or
- (c) one or more attorneys appointed by the Company.

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

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

**17. AMENDMENTS**

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

## SCHEDULE 1

### Rules for Shareholder Meetings

#### 1. CHAIR

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

#### 2. NOTICE OF MEETINGS

- 2.1 Each Shareholder and every Director of the Company must be sent written notice of the time and place of the meeting at least 10 Business Days before the meeting.
- 2.2 The notice must state:
  - (a) the nature of the business to be discussed at the meeting in sufficient detail to enable the Shareholders to form a reasoned judgment in relation to it; and
  - (b) the text of any Special Resolution to be put to the meeting.
- 2.3 An irregularity in a notice of a meeting is waived if:
  - (a) the Shareholders attend the meeting without protest as to the irregularity; or
  - (b) if each Shareholder agrees to the waiver.
- 2.4 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. It is not otherwise necessary to give any new notice for an adjourned meeting.
- 2.5 The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person entitled to receive notice does not invalidate the proceedings at that meeting.

#### 3. METHODS OF HOLDING MEETINGS

- 3.1 A Shareholders' meeting may be held either:
  - (a) at the place, date, and time appointed for the meeting; or
  - (b) by means of audio, or audio and visual, communication. The Shareholders (or their representatives) participating must constitute a quorum and must all be able to simultaneously hear all participants throughout the meeting.

**4. QUORUM**

- 4.1 No business may be transacted at a Shareholder meeting if a quorum is not present.
- 4.2 A quorum for a Shareholder meeting is present if at least one representative from each Shareholder (or their proxy) is in attendance, whether in person or via an approved virtual platform.
- 4.3 If a quorum is not present within the 30 minutes after the start time for the meeting:
- (a) the meeting is adjourned to:
    - (i) the same day in the following week at the same time and place, or
    - (ii) to another date, time and place to be fixed by the Directors; and
  - (b) at the adjourned meeting, those Shareholders present shall constitute a quorum, regardless of the number of Shareholders represented.

**5. ADJOURNMENTS**

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

**6. VOTING**

- 6.1 If a Shareholder meeting is held under rule 3.1(b), unless a poll is demanded, voting at the meeting will be by:
- (a) voting by voice; or
  - (b) voting by show of hands,
- and the Chair of the meeting will decide which method is used.
- 6.2 A declaration by the Chair of the meeting that a resolution is carried by the necessary majority is conclusive evidence of that fact unless a poll is demanded.
- 6.3 Subject to the Shareholders' Agreement and to any rights or restrictions attached to any Share:
- (a) where voting is by voice or a show of hands, every Shareholder present in person or by representative has one vote; and
  - (b) on a poll every Shareholder present in person or by representative has one vote in respect of every Share held by that Shareholder which entitles a Shareholder to vote; and

- (c) in the case of an equality of votes, the chair of the meeting does not have a casting vote.

**7. PROXIES AND POSTAL VOTES**

- 7.1 Subject to the terms of the Shareholders' Agreement, each Shareholder has the right to appoint a representative as its proxy to attend and vote at Shareholder meetings on its behalf. Any such representative so appointed is entitled to attend and be heard at Shareholder meetings and to demand or join in demanding a poll, as if that representative was the relevant Shareholder.
- 7.2 A Shareholder may not cast a postal vote at a Shareholders' meeting unless the Board has previously authorised postal votes for that meeting in which case:
  - (a) the notice of that meeting must state whether postal votes are authorised; and
  - (b) postal voting must be carried out in accordance with clause 7 of Schedule 1 to the Companies Act.

**8. MINUTES**

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

**9. SHAREHOLDER PROPOSALS**

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

**10. OTHER PROCEEDINGS**

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

## SCHEDULE 2

### Rules for Board Proceedings

#### 1. NOTICE OF MEETING

- 1.1 A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with this rule 1.
- 1.2 At least five Business Days' notice of a meeting of the Board must be given to every Director. The notice must include the date, time and place of the meeting and the matters to be discussed.
- 1.3 An irregularity in the notice of the meeting is waived if all Directors attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- 1.4 Notice of a meeting may be given by any means, including by telephone or email. Notice given by a letter addressed to a Director at his or her last known residential address in New Zealand will be deemed to have been given on the next Business Day after the letter is posted.

#### 2. METHOD OF HOLDING MEETINGS

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

#### 3. QUORUM

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

- 3.2 If a quorum is not present within 30 minutes of the time appointed for the commencement of the Board meeting, the Board meeting must be adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Chair may appoint, and if at the adjourned meeting a quorum is not present within one hour after the time appointed for the commencement of the meeting, the Directors present (regardless of the person who appointed them) will constitute a quorum. No business may be transacted at a meeting of Directors if a quorum is not present.

**4. VOTING**

- 4.1 Every Director has one vote.
- 4.2 The Chair does not have a casting vote.
- 4.3 Subject to clause 12.12, a resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it.
- 4.4 A Director who abstains from voting is not presumed to have voted in favour of the relevant resolution of the Board.

**5. MINUTES**

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

**6. RESOLUTIONS**

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

**7. NO NOTICE TO DIRECTORS OUTSIDE NEW ZEALAND**

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

**8. OTHER PROCEEDINGS**

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



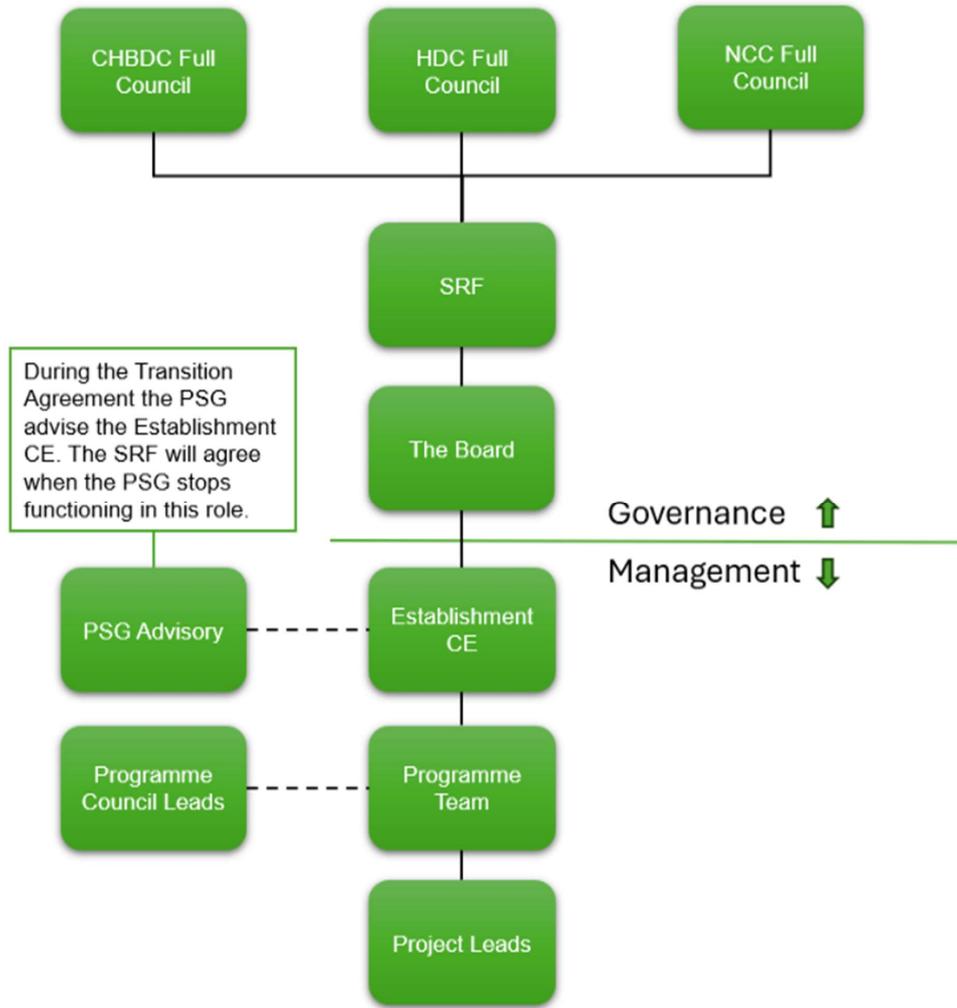


Figure 1 - Governance Structure post incorporation



## Suggested High level process for Statement of Expectation

Contributor	Input	Process	Output	Receiver
Councillors of the three shareholding councils: Central Hawkes Bay District Council Hastings District Council Napier City Council	<b>Council Workshops</b> - facilitated by the Independent Chair of the SRF.	<b>Shareholder Input</b> The three Councils input into the process	Council Requirements - Incorporation of individual requirements from each shareholding council.	SRF
SRF	Council Requirements - Incorporation of individual requirements from each shareholding council.	<b>Initial Draft</b> SRF convene to develop draft SOE and issue to The Board	<b>Draft SOE</b> - Prepared by officers based on SRF meeting facilitated by the Independent Chair.	The Board
The Board	<b>Draft SOE</b> - Prepared by officers based on SRF meeting facilitated by the Independent Chair.	<b>Board Review</b> The Board reviews the SOE and provides comments back to the SRF	Feedback - Comments on the SOE, including identification of requirements that may be challenging to deliver.	SRF
SRF	Feedback - Comments on the SOE, including identification of requirements that may be challenging to deliver.	<b>Final draft</b> SRF consider comments. SRF Endorse final draft SOE and issue to Councils	<b>Final draft SOE</b> - Amended version developed and endorsed by the SRF	Councillors of the three shareholding councils: Central Hawkes Bay District Council Hastings District Council Napier City Council
Councillors of the three shareholding councils: Central Hawkes Bay District Council Hastings District Council Napier City Council	<b>Final draft SOE</b> - Amended version developed and endorsed by the SRF	<b>Shareholder decision</b> by Ordinary Resolution	<b>Final SOE</b> - Approved by Shareholder Councils by Ordinary Resolution	The Board
The Board	<b>Final SOE</b> - Approved by Shareholder Councils by Ordinary Resolution	<b>Board Acceptance</b> The Board accepts the SOE.	<b>Process Stops</b> - Marks beginning of the Water Services Strategy process.	