

**HOROWHENUA DISTRICT COUNCIL, PALMERSTON NORTH CITY COUNCIL, RANGITIKEI DISTRICT COUNCIL
WATER SERVICES COUNCIL CONTROLLED ORGANISATION PROJECT**

KEY DECISIONS FOR FOUNDATION DOCUMENTS

#	TOPIC / QUESTION	DECISION OPTIONS	RECOMMENDATION	CROSS-REF
Constitution				
Foundational information				
1.	<i>Name of Company</i>	[TBC]		
2.	<i>Scope of business</i>	Drinking Water, Wastewater and Stormwater	Will have responsibility for all three waters, to align with earlier Council decision-making and joint WSDP.	
3.	<i>Effective date¹</i>	(a) Day 0; the date the Company is incorporated (b) Day 1; the date that all water services assets, liabilities, rights and responsibilities will transfer to the Company	Day 0: 1 July 2026 (or earlier) Day 1: 1 July 2027 (to align with WSDP and LTP cycle for shareholder councils) If the preferred Day 1 was to shift earlier, then work programme would be out of step with LTP adoption, but a workable solution can be developed.	
Ownership and control				
4.	<i>Whether dividends permitted</i>	(a) No dividend permitted (b) Dividend permitted with board approval	We recommend option (c) as it gives the Company some flexibility while ensuring that a decision against reinvesting all surplus funds	Clause 8, Constitution

¹ We have suggested including an effective date (the date on which the provisions of the Constitution will take effect) so that:

- the Company can be incorporated before Day 1;
- the Company will be governed by the Constitution on and from Day 1; and
- the provisions of the Constitution will be applicable to a water services provider (as defined in the LG(WS)A) which the Company will not be until Day 1 (or the date it is transferred responsibility for delivering water services).

#	TOPIC / QUESTION	DECISION OPTIONS	RECOMMENDATION	CROSS-REF
		(c) Dividend permitted with unanimous shareholder approval	into maintaining and improving infrastructure and services cannot be made too easily. We consider this approach to be consistent with the purpose, objectives and financial principles of the LG(WS)A.	
5.	<i>Frequency of shareholder meetings</i>	(a) Quarterly (b) Bi-annually (c) Annually.	Recommend option (c), or otherwise determined from time to time.	Clause 10.1, Constitution
Directors, governance structure, and Shareholder meetings				
6.	<i>What constitutes a quorum at a shareholders meeting?</i>	(a) >50% (b) 75+% (c) A representative from each shareholder.	Recommend option (c), to ensure that no shareholder is excluded from key decisions.	Clause 4.2, Schedule 1, Constitution
7.	<i>Director appointment</i>	(a) Each shareholder will have a right to appoint a director, with additional directors appointed by agreement (b) Shareholders (directly or via Shareholders Committee) will jointly appoint all directors	Neutral. Option (a) could be a sensible solution that sees the directors appointed for Day 1, but option (b) is arguably preferable as it signals a joint approach and uniform comfort with the directors being appointed. Preference would be to delegate to the Shareholders Committee the function of appointing directors, which is in keeping with approach to decision-making. Ideally, the Constitution would align with each Council's policy relating to the appointment and remuneration of a director, as far as practicable, or a new appointment policy will be prepared and adopted for the Company itself. Shareholding councils will prepare a board skills matrix to satisfy the requirement to have an appropriate mix of skills, knowledge, and experience in relation to providing water services.	Clause 12.3, Constitution, clause 4.1 SHA, and schedule 3, SHA

#	TOPIC / QUESTION	DECISION OPTIONS	RECOMMENDATION	CROSS-REF
8.	<i>Term of director</i>	(a) Specified appointment term (eg 3 years), with a requirement to retire (but option to be re-elected) up to a maximum term (eg 9 years (3 x 3)) (b) Unspecified appointment term, with no requirement to retire unless removed/replaced	Recommend option (a) (noting that initial appointments will need to be staggered to ensure ability to rotate directors); that each director is appointed for a specified term (eg 3 years) and is subject to a maximum tenure period (eg 3 x 3 year terms) unless determined by the shareholders otherwise.	Clause 12.6, Constitution
9.	<i>Should directors have the power to appoint alternate directors?</i>	(a) Yes (b) No	Recommend option (b) given board meetings can be attended virtually unless the shareholders unanimously agree otherwise.	None provided for (ie not permitted)
10.	<i>Director Remuneration</i>	(a) Determined by shareholders by ordinary resolution (ie >50% vote) (b) Determined by shareholders by special resolution (ie 75 ² +% vote) (c) Determined by the Shareholders Committee.	Recommend option (c), while having regard to each shareholding council's appointment and remuneration policy and independent data (or the Company's policy).	Clause 12.18, Constitution
11.	<i>Should interested directors be allowed to vote?</i>	(a) Yes (b) No	Recommend option (b), except in respect of: 1. any payment or other benefit under s 161 of the Companies Act 1993 2. the entry into an indemnity or insurance arrangement	Clause 13.3, Constitution
12.	<i>What constitutes a quorum at a directors meeting?</i>	(a) >50% (b) 75+% (c) 100%	Recommend option (b).	Clause 4.1(a) of Schedule 2, Constitution
13.	<i>Will the chair of a board have a casting vote?</i>	(a) Yes (b) No	Recommend option (b) to promote collective decision-making and avoid potential bias or tension.	Clause 5.2 of Schedule 2, Constitution

² References to 75+% in this documents are intended to signal a "75% or higher" threshold. The specific percentage should be agreed once shareholding structure is known.

#	TOPIC / QUESTION	DECISION OPTIONS	RECOMMENDATION	CROSS-REF
14.	<i>Frequency of board meetings</i>	(a) Monthly (b) No less than 10 times per annum (c) Quarterly	Recommend option (b), at least for the initial period until the Company is established.	Clause 1, Schedule 2, Constitution
Accountability and reporting				
15.	<i>Additional reporting obligations of the Company to each Council</i>	(a) Include additional reporting requirements (b) Rely on s 249 for notice to require additional plans or reports	Recommend option (b) because it gives the parties the flexibility to develop the reporting requirements rather than having to prescribe them from the outset. Note also that Statement of Expectations will provide further opportunity to prescribe reporting requirements, and frequency of reporting, and will be required to set out requirements for half-yearly report from Company to Shareholders Committee.	Clause 11.1, Constitution
Shareholders' Agreement				
Foundational information				
16.	<i>The number of shares each shareholder will receive</i>	(a) Proportionate to the net assets each shareholding council transfers to the Company (and not subsequently adjusted) (b) Proportionate to the population or number of water connections each shareholding council has at the transfer date (and not subsequently adjusted) (c) Equal shareholding of ~33% each (and not subsequently adjusted) (d) One of the above options, rounded (eg 65/25/10) (and not subsequently adjusted) (e) One of the above options, with a subsequent review and adjustment (eg annually)	Please refer to Morrison Low's paper outlining alignment of options (a) to (d). We recommend option (d). It supports more efficient decision-making for reserved matters as it would allow two out of three shareholding councils to pass special resolutions (if the threshold of 75% is adopted).	Schedule 1, SHA (currently left blank)
Shareholders Committee – membership				

#	TOPIC / QUESTION	DECISION OPTIONS	RECOMMENDATION	CROSS-REF
17.	<i>Shareholders Committee membership and appointment rights – shareholding councils representatives</i>	(a) [One/two/three] elected member[s] of each shareholding council (b) At least one elected member, and up to [One/two] person[s] appointed by a shareholding council to represent it (which can be an elected member)	Recommend option (b). Option (b) reflects the legal requirements for a joint committee under the Local Government Act 2002, which must involve a representative of each local authority. An alternative option would be to establish an other type of subordinate decision-making body, which can allow for entirely appointed members, but we anticipate that elected member representation will be preferred.	Clause 4, Schedule 3, SHA
18.	<i>Shareholders Committee membership and appointment rights – Mana Whenua representatives</i>	(a) No Mana Whenua representation (b) Person[s] appointed by Mana Whenua, and confirmed by shareholding councils (c) Person[s] appointed by each shareholding council (d) Person[s] appointed jointly by shareholding councils	Recommend either option (b) with a recommendation from Nga Tapuwae o Hau or (c). Refer to Morrison Low’s paper for outline of advantages and disadvantages of the proposed options.	Clause 4, Schedule 3, SHA (not currently provided for)
19.	<i>Shareholders Committee membership and appointment rights – independent chair</i>	(a) Yes (b) No	Recommend option (a) as it promotes good governance and helps streamline discussions (noting the chair will not have a casting vote).	Clause 5, Schedule 3, SHA
20.	<i>Who will have the right to appoint a shareholder representative to the Shareholders Committee?</i>	(a) Full Council (b) Mayor for each Council	Recommend option (a), and in tandem with the appointment the Full Council will need to approve delegations to the Committee.	Clause 4, Schedule 3, SHA (not currently provided for)
21.	<i>Frequency of Shareholders Committee meetings</i>	(a) Quarterly (b) Bi-annually (c) Annually	Recommend option (a), but with ability for Shareholders Committee to determine otherwise from time to time.	Clause 6.4, SHA

#	TOPIC / QUESTION	DECISION OPTIONS	RECOMMENDATION	CROSS-REF
Shareholders Committee – decision making				
22.	<i>Voting rights of Shareholders Committee members</i>	(a) Equal to the number of shares held by appointing shareholder (b) Each member has equal voting rights.	Option (b) recommended.	Clause 8(c), Schedule 3, SHA
23.	<i>Decision-making</i>	Generally by simple majority	Reflects equal voting rights for representatives on Shareholders Committee.	Clause 8(c), Schedule 3, SHA
24.	<i>Responsibilities of Shareholders Committee</i>	Suggest includes the following matters: (a) Approval of initial plan and budget (b) Preparation and approval of Statement of Expectations (c) Adoption of or changes to Director Skills Matrix (d) Director appointment policy (e) Comments to Company on draft Water Services Strategy (f) Review of draft Transfer Agreements (but not execution, as that is matter for Councils) (g) Review of draft Transitional or Service Level Agreements (but not execution) (h) Other matters	Recommend inclusion of all matters. Note Mana Whenua membership on the Shareholders Committee may influence what is included in this scope, or may require adjustments so that certain decisions are only for Shareholders as opposed to non-Shareholder representatives.	Clause 2, Schedule 3, SHA
Reserved Shareholder matters				
25.	<i>Matters requiring unanimous approval of shareholders</i>	Can include the following matters: (a) Addition of new shareholder (b) Addition of new party to the Shareholders Committee (c) Liquidation or winding up of Company (d) Amalgamation	This should be limited to the most critical matters. We recommend (a) to (d).	Schedule 2, SHA

#	TOPIC / QUESTION	DECISION OPTIONS	RECOMMENDATION	CROSS-REF
		(e) Other matters		
26.	<i>Matters requiring 75+% approval of shareholders</i>	(a) Issue (to an existing shareholder) of, or changes to, buy-backs of shares (b) Major transactions (being transactions with a value of 50% or more of the assets of the Company) (c) Changes to constitution (d) Material change to the nature of the Company's business (e) Giving financial assistance for the purposes of purchasing shares (f) Other matters	This list should be limited to matters which require substantial alignment among shareholding councils. We recommend (a) to (e).	Schedule 2, SHA
Other				
27.	<i>Will the shareholding councils be required to make any loans to the Company?</i>	(a) Yes (b) No	Recommend option (b) to encourage financial sustainability.	Clause 7.1, SHA
28.	<i>Extent of shareholding council's guarantee to Company's under LGFA arrangements</i>	(a) Proportionate to shareholding (b) Equal liability	Recommend option (a).	Clause 7.2, SHA
29.	<i>Dispute resolution regime</i>	(a) Negotiation, mediation, arbitration (b) Negotiation, mediation, expert determination (c) Negotiation, expert determination (d) Negotiation, and hybrid of expert determination and arbitration depending on the nature of the dispute	We recommend option (d), subject to determining which matters should be resolved through expert determination.	Clause 13, SHA