

# LWDW Issues from briefing for Elected Members. 7 November 2025

## Options paper

The four issues are

- Distributions/Payment of dividends
- Ability for Councils to influence the Statement of Expectations
- Size of Shareholder Committee
- Mana whenua representation on the Shareholder Committee

### Issue 1

Should payment of a dividend (i.e. a distribution) to shareholders be permitted in the constitution of Central Districts Water?

### Relevant statutory provisions

Section 18(3) LG(W) Act 2025 allows shareholders to authorise payment of a dividend, but the WS-CCO must not pay a dividend amount that could compromise its ability to act in accordance with the financial principle that the revenue and funding it applies to providing water services is sufficient to sustain the provider's long-term investment in its water services while meeting all regulatory requirements.

Section 52 Companies Act 1993 requires the Board of directors to sign a certificate stating that, in their opinion, the WS-CCO will, immediately after the distribution, satisfy the solvency test (as specified in section 4 of the Act).

Regardless of what the constitution provides, the constitution itself can be amended at any time by special resolution of shareholders (which requires a 75% or higher approval).

### Options

		Advantages	Disadvantages
1	Prohibit	Clear expectation	Potentially inflexible in the long-term (would require an amendment to the Constitution to allow dividends to be paid).
2	Prohibit for a period of time	Clear expectation	<ul style="list-style-type: none"><li>• Hard to predict what the relevant period should be so may be seen as arbitrary.</li><li>• Following that period, would allow the Board to make distributions without involvement from council shareholders.</li></ul>

3	Prohibit, except with unanimous consent of shareholders	<ul style="list-style-type: none"> <li>• Offers flexibility – should the WS-CCO become profitable in the future, it permits a dividend to be paid without needing to amend the constitution.</li> <li>• Sends a clear signal that the threshold for authorisation is high (ie unanimous shareholder consent required).</li> <li>• Sends a signal that profitability is potentially contemplated/encouraged.</li> <li>• Allows shareholders to make a decision in a particular circumstance or as a matter of policy</li> <li>• Should payment of a dividend eventuate, it would allow shareholders to reduce costs of non-water services (or increase their investment in such services)</li> </ul>	<ul style="list-style-type: none"> <li>• Paying a dividend raises question of whether water charges are too high</li> <li>• Inconsistent with the purpose of ring-fencing water revenue</li> </ul>
4	Allow if Board satisfies statutory requirements	<ul style="list-style-type: none"> <li>• Demonstrates trust in Board decision-making</li> <li>• Should payment of a dividend eventuate, it would allow shareholders to reduce costs of non-water services (or increase their investment in such services)</li> </ul>	<ul style="list-style-type: none"> <li>• Removes any shareholder input into decision.</li> <li>• Raises question of whether water charges are too high.</li> <li>• Contradicts the purpose of ring-fencing water revenue.</li> </ul>

#### What other multi-council WS-CCOs are doing?

Tararua-Wairarapa	<p>Prohibited for at least nine years - Permitted by the Shareholders' Agreement 'only in accordance with a dividend policy adopted by the Shareholders' and each shareholder agrees that:</p> <p>(a) the initial dividend policy of the Company will be to re-invest all profits of the Company into the Business and, accordingly, the Company does not intend to pay dividends to Shareholders; and</p> <p>(b) it is the Shareholders' intention that the initial dividend policy will be maintained for at least nine years from the Incorporation Date.</p>
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	Permitted by the Constitution, if the Board is satisfied that the Company will, immediately after the Distribution, satisfy the solvency test under section 4 of the Companies Act, but this is 'subject to the Companies Act, the Shareholders' Agreement and the LG(WS) Act'.
Hawke's Bay	Not yet publicly accessible <sup>1</sup>
IAWAI (Hamilton City-Waikato District)	Prohibited by the Constitution Prohibited by the Shareholders' Agreement unless agreed by the Shareholders as a Reserved Matter. (It is not currently specified.)
Waikato Waters	Prohibited by the Constitution Shareholders Agreement specifies that shares do not carry any right to a dividend or distribution.
Buller-Grey-Westland	Not yet determined
Metrowater	Prohibited by the Interim Constitution; Final Constitution not yet available.

While not a multi-council CCO, Watercare is prohibited by legislation (s 57 of the Local Government (Auckland Council) Act 2009) from paying a dividend or distributing any surplus in any way, directly or indirectly, to any owner or shareholder.

## Evaluation

The joint WSDP noted that the combined WS-CCO area faces considerable compliance, renewal and resilience and growth challenges that require major investment in three waters infrastructure over the next ten years and beyond. In that context, it is highly unlikely that, irrespective of the position taken in the Constitution, the statutory pre-requisite for paying a dividend in s18(3) – that a dividend would not compromise the company's ability to act in accordance with the financial principle that the revenue and funding it applies to providing water services is sufficient to sustain the company's long-term investment in its water services while meeting all regulatory requirement – will be met.

Any option chosen should reflect the shareholders' expectation that the company's revenue is first re-invested into its operations to meet the compliance, renewal and resilience and growth challenges identified in the WSDP (this can also be reinforced in the SOE).

Option 3 (prohibited, except with unanimous consent of the shareholders) is recommended. If a stronger signal to the community is desired, Option 1 (prohibited) could be selected, although it would still only require a 75% majority of shareholders to approve a change to the Constitution to allow dividends.

<sup>1</sup> Commercial terms sheet (to inform the SHA and Constitution) prepared by Simpson Grierson, but dealt with in public excluded session:" Hastings District Council, 31 July 2025. Shareholders Agreement yet to be finalised.

## Issue 2

Should shareholders committee members be required to consult with their respective Councils and gain their endorsement before approving the Statement of Expectations?

### Relevant statutory provisions

Section 224(1) LG(WS) Act 2025 *specifies* 'The shareholders of a water organisation must prepare and adopt a statement of expectations...' The Act allows a water organisation to have more than one shareholder, and requires the shareholders (plural) to prepare and adopt the SOE, but does not specify any particular process that they must be followed. However, s229(1) states that the shareholders of a water organisation may provide only one statement of expectations to a water organisation at any time.

Section 225(3) LG(WS) Act 2025 allows shareholders to provide an interim statement ahead of the first statement of expectations which sets out interim expectations including directions for the operation of the water organisation and priorities for the water organisation.

Section 227(1)(b) LG(WS) Act 2025 *requires* the SoE to include requirements relating to each Council's resource management planning and land use planning that are relevant to the water organisation's service area.

Section 227(3)(b) LG(WS) Act 2025 also *allows* the SoE to include to all or a specified part of the WS-CCO's service area (for example, a matter that applies only to a particular Council district).

Section 229(3) *requires* the shareholders of a water organisation must publish, on an internet site maintained by or on behalf of 1 or more of the shareholders, the process that the shareholders must follow to prepare a statement of expectations.

### *In addition*

It is proposed that the shareholders committee be a joint committee of the three shareholding councils, under Clause 30A of Schedule 7 LGA 2002.

Clause 30A of Schedule 7 LGA 2002 requires a joint committee to be based on prior agreement from all member Councils, which must specify, amongst other matters—

- the number of members each Council may appoint to the committee;
- the terms of reference of the committee; and
- what responsibilities (if any) are to be delegated to the committee by each Council.

It is proposed that the responsibilities delegated to the committee include preparation and adoption of the SOE, so as to prevent each shareholding council making that decision separately, increasing the risk of uncoordinated or inconsistent decision-making between the three councils. However, this approach raises the question of what role the shareholding council has in relation to the SOE, outside of the role played by its representatives on the shareholding committee.

### Options

		Advantages	Disadvantages
1	No specific requirement for shareholder decision on the SOE in the SHA	<ul style="list-style-type: none"><li>• Preserves the general delegation to Council representatives on the Shareholder Committee.</li><li>• Allows informal discussion with other</li></ul>	<ul style="list-style-type: none"><li>• Other Elected Members may consider the interests of their Council have not been sufficiently advanced or misunderstood.</li></ul>

		<p>Elected Members of the Council (and its Chief Executive)</p> <ul style="list-style-type: none"> <li>• No additional steps – so maintains efficiency of joint decision-making</li> <li>• Allows each shareholding Council to determine its own approach and “riding instructions” to its representatives on the shareholders committee</li> </ul>	<ul style="list-style-type: none"> <li>• Potential risk that positions taken by shareholder representatives do not reflect the wishes of a majority of Elected Members</li> </ul>
2	<p>Include a process requirement (noted when the shareholders committee provides the draft SoE to WSCCO for review and comment) that a forum of all Elected Members be convened to discuss the draft SoE before formal approval</p>	<ul style="list-style-type: none"> <li>• Preserves the general delegation to Council representatives on the Shareholder Committee to prepare and approve the SoE.</li> <li>• Promotes understanding of shared priorities and an opportunity for the Shareholders Committee to amend its proposals</li> <li>• Ensures Elected Members have input into shareholder decisions and that decisions made by shareholder representatives reflect views of a majority of members</li> </ul>	<ul style="list-style-type: none"> <li>• An additional process step to be organised.</li> <li>• Mandates a process for all councils to follow, as opposed to allowing them to decide how shareholder representatives engage with Elected Members.</li> <li>• Slows decision-making</li> <li>• Unless this forum has decision making powers then it is just consultation process</li> </ul>
3	<p>Acknowledge in the SHA that each Council may require its representative to consult formally with the Council and gain its endorsement.</p>	<ul style="list-style-type: none"> <li>• Allows each Council to determine the discretion afforded to its representatives.</li> <li>• Provides assurance that the Council’s perspective is fully understood.</li> </ul>	<ul style="list-style-type: none"> <li>• Uncertainty for other partner Councils</li> <li>• More convoluted process (especially if the Council representative proposes alternatives and the other Councils disagree)</li> <li>• Unnecessary, given the likelihood that discussion of the SoE would be in a public meeting.</li> <li>• Slows decision-making.</li> </ul>
4	<p>Include a requirement (noted when the shareholders committee provides the draft SoE to</p>	<ul style="list-style-type: none"> <li>• A standardised approach</li> <li>• Provides assurance that each Council’s</li> </ul>	<ul style="list-style-type: none"> <li>• Some Councils may not wish to qualify their delegations to their</li> </ul>

	WSSCO for review and comment) in the SHA that each Council must require its representative to consult formally with the Council and gain its endorsement.	perspective is fully understood.	<p>representatives in this way.</p> <ul style="list-style-type: none"> <li>• More convoluted process (especially if the Council representative proposes alternatives and the other Councils disagree)</li> <li>• Unnecessary, given the likelihood that discussion of the SoE would be in a public meeting.</li> </ul>
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#### What other multi-council WS-CCOs are doing

Tararua-Wairarapa	No specific requirement but requires the Committee to agree the process for preparing the SoE (to be published on one or more partner Council websites).
Hawke's Bay	Not yet publicly accessible <sup>2</sup>
IAWAI (Hamilton City-Waikato District)	No specific requirement but the Committee's review of the SoE must precede each Council's process for preparing and reviewing its Annual Plan or Long-Term Plan
Waikato Waters	No specific requirement but the Committee's review of the SoE must precede each Council's process for preparing and reviewing its Annual Plan or Long-Term Plan
Buller-Grey-Westland	Not known (but not part of the HoA between those three Councils)

#### Evaluation

The issue of a council representative on a joint committee or some other having a suitable mandate or sufficiently clear "riding instructions" is common within local government. Councils that are concerned to ensure that the representative only takes positions on the shareholders committee that are within parameters set by the majority of Elected Members can ensure this through making their own arrangements, outside the shareholders agreement. For the shareholders agreement to address this matter would cut across the differences of approach that each shareholding council may have to this issue; and this is essentially an issue between a council and its representative on the committee, rather than issue *between* shareholders. Accordingly, Option 1 is recommended.

<sup>2</sup> Commercial terms sheet (to inform the SHA and Constitution) prepared by Simpson Grierson, but dealt with in public excluded session:" Hastings District Council, 31 July 2025. Shareholders Agreement yet to be finalised.

### Issue 3

What is the optimum size of the Shareholder Committee?

#### Relevant statutory provisions

Clause 30 and clause 30A, Schedule 7 LGA 2002 do not specify a minimum (or maximum) number of members for a committee or joint committee; however, in establishing a joint committee, Clause 30A requires the member Councils to agree the number of members each Council can appoint.

#### Options

		Advantages	Disadvantages
1	3 members (i.e. one from each Council, potentially the Mayor)	<ul style="list-style-type: none"><li>• Small and collegial</li><li>• Accords primacy to the Mayors</li><li>• Readily accommodates other councils who join later</li></ul>	<ul style="list-style-type: none"><li>• Precludes a wider exchange of views which a larger membership is likely to foster</li><li>• No mana whenua voice</li></ul>
1a	4 members – as in option 1 plus a mana whenua representative	<ul style="list-style-type: none"><li>• Small and collegial</li><li>• Accords primacy to the Mayors</li><li>• Introduces a mana whenua perspective</li><li>• Probably easily accommodates other councils who join later</li></ul>	<ul style="list-style-type: none"><li>• Precludes a wider exchange of views which a larger membership is likely to foster</li><li>• Iwi may struggle to choose a single representative across the three Council areas</li><li>• A single mana whenua voice may find it difficult to break into the Mayors' collegial discussions</li></ul>
2	6 members (i.e. two from each Council, one of whom must be an elected member, the other may be anyone nominated by the Council)	<ul style="list-style-type: none"><li>• Still reasonably small</li><li>• Allows external expertise to be part of the discussion</li><li>• Allows a council to appoint a Mana whenua representative if they wish</li></ul>	No certainty of a mana whenua voice
2a	7 members (i.e. as in option 2 plus one mana whenua representatives)	<ul style="list-style-type: none"><li>• Still reasonably small; allows external expertise to be part of the discussion</li><li>• Could probably accommodate one more council joining later</li><li>• An odd number of members streamlines decision-making</li></ul>	<ul style="list-style-type: none"><li>• Iwi may struggle to choose a single representative across the three Council areas</li><li>• Would become too large if more than one additional council joined later</li></ul>

3	9 members (i.e. three from each Council one of whom must be an elected member, the second may be anyone nominated by the Council, and the third a mana whenua representative	<ul style="list-style-type: none"> <li>• Still reasonably small</li> <li>• Allows external expertise to be part of the discussion</li> <li>• Could probably accommodate one more council joining later</li> <li>• Allows a diverse mana whenua perspective from all three Council areas</li> <li>• An odd number of members streamlines decision-making</li> </ul>	Would become too large if more than one additional council joined later, at which point membership would need to be reconsidered
4	Any option above but adding an Independent Chair (likely non-voting)	<ul style="list-style-type: none"> <li>• Would provide opportunity to appoint an independent person that can bring additional expert perspective (water or governance) to the Committee.</li> <li>• Could add, or supplement skill-sets of other members, but also provide broader non-political views.</li> <li>• Could enhance governance and robustness of decision-making process.</li> <li>• Would be able to lead any mediation to facilitate compromises between the three council positions.</li> <li>• Would streamline communication between the Committee and the WS-CCO Board (on a Chair-to-Chair basis).</li> </ul>	<ul style="list-style-type: none"> <li>• Would add to the Committee numbers</li> <li>• If non-voting role, would not be able impose independent view through voting</li> <li>• Some shareholders may not be comfortable with an “outsider” being a member (but this risk is mitigated if the role is non-voting).</li> <li>• Assuming payment for role, financial implication (but expect modest).</li> <li>• Would require agreement as to how Independent Chair is appointed.</li> </ul>

**What other multi-council WS-CCOs are doing (if Constitution/Shareholders’ Agreement available)?**

Tararua-Wairarapa ('Stakeholder Forum')	6 One representative from each of the four participating Councils plus a member appointed by each of Rangitāne and Ngāti Kahungunu. The four Councils and the two Iwi must each appoint an Alternate representative who may attend all meetings as an observer (without rights of participation or voting) unless the Forum Member is absent.
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Hawke's Bay	Not yet publicly accessible <sup>3</sup>
IAWAI (Hamilton City-Waikato District) ('IAWAI Forum')	9 Three representatives from each Council (one of whom is nominated as the Lead Representative and is the only representative who can vote (except for appointment of Directors, Board Chair, Forum Chair) plus three representatives appointed by Waikato-Tainui (with the same requirement to nominate a Lead Representative as for the two Councils)
Waikato Waters ('Shareholders Representative Forum')	8 One representative from each Council, who will normally be the Mayor. However, after establishment of the SRF, the Councils will convene and agree a process for engaging with Iwi.
Buller-Grey-Westland	11. The Mayor of each Council and two other elected representatives (appointed by each Council) and one representative from each of Tye Runanga o Ngāti Waewae and Te Runanga o Makaawhio (to be appointed by those entities) Note: each member has one vote but the representatives of each Council will be entitled to a total of three votes at each meeting notwithstanding the number of representatives attending.

## Evaluation

It is important to ensure the committee size is sufficient to provide appropriate representation of shareholder views while also not becoming so large as to compromise effectiveness or workability. A committee comprising three representatives of each Council would achieve that while the number of shareholders is three, but may need to be re-examined if further shareholders are added in the future. This would occur through a review of the Shareholders Agreement, which would need to be amended in any event to provide for the addition of a new shareholder (eg Share allocation, governance role, etc).

An independent non-voting chair of the committee could assist with streamlining committee decision-making and engagement. This would be particularly beneficial if the committee is large (eg nine shareholder representatives) and composed with Mayor members (who have time pressures). Having an independent chair will also provide an opportunity to supplement the skills and attributes of shareholder committee members (this has parallels with the practice of having an independent chair on a council's audit and risk committee because of the expertise that person can bring that Council members might not have otherwise).

If the independent chair position is non-voting, and focussed on ensuring good governance, this will not lead to any requirement to review voting rights between the Shareholders, it will be important to carefully design their role to ensure the right person is found for the role (ie governance skill set vs operational knowledge). Overall, it is considered useful to provide for an Independent Chair, which should be appointed by the Shareholder Committee members.

This would mean that the make-up of the committee, if the Independent Chair is appointed, would be a total of 10 members, with 9 voting members - being 3 representatives of each shareholder, including 1 of each 3 being a Mana whenua representative.

<sup>3</sup> Commercial terms sheet (to inform the SHA and Constitution) prepared by Simpson Grierson, but dealt with in public excluded session:" Hastings District Council, 31 July 2025. Shareholders Agreement yet to be finalised.

## Issue 4

### Mana whenua representation on the Shareholder Committee

#### Relevant statutory provisions

Section 14(1)(d) LGA 2002 states: 'a local authority should provide opportunities for Māori to contribute to its decision-making processes', section 81 requires a local authority to (a) establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority; and (b) consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority; and (c) provide relevant information to Māori for the purposes of paragraphs (a) and (b). These obligations are not affected by the establishment of the joint WS-CCO.

Section 7 LG(WS) Act 2025 states: 'All persons performing and exercising functions, duties, and powers under this Act must act in a manner that is consistent with Treaty settlement obligations'. The Act defines 'Treaty settlement Act' to mean—(a) an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975; or (b) any other Act that provides redress for Treaty of Waitangi claims, including Acts that provide collective redress or participation arrangements for claimant groups whose claims are, or are to be, settled by another Act.

The key statutory documents are:

- Rangitāne o Manawatū Claims Settlement Act 2016
- Ngāti Apa (North Island) Claims Settlement Act 2010
- Rukutia Te Mana - Ngāti Rangī Claims Settlement Act 2018 – (Te Waiū o te Ika)
- Marine and Coastal area (Takutai Moana) Act 2011

#### Options

		Advantages	Disadvantages
1	No representation	None	<ul style="list-style-type: none"><li>• Does not give effect to the obligation to facilitate Māori participation in local authority decision-making.</li><li>• No direct Iwi perspective available in the Shareholder Committee discussions</li><li>• Will require each Council to engage with their respective Iwi so that the Council member(s) of the Shareholder Committee understand and articulate Iwi perspectives and priorities</li></ul>

2	One Mana whenua (with voting rights)	<ul style="list-style-type: none"> <li>Allows a mana whenua voice</li> <li>May be considered an appropriate proportion with options for smaller number of Committee members (e.g. one member per council)</li> </ul>	<ul style="list-style-type: none"> <li>Will be seen as a token gesture, given the number of Iwi across the three Council areas</li> <li>Likely to be a complex decision-making process for the Iwi across the three Council areas</li> </ul>
3	Two Mana whenua representatives (with voting rights)	<ul style="list-style-type: none"> <li>Allows greater diversity of the mana whenua voice.</li> <li>Potential for mutual support for each other (making for a stronger contribution to the Committee's discussions)</li> </ul>	May be a complicated decision-making for the Iwi across the three Council areas
4	Three Mana whenua representatives (with voting rights)	<ul style="list-style-type: none"> <li>Allows iwi in each Council area to have a voice.</li> <li>Builds on existing relationships with the Council members of the Shareholder Committee</li> <li>Potential mutual support for each other (making for a stronger contribution to the Committee's discussions)</li> <li>May be considered an appropriate proportion with options for larger number of Committee members (e.g. one Mana whenua out of three members per council)</li> </ul>	May be seen as insufficient for those who believe that the Shareholder Committee should give effect to full co-governance.

**What other multi-council WS-CCOs are doing (if Constitution/Shareholders' Agreement available)?**

Tararua-Wairarapa ('Stakeholder Forum')	<b>Two mana whenua representatives:</b> a member appointed by each of Rangitāne and Ngāti Kahungunu (with requirement for each Iwi to appoint an Alternate who may attend all meetings as an observer (without rights of participation or voting) unless the Forum Member is absent.
Hawke's Bay ('Shareholders Representative Forum')	<b>Mana whenua representation to be determined</b> Each Council is responsible for deciding how to reflect their mana whenua relationships within the Shareholders Representative Forum
IAWAI (Hamilton City-Waikato District) ('IAWAI Forum')	<b>Three mana whenua representatives:</b>

	to be appointed by Waikato-Tainui (with the same requirement to nominate a Lead Representative as for each of the two Councils)
Waikato Waters (‘Shareholders Representative Forum’)	<b>Mana whenua representation to be determined</b> After establishment of the SRF, the eight member Councils will engage with Iwi to consider and prepare a proposal for how Shareholding Councils can effectively partner with Iwi and with existing co-governance entities across the Shareholding Councils' Service Areas to achieve the agreed outcomes.
Buller-Grey-Westland (‘Shareholders’ Representative Forum’)	<b>Two mana whenua representatives</b> A member nominated by each of Te Runanga o Ngāti Waewae and Te Runanga o Makaawhio

### Evaluation

No recommendation made.