

Shareholders' Agreement

relating to

Wellington Water Limited

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

Draft for discussion: 18 June 2014

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Parties

Wellington City Council (WCC)

Hutt City Council (HCC)

Upper Hutt City Council (UHCC)

Porirua City Council (PCC)

Wellington Regional Council (GWRC)

Background

The parties are shareholders in Wellington Water Limited (**Company**) and wish to enter into this document for the purpose of recording the agreements they have reached in relation to managing their shareholdings in the Company and their respective relationships with each other.

Operative provisions

1 Shareholder obligations

Shareholder and customer

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

Duty to comply with Constitution

- 1.2 Each Shareholder shall comply with the Company's Constitution.

Council controlled organisation

- 1.3 The Shareholders acknowledge that the Company is a council controlled organisation and they will each use their best endeavours to ensure that they each comply with their, and the Company complies with its, obligations under the LGA and the Companies Act.

Security Interest

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

2 Shareholders

2.1 The parties acknowledge that the Shares in the Company are structured so that each Shareholder holds Shares as set out below:

Name of Shareholder	Number of Class A Shares held	Number of Class B Shares held	Value of Class B Shares held (\$'000)
WCC	150	200	400
HCC	150	100	200
UHCC	150	40	80
PCC	150	60	120
GWRC	150	[75]	[150]

Comme
confirme

3 Wellington Water Committee

Establishment and Terms of Reference

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

3.2 Each Shareholder will:

3.2.1 confirm the Terms of reference;

3.2.2 appoint one of its elected members as a Committee Member; and

3.2.3 appoint one of its elected members to be an Alternate;

3.3 Each Shareholder's appointed Committee Member and/or Alternate may be replaced from time to time by the respective Shareholder providing written notice to the Wellington Water Committee and the Shareholders.

Delegations to Committee Members

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

Attendance of Committee Members at meetings

- 3.5 Each Shareholder agrees to use its reasonable endeavours to ensure that its appointed Committee Member or their Alternate attends each meeting of the Wellington Water Committee.
- 3.6 It shall be considered a breach of this document if a Shareholder's appointed Committee Member or their Alternate is not present at three consecutive meetings of the Wellington Water Committee.

4 Shareholder decisions

- 4.1 The matters contained in part 1 of Schedule 2 must be approved by unanimous agreement of the Shareholders and the matters contained in part 2 of Schedule 2 must be approved by a special resolution of the Shareholders.

5 Composition of the Board**The Board**

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

6 Statement of Intent

- 6.1 The parties agree that the business of the Company is expected to be conducted in accordance with its Statement of Intent, which must be prepared in accordance with the LGA.
- 6.2 Each Shareholder retains its rights under the LGA to comment on and decide whether to approve a Statement of Intent, but will use its best endeavours to co-ordinate its feedback in accordance with the procedure set out in this clause 6.
- 6.3 Unless the Shareholders agree an alternative date, no later than 1 December each year, the Wellington Water Committee will meet to discuss and recommend to the

Shareholders details to be included in the Letter of Expectation to the Company in relation to its Statement of Intent.

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

7 Shareholder amalgamation

- 7.1 In the event of an amalgamation or any other change in the regional governance structure of a Shareholder, the parties will meet and discuss the effect of the amalgamation on the shareholding structure of the Company and will exercise their voting rights to ensure that the shareholding percentages for both classes of shares remain reasonable as agreed by all Shareholders.

8 Conduct by the Shareholders

Spirit of collaborative working

- 8.1 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 Shareholder intentions or requirements to the Company.
- 8.2 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. If any Shareholder decision has a material impact on its Service Level Agreement with the Company, that Shareholder must immediately notify the other Shareholders of the change.

9 Dispute resolution

Application of procedures

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

Notice in writing

- 9.2 If a party claims that a dispute has arisen, that party must give written notice to the other parties. The written notice must specify the nature of the dispute.

Escalation

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

Negotiation in good faith

- 9.4 On receipt of a notice delivered in accordance with clause 9.2 and before any party may refer a dispute to mediation, the Representatives must, in good faith and acting reasonably, do their best to resolve the difficulty quickly and efficiently through negotiation.
- 9.5 If any Representative considers that the dispute is not being resolved in a timely manner, such Representative may serve written notice on the other parties' Representatives to escalate the dispute to the Chief Executives (where the Representatives are not the Chief Executive) of the applicable Shareholders for resolution.
- 9.6 If the issue has not been resolved within 30 days (or within such other period as agreed by the parties) of the date of the notice referred to in clause 9.4, any party may submit the dispute to mediation.

Mediation

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

Implementation of agreement reached through negotiation or mediation

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

Rights and obligations during a dispute

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

Interlocutory relief and right to terminate

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

10 Termination**Duration**

- 10.1 This document commences on its execution date in accordance with its terms and continues until one Shareholder holds all of the Shares or none of the Shareholders hold Shares or until terminated earlier in accordance with clause 10.2.

Termination for default

- 10.2 This document will terminate if an Insolvency Event occurs in relation to the Company.
- 10.3 Any Shareholder may terminate this document with respect to another Shareholder if that other Shareholder is in breach of any obligation under this agreement that continues for more than 60 days after the Shareholder receives written notice of it.

Termination by notice

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

Right of first refusal

- 10.6 If a Shareholder ceases to be a Shareholder in the Company for any reason, the Shareholder must offer its Shares to the remaining Shareholders pro rata to their respective shareholdings.
- 10.7 No Shareholder is entitled to terminate this document except as expressly permitted in this document.

Effect of termination

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

11 Confidential Information**Confidentiality**

- 11.1 Each party must keep confidential the terms of this document, the contents of all negotiations leading to its preparation and any other information relating to the Company or to another Shareholder that it obtains as a result of this document or anything done under it (**Confidential Information**), and must not disclose or permit the disclosure of such Confidential Information to any other person. If a party becomes aware of a breach of this obligation, that party will immediately notify the other parties.

Further permitted use and disclosure

- 11.2 This document does not prohibit the disclosure of Confidential Information by a party in the following circumstances:
- 11.2.1 The other parties have consented to the disclosure of the relevant Confidential Information.
- 11.2.2 The disclosure is specifically contemplated and permitted by this document.
- 11.2.3 The disclosure of Confidential Information is to an employee, subcontractor, agent or representative who needs it for the purposes of this document.

- 11.2.4 The disclosure is to a professional adviser in order for it to provide advice in relation to matters arising under or in connection with this document.
- 11.2.5 The disclosure is required by a court or governmental or administrative authority.
- 11.2.6 The disclosure is required by applicable law or regulation, including under the Local Government Official Information and Meetings Act 1987.

Obligations to continue after agreement ends

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

12 Announcements

- 12.1 Each Shareholder agrees that any public announcements or media releases in connection with, or on behalf of, the other Shareholders or the Wellington Water Committee in relation to the Company or Water Services. Nothing in this provision shall prohibit or restrict a Shareholder from making a public announcements or media releases in connection with the Shareholder's own involvement with, or policies in relation to, the Wellington Water Committee or the Company.
- 12.2 Only the Chairperson of the Wellington Water Committee or their nominee shall be authorised to make public announcements or media releases in connection with or on behalf of the Wellington Water Committee in relation to the Company or Water Services.

13 Notices

Giving notices

- 13.1 Any notice or communication given to a party under this document is only given if it is in writing and sent in one of the following ways:
 - 13.1.1 Delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out below.
 - 13.1.2 Emailed to that party at its email address and marked for the attention of Representative set out below.

WCC

Address: []
Email: []
Attention: [Chief Executive]

HCC

Address: []
Email: []
Attention: [Chief Executive]

UHCC

Address: []
Email: []
Attention: [Chief Executive]

PCC

Address: []
Email: []
Attention: [Chief Executive]

GWRC

Address: []
Email: []
Attention: [Chief Executive]

Change of details

- 13.2 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.

Time notice is given

- 13.3 Any notice or communication is to be treated as given at the following time:
- 13.3.1 If it is delivered, when it is left at the relevant address.
 - 13.3.2 If it is sent by post, two business days after it is posted.
 - 13.3.3 If it is sent by email, when it is received in readable form addressed in the manner specified above.
- 13.4 However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

14 Miscellaneous

Assignments and transfers

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

Costs

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

Entire agreement

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

Execution of separate documents

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

Further acts

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

Inconsistency with Constitution

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

No partnership or agency

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

No reliance on other matters

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

Severability

- 14.9 Each provision of this document is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being

severed from this document in the relevant jurisdiction, but the rest of this document will not be affected.

Variation

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

Waivers

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

15 Definitions and interpretation

Definitions

- 15.1 In this document the following definitions apply:

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

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

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

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

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

Committee Member means a member of the Wellington Water Committee.

Companies Act means the Companies Act 1993.

Confidential Information has the meaning set out in clause 11.1.

Constitution means the constitution of the Company.

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

Independent Director means a Director appointed by the Shareholders jointly by agreement (including pursuant to authority delegated to the Wellington Water Committee) and who is neither a member (including Councillors and Mayors) of nor a person employed by any Local Authority (as defined under the LGA).

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

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

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

LGA means the Local Government Act 2002.

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

Representative means any person appointed by a Shareholder as its representative for the purposes of this document, including as the primary point of contact for the other Shareholders and to the Wellington Water Committee and, at the date of this agreement, means the Chief Executive of each Shareholder.

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

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

Shareholder means 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 document.

Shares means shares in the Company.

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

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

Water Services means the network infrastructure for the delivery of bulk water, water reticulation, wastewater and stormwater services in the Wellington region.

Wellington Water Committee means the joint committee formed by the Shareholders pursuant to clause 3.1.

Interpretation

- 15.2 In the interpretation of this document, the following provisions apply unless the context otherwise requires:
- 15.2.1 Headings are inserted for convenience only and do not affect the interpretation of this document.
 - 15.2.2 A reference in this document to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Wellington, New Zealand.
 - 15.2.3 If the day on which any act, matter or thing is to be done under this document is not a business day, the act, matter or thing must be done on the next business day.
 - 15.2.4 A reference in this document to dollars or \$ means New Zealand dollars and all amounts payable under this document are payable in New Zealand dollars.
 - 15.2.5 A reference in this document to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 15.2.6 A reference in this document to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.

- 15.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document. Any schedules and attachments form part of this document.
- 15.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 15.2.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 15.2.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 15.2.11 References to the word 'include' or 'including' are to be construed without limitation.
- 15.2.12 A reference to this document includes the agreement recorded in this document.

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Execution and date

Executed as an agreement.

Date:

Wellington City Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

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

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Hutt City Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

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

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Upper Hutt City Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

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

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Porirua City Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

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

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Wellington Regional Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

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

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Schedule 1

Board Skills Matrix

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Schedule 2

Matters requiring Shareholder approval

Part 1 - Matters requiring unanimous resolution of Shareholders

The unanimous agreement of the Shareholders is required for:

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

Part 2 - Matters requiring special resolution of Shareholders

The agreement of 75% of those Class A Shareholders entitled to vote and voting on resolution is required for:

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

Schedule 3

Form of Wellington Water Committee Terms of Reference

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