

Commitment Agreement

PARTIES

Tauranga City Council

Western Bay of Plenty District Council

CONTENTS

SCHEDULE 1	3
Agreement Details.....	3
SCHEDULE 2	5
Agreement Terms and Conditions	5
1. DEFINITIONS AND INTERPRETATION	5
2. PROJECT OVERVIEW	7
3. KEY ACTIVITIES	8
4. PROJECT GOVERNANCE	10
5. COST SHARING.....	12
6. TERM	13
7. DISPUTE RESOLUTION	15
8. CONFIDENTIALITY AND INFORMATION DISCLOSURE	16
9. INTELLECTUAL PROPERTY RIGHTS	17
10. NOTICES	17
11. GENERAL	18

AGREEMENT dated 1 September 2025

PARTIES

Tauranga City Council
Western Bay of Plenty District Council
(together, the "**Councils**")

INTRODUCTION

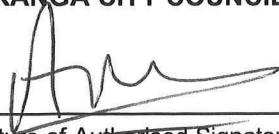
- A. The Councils have agreed to proceed with the planning for a joint operating model between the Councils in respect of each Council's service area.
- B. The Councils are each required to submit a Water Services Delivery Plan ("**WSDP**") to the Secretary for Local Government (Department of Internal Affairs) by 3 September 2025 on how water services will be delivered in the Council's district as required under the Local Governance (Water Services Preliminary Arrangements) Act 2024. Each Council's WSDP will include an implementation plan (jointly developed by the Councils) and a description of the proposed joint operating model.
- C. The Councils commit to working together, including on the preparation of a detailed joint implementation plan, to:
 - (a) develop a joint operating model for the delivery of water services for each Council's community through the Water Organisation;
 - (b) undertake a due diligence process on each Council's water and wastewater assets, debts, obligations and arrangements, covering financial, cultural, legal and condition assessment, to inform decision-making by Councils;
 - (c) agree the shareholding and governance arrangements for the Water Organisation; and
 - (d) establish the Water Organisation for the joint operating model in accordance with each Council's accepted WSDP, with the intention that the Water Organisation will take over the water services obligations from the Councils with effect from 1 July 2027.
- D. Each Council agrees to undertake the activities and responsibilities allocated to it in this agreement to achieve the Objectives.
- E. The Council have entered into this agreement to record the terms of their commitment to achieve the joint operating model and Objectives.

SIGNATURES

SIGNED for and on behalf of

TAURANGA CITY COUNCIL

By:



Signature of Authorised Signatory

Mayor Mahé Drysdale

Name of Authorised Signatory

1 September 2025

Date



Signature of Authorised Signatory

Marty Grenfell, Chief Executive

Name of Authorised Signatory

1 September 2025

Date

WESTERN BAY OF PLENTY DISTRICT COUNCIL

By:



Signature of Authorised Signatory

Mayor James Denyer

Name of Authorised Signatory

1 September 2025

Date



Signature of Authorised Signatory

Miriam Taris, Chief Executive Officer

Name of Authorised Signatory

1 September 2025

Date

SCHEDULE 1

Agreement Details

Commencement Date <i>(Clause 6.1, Schedule 2)</i>	The date on which this agreement has been signed by all parties.
Expiry Date <i>(Clause 6.1, Schedule 2)</i>	This agreement expires on the date on which the parties agree to terminate this agreement under clause 6.2.
Elected Members Governance Group <i>(Clause 4, Schedule 2)</i>	Members: The members of the Elected Members Governance Group will be the following persons (or such other persons as are nominated by the relevant Council from time to time): • Tauranga City Council member(s): To be nominated by the Mayor of Tauranga City Council. • Western Bay of Plenty District Council member(s): To be nominated by the Mayor of Western Bay of Plenty District Council and approved by the Western Bay of Plenty District Council. • An independent chair, who may be appointed (and removed or replaced) by the other members of the Elected Members Governance Group by unanimous agreement. The independent chair (if any) will not have a vote on any matter to be determined by the Elected Members Governance Group. Meetings: The Elected Members Governance Group will meet monthly or at such other times or frequency as they determine from time to time.
CEO Oversight Group <i>(Clause 4, Schedule 2)</i>	Members: The members of the CEO Oversight Group will be the following persons (or such other persons as are nominated by the relevant Council from time to time): • Tauranga City Council member: The Chief Executive of Tauranga City Council. • Western Bay of Plenty District Council member: The Chief Executive of Western Bay of Plenty District Council. • An independent chair, who may be appointed (and removed or replaced) by the other members of the CEO Oversight Group by unanimous agreement. The independent chair (if any) will not have a vote on any matter to be determined by the Council Executive Group. Meetings: The Council Executive Group will meet monthly or at such other times or frequency as they determine from time to time.

Project Steering Group (Clause 4, Schedule 2)	Members: The members of the Project Steering Group will be the following persons (or such other persons as are nominated by the relevant Council from time to time): • Tauranga City Council member: To be nominated by the Chief Executive of Tauranga City Council. • Western Bay of Plenty District Council member: To be nominated by the Chief Executive of Western Bay of Plenty District Council. Meetings: The Project Steering Group will meet fortnightly or at such other times or frequency as they determine from time to time.	
Project Team (clause 4 and 5.3, Schedule 2)	Members: The members of the Project Team will be up to 2 persons nominated by each Council from time to time, with the members of the Project Team as at the Commencement Date being as follows: • Tauranga City Council members: To be nominated by the Chief Executive of Tauranga City Council. • Western Bay of Plenty District Council members: To be nominated by the Chief Executive of Western Bay of Plenty District Council. Additional persons may be nominated by Councils to join the Project Team from time to time in addition to the nominated members. Meetings: The Project Team will meet weekly or at such other times or frequency as they determine from time to time.	
Address for notices (clause 10, Schedule 2)	Tauranga City Council 21 Devonport Road Tauranga, 3143 Private Bag 12022, Tauranga 3143 Email: christine.jones@tauranga.govt.nz	Western Bay of Plenty District Council 1484 Cameron Road Barkes Corner, Greerton, Tauranga, 3112 Private Bag 12803 Tauranga Mail Centre Tauranga 3143 Email: adele.henderson@westernbay.govt.nz

SCHEDULE 2

Agreement Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

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

"Agreement Details" means Schedule 1 of this agreement.

"Business Day" means any day other than a Saturday, Sunday or a statutory public holiday in the Service Area(s) identified in the Agreement Details, New Zealand.

"Commencement Date" has the meaning given to that term in the Agreement Details.

"Confidential Information" means any of the following (whenever it was obtained):

- (a) all information of a confidential nature (reasonably determined) obtained by one Council from another Council under or in connection with this agreement;
- (b) all information relating to the operations and affairs of another Council; and
- (c) all information obtained by a Council in respect of all activities or information undertaken, produced or discussed under the umbrella of the Project.

"Councils" means the councils who are named as counterparties to this agreement and who continue to be a participant of this agreement.

"Due Diligence Plan" means a plan setting out the due diligence exercise that the Councils will undertake on the water, wastewater and stormwater assets, debts, obligations and arrangements of each Council that would be expected to transfer from that Council to the Water Organisation, which plan will set out:

- (d) the scope of the due diligence, and any specific exclusions;
- (e) the timeframes within which the due diligence is to be carried out and completed; and
- (f) the outputs from this exercise that will be provided to all Councils for consideration;

"Existing Material" means, in respect of any Council, all documentation and other materials used or provided by the Council under or in connection with this agreement that are:

- (a) owned by, or licensed to, that Council prior to the date of this agreement; or
- (b) developed independently from this agreement by that Council, and that are not developed, commissioned or created under or in connection with this agreement.

"Expiry Date" has the meaning given to that term in the Agreement Details.

"Intellectual Property Rights" means, in respect of any person, all intellectual and industrial property rights and interests (including common law rights and interests) owned or held by that person, or lawfully used by that person, including:

- (a) patents, trade marks, service marks, copyright, registered designs, trade names, symbols and logos;
- (b) patent applications and applications to register trade marks, service marks and designs; and
- (c) formulae, methods, plans, data, drawings, specifications, characteristics, equipment, designs, inventions, discoveries, improvements, know-how, experience, software products, trade secrets, price lists, costings, brochures and other information used by that person.

"LGOIMA" means the Local Government Official Information and Meetings Act 1987.

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

"LG(WSPA) Act" means the Local Governance (Water Services Preliminary Arrangements) Act 2024.

"Objectives" has the meaning given to that term in clause 2.1.

"Project " means giving effect to the Objectives in the manner contemplated by this agreement.

"Project Budget" has the meaning given to that term in clause 5.2.

"Project Plan" has the meaning given to that term in clause 4.8(a).

"Water Organisation" means the Council Controlled Organisation that is proposed to be jointly owned by the Councils, that will be a water organisation once established under the LG (WS) Act .

"Water Services Delivery Plan" or **"WSDP"** has the meaning given to that term in paragraph B of the Introduction section of this agreement.

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) 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 or other representative of such party, person or entity.

- (e) a reference to dollars or \$ is to New Zealand currency and excludes every tax and duty;
- (f) a reference to a clause or schedule is to a clause or schedule of this agreement;
- (g) 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;
- (h) references to the word 'include' or 'including' are to be construed without limitation;
- (i) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (j) a reference to a document or instrument includes reference to that document or instrument as novated, altered, supplemented, or replaced from time to time;
- (k) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (l) 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
- (m) an obligation not to do something includes an obligation not to allow or cause that thing to be done.

2. PROJECT OVERVIEW

2.1 Objectives: The key objectives of this agreement ("**Objectives**") are:

- (a) for the Councils to continue to work closely, collaboratively and successfully to develop and plan their separate WSDPs that meet each Council's needs and objectives for their respective communities and that are aligned with each other Council's WSDPs;
- (b) to provide each Council with sufficient information as to each other Council's water assets and obligations, through the carrying out of due diligence in accordance with the Due Diligence Plan, to facilitate each Council's decision making processes;
- (c) to facilitate the Councils making decisions in a timely manner to ensure the joint operating model can progress in a timely way to meet the requirements for submissions of each Council's WSDP and other requirements under the LG(WSPA) Act and the LG(W) Act ;
- (d) to enable the Councils to consider how they would operate together in a way that facilitates an effective and efficient use of the Councils' resources, providing optimum benefit to the parties' ratepayers;
- (e) to determine how the Water Organisation will uphold Treaty of Waitangi obligations and commitments, existing formal relationships, and maintain open engagement through support of established Iwi and Hapū collectives; and

- (f) to agree the process (including timetable, key terms, allocation of responsibilities and budget) for the establishment of the Water Organisation for the joint operating model in accordance with the accepted WSDP,

in each case, in accordance with the establishment principles set out in Attachment 1 to this agreement (**Principles**). The COG may update and amend the Principles from time to time.

2.2 Key Documents and Outcomes: The key documents to be developed under or in alignment with this agreement are as follows:

- (a) the Project Plan, which will be prepared by the Project Team and approved by the PSG;
- (b) the Project Budget, which will be developed and maintained by the Project Team for each phase of the Project (as set out in the Project Plan) and approved by the PSG;
- (c) the Due Diligence Plan, which will be prepared by the Project Team and approved by the PSG;
- (d) a WSDP, which will be developed and approved by each Council individually; and
- (e) the structure, governance and transfer arrangements, in relation to the Water Organisation, which will be developed by the Project Team and approved by the PSG, with a final approval step of the COG or the Councils as appropriate.

2.3 Relationship principles: The Councils will:

- (a) work together collaboratively and in good faith;
- (b) ensure communication between them is open, proactive, transparent and inclusive, to avoid any surprises;
- (c) make every effort to understand the other Council's needs and objectives for the joint operating model, and make all reasonable endeavours to ensure the joint operating model meets such needs and objectives;
- (d) raise any issues that arise in connection with this agreement at the earliest opportunity, for joint resolution;
- (e) resolve disagreements between them promptly and amicably; and
- (f) as a courtesy and in the interest of clear and consistent communication, consult with the other Council before commenting publicly on the joint operating model or this agreement.

3. KEY ACTIVITIES

3.1 Council responsibilities: Each Council will:

- (a) work with the other Council to:

- (i) develop and document the Council's financial, technical, operational, legal and other requirements for the joint operating model ("**Requirements**") and to agree reasonable and realistic timeframes for delivery of the joint operating model; and
 - (ii) plan and design the joint operating model to meet the Requirements, including at such time(s) required by the other Council;
- (b) make decisions in relation to matters for the Project, within the indicative timeframes listed in the Project Plan;
- (c) provide subject matter experts where relevant to assist with the development and design of the joint operating model;
- (d) provide a dedicated single point of contact for that Council for the management of the Project delivery (who will also be the person authorised to make decisions (for example, approvals of proposed public comments on the Project) on behalf of that Council);
- (e) provide a dedicated and senior level 'sponsor' for the Project, who will be the representative of that Council on the PSG;
- (f) attend those meetings agreed by the Councils as appropriate or necessary for the effective governance of and/or the delivery of the joint operating model;
- (g) where there are any changes in Government policy or direction, which affects the purposes and activities of this agreement, inform the other Council of those changes at the earliest possible opportunity thereafter, and the Councils agree to renegotiate, where necessary, any aspects of this agreement that has been or will be affected by this policy change.
- (h) fund and provide resources to undertake the Project under this agreement; and
- (i) be responsible for complying with any requirements to undertake consultation or reporting in respect of its own council and local government processes.

3.2 **Council individual responsibilities not affected:** Each Council acknowledges that the Councils' commitment to the obligations under this agreement does not limit or pre-empt each Council's own obligations as local government authorities at law, including in respect of decision-making responsibility, funding, prudent financial management and public consultation obligations.

3.3 **Project management, advisory and administration:**

- (a) The PSG will determine what project management, advisory, and other administrative resources are required for the Project, and approve the arrangements in relation to engaging such resources.
- (b) The Councils agree that Tauranga City Council will have responsibility for the following:
 - (i) managing Project expenditure, including paying amounts incurred in respect of the Project and seeking reimbursement from the Councils in

accordance with clause 5, and tracking against the Project Budget (once agreed);

- (ii) entering into agreements for the benefit of the Project, where approved by the PSG as contemplated by clause 3.3(a), on the basis that all costs incurred by Tauranga City Council in relation to such arrangements will be treated as Project costs.
- (c) The Councils may agree that Western Bay of Plenty District Council will take the role set out in clause 3.3(b), after which time, Western Bay of Plenty District Council will assume those responsibilities under this Agreement.

3.4 **Development expectations and timelines:**

- (a) Each Council acknowledges that the other Council will be providing funding and resources to develop and design the joint operating model, and has an interest in ensuring a consistency of approach in the development and design of the joint operating model.
- (b) Accordingly, any Council may submit a request to the other Council to:
 - (i) adjust expected timelines and/or reprioritise resources allocated to the development and design of the joint operating model as necessary to manage resource and funding constraints, subject to not compromising the achievement of the Objectives; and/or
 - (ii) change the Requirements that are not reasonably viable in order for a Council to meet its own needs, and the Councils will work together to agree and implement any agreed change to the joint operating model, including any consequential changes to the Requirements for that joint operating model.

3.5 **Project communications:** The Councils agree to jointly develop a communication plan relating to all aspects of the Project (including media releases, public announcements and public disclosures, communications with Tangata Whenua, internal communications with affected staff of each Council, as well as Council meetings relating to the Project and engagement with Department of Internal Affairs), and each Council will comply with that communication plan once agreed by all Councils.

4. **PROJECT GOVERNANCE**

4.1 **Governance structure:** The governance model for the Project comprises the following:

- (a) Elected Members Governance Group ("**EGG**");
- (b) CEO Oversight Group ("**COG**");
- (c) Project Steering Group ("**PSG**"); and
- (d) Project Team.

- 4.2 **Terms of Reference:** Each of the EGG, the COG, the PSG and the Project Team will develop its own terms of reference to align with the Objectives and its role under this agreement.
- 4.3 **Decisions made by the governance groups:**
- (a) Each Council will be responsible for their own decision-making using the Project Team's advice and assistance.
 - (b) The EGG, COG, PSG, and Project Team will make decisions on a consensus basis.
 - (c) Where consensus is not possible, decisions will be made by the majority, or alternatively escalated to the next governance level, with final decisions to be made by the EGG (if the EGG has been established and if the EGG has not been established, by the COG).
- 4.4 **Meeting administration:** Each of the governance meetings will be scheduled by the Council appointed under clause 3.3, who will circulate agenda items and decisions to be discussed ahead of the meeting date.
- 4.5 **Elected Members Governance Group:** The EGG is to be established at the Councils' discretion with the terms of reference to be determined at a later date. If established, the EGG shall be responsible for:
- (a) addressing issues that have been escalated to it by the COG;
 - (b) keeping informed on the Project; and
 - (c) referring issues raised by the COG to their respective Councils for consideration and approval where relevant.
- 4.6 **CEO Oversight Group:** The COG shall be responsible for:
- (a) overseeing the executive direction of the Project;
 - (b) addressing issues that have been escalated to it by the PSG;
 - (c) keeping informed on the Project by information provided from the Project Team; and
 - (d) referring issues raised by the PSG to their respective Councils for consideration and approval where relevant.
- 4.7 **Project Steering Group:** The PSG shall be responsible for:
- (a) providing strategic directions and decisions on the Project;
 - (b) ensuring that progress against the Project Plan and associated timelines are monitored and the activities set out in the Project Plan are delivered;
 - (c) identifying and managing risks, and escalating any such risks where appropriate;

- (d) identifying the issues that require consideration and decision-making by Councils, and referring those issues to the COG;
- (e) addressing issues that have been escalated to it by the Project Team;
- (f) reviewing and approving any proposed changes the direction of the Project;
- (g) appointing members to the Project Team;
- (h) ensuring the strategic direction of the Project continues to align with the Objectives and each Council's obligations under this agreement; and
- (i) approving the Project Budget and any changes to the Project Budget.

4.8 Project Team: The Project Team shall be responsible for:

- (a) preparing a detailed scope of work and project plan (including timeline and project milestones) to deliver on the Objectives ("**Project Plan**"), which will be developed based on the draft transition plan set out in Attachment 2 to this agreement and will incorporate the due diligence and negotiations processes set out in the diagram in Attachment 3 to this agreement. The Project Plan and progress against the Project Plan will be reported to the PSG and COG on a monthly basis;
- (b) preparing and implementing the Due Diligence Plan, and reporting to the PSG and COG on a weekly basis against that Due Diligence Plan;
- (c) developing an initial Project Budget for approval by the PSG, and then maintaining that Project Budget (including any recommendations to the PSG to increase the Project Budget);
- (d) developing such term sheets, guidance notes and documents as are required in order to formalise the way in which the joint operating model is proposed to be established, governed and operated, for review and approval by the Councils;
- (e) engaging external expertise as required;
- (f) preparing stakeholder/engagement framework ensuring all appropriate parties are included on an ongoing basis;
- (g) preparing and attending workshops with the Councils' elected members as required to achieve the Objectives;
- (h) preparing consultation packs in collaboration with individual Councils to support each Council's required consultation processes;
- (i) running and/or supporting consultation processes as required;
- (j) approving payments from the Project Budget up to a level set by the PSG; and
- (k) any of matters required under a terms of reference agreed for the Project Team.

5. COST SHARING

5.1 **Cost sharing principles:** The Councils agree:

- (a) To fund the costs of the Project in accordance with the amounts and frequency of cost contributions agreed by the PSG under clause 5.2. All such Project costs will be shared between the Councils as follows: Tauranga City Council 70% and Western Bay of Plenty District Council 30%.
- (b) In the situation where there is a need for data cleansing, that the costs fall to each Council. Councils will provide the subject matter experts for data remediation, and that the work will be undertaken under the guidance of the Digital Project Workstream Lead.

5.2 **Project funding:** By no later than 30 Business Days after the date of this agreement, the Councils will (through the Project Team) prepare a Project budget for approval by the PSG, that covers:

- (a) the contribution by the Councils for the costs of the Project, including the project management and administration costs that will be incurred by the Council carrying out the responsibilities set out in clause 3.3(a); and
- (b) costs for any internal and external consultants (preapproved by the PSG in each instance),

(together, the “**Project Budget**”). The Councils acknowledge their intention that all costs borne by the Councils under this agreement relating to the Project will (if the Water Organisation is established and becomes operational) be treated as an advance by each Council to the Water Organisation and will be reimbursed by the Water Organisation accordingly. These costs will be ring-fenced from the costs incurred by each Council as contemplated by clause 5.5.

5.3 **Project Team delegation:** The Project Team will have delegated authority to spend up to the approved Project Budget, subject to any limits set (as contemplated by clause 4.8(j)). Costs that exceed the approved Project Budget will require approval by the PSG.

5.4 **Council Exit:** If a Council exits this agreement, that Council remains responsible for their share of all costs incurred up to that date, including any committed costs which cannot be mitigated by the remaining participating Councils.

5.5 **Council Costs:** The Councils acknowledge and agree that any costs relating to the preparation of their individual WSDPs and internal work in relation to the proposed joint operating model (and any advice they obtain for their sole benefit) will be their own cost and will not form part of the Project Budget.

6. **TERM**

6.1 **Term:** This agreement commences on the Commencement Date and continues until the Expiry Date, unless terminated earlier by all Councils in accordance with clause 6.2.

6.2 **Termination by agreement:** This agreement may be terminated at any time with immediate effect by agreement of all current Councils to this agreement for any reason, including if there is a material change of law or policy direction that affects the Councils' obligations under the LG(WSPA) Act and LG(WS) Act.

6.3 Council withdrawal:

- (a) Subject to clauses 5 and 6.3(b), any Council may withdraw its participation in this agreement at any time immediately by giving written notice to the other Council. The parties acknowledge that a Council's decision to withdraw may be as a result of the outcomes of the due diligence exercise to be undertaken in accordance with the Due Diligence Plan.
- (b) Before a Council exercises its withdrawal right under subclause (a), that Council must use reasonable endeavours to:
 - (i) provide as early as possible notification to the other Council that the Council is considering, or intending to withdraw from the Project, including to provide the other Council with sufficient time to respond to and agree on any public releases in accordance with clause 3.5; and
 - (ii) provide the other Council an explanation for the withdrawing Council's reason(s) for the withdrawal.
- (c) Where any Council breaches a material obligation, or persistently does not perform its obligations, under this agreement, then the other Council may request that such Council withdraws its participation from this agreement, in which case the parties will promptly discuss the next steps following such request.

6.4 Effect of termination: In addition to any other rights, powers or remedies a Council may have under this agreement or at law:

- (a) if this agreement ends or is terminated, the following will apply:
 - (i) each Council is released from its obligations under this agreement, except clauses 5, 6, 7, 8 and 9 that shall survive expiry or termination of this agreement;
 - (ii) each Council retains the rights and obligations it has accrued under this agreement as at the date of expiry or termination; and
 - (iii) each Council must return any Confidential Information of another Council in its possession to that other Council or, if requested by the other Council, destroy the Confidential Information, except to the extent that it is required to retain the Confidential Information in order to meet its legal, contractual and governance obligations.
- (b) if a Council withdraws its participation in this agreement or otherwise exits this agreement:
 - (i) clause 6.4(a) will apply only in respect of that Council;
 - (ii) that Council will not have any rights to any new Intellectual Property Rights as contemplated by clause 9.2; and
 - (iii) this agreement continues in force as between the remaining Councils.

7. DISPUTE RESOLUTION

7.1 Notice in writing: If a Council claims that a dispute has arisen, that Council must give written notice to the other Council. The written notice must specify the nature of the dispute.

7.2 Negotiation:

- (a) On receipt of a notice delivered in accordance with clause 7.1 and before any Council may refer a dispute to mediation, the Representatives must, in good faith and acting reasonably, do their best to resolve the dispute quickly and efficiently through negotiation.
- (b) 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 or equivalent (where the Representatives are not the Chief Executive or equivalent) of the applicable Councils for resolution.
- (c) If the dispute has not been resolved within 20 Business Days (or within such other period as agreed by the Councils) of the date of the notice referred to in clause 7.2, any Council may submit the dispute to mediation.

7.3 Mediation:

- (a) If the Councils do not resolve the dispute by negotiation, the Councils 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 Councils do not agree on a mediator, then the mediator will be appointed by the New Zealand Dispute Resolution Centre.
- (c) The Councils 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 Councils 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).

7.4 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 Council (the "**Initiating Council**") may refer such dispute to binding arbitration by issuing a written notice ("**Arbitration Notice**") to the other Council (together with the Initiating Council, the "**Disputing Council**") for final resolution in accordance with the provisions of this clause 7.4 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 Council 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 Tauranga, New Zealand 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 Councils. No Council 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 Councils of their respective obligations under this agreement.

7.5 **Implementation of agreement:** The Councils 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.

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

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

8. CONFIDENTIALITY AND INFORMATION DISCLOSURE

8.1 **Confidentiality:** Each Council will keep confidential and secure all Confidential Information, and no Council shall disclose the other Councils' Confidential information to any person, or use the other Councils' Confidential Information, other than:

- (a) to the extent that use or disclosure is necessary for the purposes of giving effect to or exercising the rights and benefits of this agreement (which for the purpose of each Council, may involve disclosure to that council's elected members and staff);
- (b) if the discloser of the information has obtained the prior written approval of the providing Council to the use or disclosure;
- (c) if the use or disclosure is required by law including under the Local Government Official Information and Meetings Act 1987 ("**LGOIMA**"), or the Local Government Act 2002, provided that prior to that Council making a disclosure, that Council will

use reasonable endeavours to promptly consult in good faith with the other Council:

- (i) regarding the requirement under which that Council is required to disclose the Confidential Information; and
 - (ii) so that the other Council is informed to arrive at a view on whether those Councils would also be required to make such disclosure if a request is made of them; or
- (d) in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Councils.

8.2 **LGOIMA:** Each Council acknowledges that the other Council is subject to the LGOIMA. Accordingly, notwithstanding anything else in this agreement, each Council agrees to cooperate fully in providing the other Council with any documents or other information that the other Council is required to provide pursuant to a request made under the LGOIMA.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 **Existing Intellectual Property Rights:** Notwithstanding any of the provisions of this agreement, each Council or its licensors retain ownership of all Intellectual Property Rights, including in Existing Material belonging to that Council or its licensors at the Commencement Date ("**Existing Intellectual Property Rights**").

9.2 **New Intellectual Property Rights:** Any new Intellectual Property Rights which are created as a result of, or in connection with, the provision of the Services or Deliverables, or otherwise in connection with this agreement, shall be jointly owned by the Councils, unless otherwise agreed by the parties.

9.3 **Licence:** If any Council's Existing Intellectual Property Rights is included in any new Intellectual Property Rights, then that Council grants to the other Council and the other Council accepts, a worldwide, perpetual, non-exclusive, transferable, sub-licensable licence during the term of this agreement to use the Council's Existing Material for the purposes relating to giving effect to and performing its obligations under this agreement. That licence will expire immediately on expiry or termination of this agreement.

10. NOTICES

10.1 **Giving notices:** Any notice or communication given to a Council 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 Council 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 Council at its email address and marked for the attention of the representative set out in Schedule 1.

10.2 **Change of details:** If a Council gives the other Council three Business Days' notice of a change of its postal address or email address, any notice or communication is only given by

that other Council if it is delivered, posted or emailed to the latest postal address or email address.

10.3 **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 Council to whom it is sent it is to be treated as having been given at the beginning of the next Business Day.

11. GENERAL

11.1 **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 Councils, and a Council may not make, or allow to be made, any representation that any such relationship exists between any of the Councils. A Council 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.

11.2 **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.

11.3 **Counterparts:** This agreement is deemed to be signed by a Council if that Council has signed or attached that Council's signature to any of the following formats of this agreement:

- (a) an original;
- (b) a photocopy; or
- (c) an electronic copy,

and if each Council has signed or attached that Council's signature to any such format and delivered it to the other Council, the executed formats shall together constitute a single binding agreement between the Councils.

11.4 **Entire agreement:** This agreement contains everything the parties have agreed in relation to the subject matter it deals with. No Council can rely on an earlier written agreement or anything said or done by or on behalf of another Council before this agreement was executed.

11.5 **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.

- 11.6 **Further assurance:** Each Council 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.
- 11.7 **Variation:** No variation of this agreement will be of any force or effect unless it is in writing and signed by each Council to this agreement.
- 11.8 **Assignments and transfer:** A Council must not assign or transfer any of its rights or obligations under this agreement without the prior written consent of the other Council.
- 11.9 **Costs:** Except as otherwise set out in this agreement, each Council 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.
- 11.10 **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 Council fails to do, or delays in doing, something the Council is entitled to do under this agreement does not amount to a waiver.
- 11.11 **Governing law:** This agreement is governed by the laws of New Zealand and the Councils submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this agreement.

Attachment 1 – Establishment Principles

1. PURPOSE

This document presents draft establishment principles, criteria, and safeguard mechanisms. These would apply to any joint or multi-WSO to ensure beneficial arrangements between councils are able to be identified and implemented.

These principles are enduring and will apply wherever additional Water Service Providers (Councils) seek to join the multi-WSO. Principles will be upheld by Council, and any amendments will be managed through resolution of Council, consistent with legislation and delegations.

Key Strategic Principles (Approved by Councils)

- | | | |
|----|--------------------------------|---|
| 1. | Affordability | The WSO is operated in a way that ensures water services are affordability focused and equitable for all communities, balancing cost-effectiveness with long-term service quality and sustainability |
| 2. | Transparency | The WSO will operate with transparency and accountability to its shareholder councils and communities, ensuring clear, timely, and accessible information to build trust and support informed participation |
| 3. | Safe and resilient | The WSO will deliver water services that are safe, reliable, and resilient—protecting public health and adapting to changing environmental, infrastructure, and community needs over time |
| 4. | Environmental Wellbeing | The WSO has a kaitiaki role caring for the health and wellbeing of water for the benefit of the environment, communities, and future generations |
| 5. | WSO is set up to be successful | The shareholder councils are committed to establishing the joint waters WSO with the right governance, capabilities, and direction to enable long-term operational success and public value from day one |
| 6. | Iwi Hapū | The WSO will uphold Treaty of Waitangi obligations and commitments, existing formal relationships, and maintain open engagement through support of established Iwi and Hapū collectives. |

CORE GUIDELINES AND CRITERIA THAT WOULD BE APPROVED BY ELECTED MEMBERS

Group (1) – Key Establishment Considerations	
Financial Transition	
Independent verification of key data	In summary - by agreement, an independent advisor assesses key financial data and other key information to ensure: • Debt transfer • outstanding revenue and liabilities, • financing arrangements and reserves • asset valuations and transfer, • asset condition, • risk registers. • capital programme and prioritisation <i>Further detail and linkage to guidelines below.</i>
Appropriate debt transfer	The amount of debt that each council transfers to the new water entity will have a major bearing on the financial health of both the water service entity and each council. Ensuring the ability to agree to a fair and equitable debt level arrangement Councils will; • Demonstrate that the debt value transferred from the council to the WSO is appropriate and sustainable and genuinely relates to the water asset • Financing arrangements are fair and equitable in relation to the remaining council operations • Financial reserves are considered as part of total debt and transferred as appropriate (including depreciation and financial instruments) and special purpose reserves (e.g. biosolids) A peer review of data and history may be engaged. Activities surrounding debt and direct costs of renewing, improving, operating and maintaining the network of each partnering Council should be ring-fenced so that communities fund their fair portion of services, and apply their fair share of debt brought to the arrangement.
Equitable asset transfer	The valuation of assets must have been revalued in the last 2 years, consistent within benchmarking rates. Asset management plans reflect the asset value, condition, performance and age. Assets that have high amenity value for the community (e.g. stormwater reserves) should stay with the councils to enable the focus to be on recreation management.
Growth pays for growth	Capital expenditure associated with enabling or supporting growth will be attributed to and funding by those who have caused or benefit from that investment.

	The WSO will look to maximise all available sources of external funding in order to minimise the financial impacts of investment on ratepayers and customers.
Capital programme	Ring fencing of new debt and a prioritization approach to capital programme. A capital programme prioritisation framework to be agreed and applied across a combined programme.
Equitable allocation of guarantee	Allocation of guarantee of debt and other liability will be ring fenced, but in the event of that approach changing, in the first instance the guarantee will relate to the jurisdiction area where the investment occurred. If this is not possible to achieve, then the guarantee will be proportional to the value of the assets,
Equitable share allocation	Jointly explore and assess options for share allocation to achieve a mutually agreed allocation which is proportional and fair, both at the commencement of the multi-WSO and overtime when and when scale and membership of the business changes.
“In flight” transaction at transition date	In flight transactions to be agreed with the transferring council the arrangements for transferring of any outstanding operational and business process matters.
Revenue and Pricing	The WSO will set pricing appropriate to deliver water services (affordability of services) aligned to the objectives through the Statement of Expectation (SOE). The pricing models will: • avoid customer price shocks • reasonably reflect operation costs, in the year they occur (i.e. a balanced budget) • reasonably reflect customer segmentation and requirements • maintain financial sustainability. This relates to ring fenced operations unless Council make decision to harmonise.
Harmonisation of pricing	Initially, there will be ring fenced pricing aligning with the principles above. Any shift to equalisation/harmonisation would be a transitional process. All Councils agree, through their Statement of Expectation, that annual reports to Council will be provided identifying efficiencies, alongside the WSO position on any future harmonisation or tariffing structures.
Sustainability	
Wellbeing of Water	The WSO recognises the vital importance of wai (water) as a taonga and upholds its responsibility as a kaitiaki. In partnership with Iwi and Hapū the Board will ensure that all decisions recognise the importance of the health and wellbeing of water, for the benefit of the environment, communities, and future generations.

Environmental stewardship	Sustainable use of natural resources across all three waters should support the approach to efficient infrastructure investment. The WSO will comply with environmental requirement set through legislation or Government policy statements. Ensure management of all conditions of resource consents held by WSO.
Workforce	
Fair process and equal opportunity	Staff transition processes are underpinned by procedural; fairness that gives staff from all organisations equal opportunity to apply for roles in the new WSO (excluding board appointments)

Attachment 2 – Transition Plan

	Key Milestone / Task	Indicative timeframe
1	Draft TCC WSDP	Approved 26 August
2	Partnership Plan with Tangata Whenua (Align with Due diligence timeframes)	Aug – Dec 25
3	TCC Commitment Agreement (Establishment Principles)– Executed/Completed	End August 25
4	TCC WSDP completed and CEO sign-off	End August 25
5	TCC WSDP - Submission	3 September 25
6	Recruit and appoint Joint Programme Director	Sept / Oct 25
7	Due Diligence process starts, which includes independent review of asset and financial information	Sept – Dec 25 Continues beyond if necessary
8	Establish project governance and project team structures for WO	Early 2026
8	Developing WO Shareholder Agreement, Constitution and other key documents	Early 2026
10	If approved as part of shareholder agreement - Establish Shareholder Council (TCC/WBOPDC)	Mid - 2026
11	Recruit/appoint WO Board of Directors	Apr-- June 26
12	Recruit key management roles - (either Interim or permanent) WO CEO, CFO, CDO	Apr – June 26
13	Key management roles appointed	By Jul-Oct 26
14	Transfer arrangements, LGFA lending Arrangements, Statement of Expectations underway	Jan – Dec 2026
15	Water Services Strategy commence drafting	Jan 27 onwards
16	Go Live with Multi-WO	1 July 2027

Attachment 3 – Due Diligence and Negotiation Process

Multi-Council Water Organisation (WO) Due Diligence & Negotiation Process

