

TE KAUNIHERA O TE AWA KAIRANGI | HUTT CITY COUNCIL

Ordinary meeting to be held in the Council Chambers, 2nd Floor, 30 Laings Road, Lower Hutt
on Wednesday, 13 May 2026 commencing
at the conclusion of the Strategy, Long Term and Annual Plan Subcommittee

SUPPLEMENTARY ORDER PAPER

PUBLIC BUSINESS

5. TIAKI WAI LIMITED - TRANSFER AGREEMENT

Report No. HCC2026/2/35 by the Water Services Transition Manager 2

8. PUBLIC EXCLUDED ITEM

9. TIAKI WAI LIMITED - SHAREHOLDER SUPPORT

Following review, the report will remain in the Public Excluded section of the meeting.

**MAJOR ITEM NOT ON THE AGENDA: TIAKI WAI LIMITED - OTHER
SHAREHOLDER MATTERS**

MAYOR'S RECOMMENDATION:

"That in terms of Standing Order 10.12 Council:

- (1) notes that a report on the "Tiaki Wai Limited – Other Shareholder Matters was not listed on the public agenda for the reason that the information was not available until after the agenda had been distributed; and
- (2) agrees to discuss the report due to the urgency of the matter."

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

(A)	(B)	(C)
General subject of the matter to be considered.	Reason for passing this resolution in relation to each matter.	Ground under section 48(1) for the passing of this resolution.
Tiaki Wai Limited - Shareholder Support.	The withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information (s7(2)(b)(ii)).	That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding exist.
Tiaki Wai Limited – Other Shareholder Matters		

This resolution is made in reliance on section 48(1) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by section 6 or 7 of that Act which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public are as specified in Column (B) above."

Kate Glanville, Senior Democracy Advisor

Report no: HCC2026/2/35

Tiaki Wai Limited - Transfer Agreement

Purpose of the Report

1. To seek approval of the Transfer Agreement to be entered into with Tiaki Wai Limited ("Tiaki Wai") (attached to this report as Appendix 2), and delegations to allow all associated agreements to be executed. These agreements collectively support the legal transfer of statutory responsibilities, and water services assets, debts, infrastructure, land, contracts and other matters from Hutt City Council ("Council") to Tiaki Wai, effective 1 July 2026.
2. This report outlines the delegations sought that will:
 - a) Allow the approval of any required minor amendments to the Transfer Agreement, following further discussions between Council and Tiaki Wai;
 - b) Allow the approval of the Transfer Schedules that will be appended to the Transfer Agreement;
 - c) Support the final execution of the Transfer Agreement and all associated agreements on behalf of the Council; and
 - d) Provide for the agreement of all other practical operational arrangements with Tiaki Wai.
3. Appendix 1 provides a summary of the transfer agreement terms.

Recommendations

That Council:

- (1) receives the report;

Transfer Agreement and related service level/support arrangements

- (2) pursuant to section 12(3) of the Local Government (Water Services) Act 2025 approves entry by the Council into the Transfer Agreement (Appendix 2) with Tiaki Wai, noting that the terms and conditions of the Transfer Agreement have been developed with input from across all Shareholding Councils, the Tiaki Wai Establishment Team and legal advisors to all parties, and that the Tiaki Wai Board will be meeting to approve the Transfer Agreement on 11 June 2026;
- (3) approves the transfer of debt from Council to Tiaki Wai, as provided for (and subject, where applicable, to the post-completion adjustments contemplated) by the Transfer Agreement;
- (4) approves the transfer of statutory responsibilities, land and interests in land, assets, contracts, approvals and all other matters from the Council to Tiaki Wai, subject to finalising the relevant Transfer Schedules that will be appended to the Transfer Agreement, resolution of any associated processes under the Transfer Agreement, and completion of all necessary processes and statutory requirements, and for that purpose:
 - (a) delegates to the Mayor and Chief Executive of Hutt City Council the power to finalise the Transfer Schedules and sign all documents required to give effect to such transfers;
- (5) notes that not all land on which water services assets or infrastructure are located will transfer to Tiaki Wai, and as a consequence:
 - (a) delegates to the Chief Executive of Hutt City Council the power to enter into any leases, licences to occupy and easements over Council land considered necessary to ensure appropriate rights to Tiaki Wai and the Council, where land does not transfer; and
 - (b) until such time as formal access arrangements have been secured by way of other appropriate instruments, approves the grant of a standing licence in favour of Tiaki Wai in the form attached to the Transfer Agreement as Appendix 3 Schedule 1;
- (6) delegates to the Chief Executive of Hutt City Council the power to enter into any leases, licences to occupy and easements over Council land considered necessary to ensure appropriate rights for Tiaki Wai and Council, where land does not transfer; and until such time as formal access arrangements have been secured by way of other appropriate instruments, approves the grant of a standing licence in favour of Tiaki Wai in the form attached to the Transfer Agreement as Appendix 3, Schedule 1;

- (7) approves the entering into of a Master Services Agreement with Tiaki Wai, which addresses various shared and transitional services that will be provided between the Council and Tiaki Wai to ensure continuity of waters service delivery and other ancillary matters from 1 July 2026, and delegates to the Chief Executive of Hutt City Council the power to negotiate and agree the terms of the various shared and transitional services and execute those agreements on Council's behalf;
- (8) approves Council entering into all associated agreements, deeds, notices, side letters and other documents contemplated by, or required in connection with the Transfer Agreement, with the final execution of those documents delegated to the Chief Executive of Hutt City Council ("Associated Agreements");

Bylaws

- (9) delegates to Tiaki Wai the power to administer and enforce the Trade Waste Bylaw 2016 and the Hutt City Council Water Supply Bylaw 2022 as per the attached Instrument of Delegation (Appendix 5 attached to the report); and
- (10) approves the making of an invitation to Tiaki Wai to undertake, for all Shareholding Councils, an initial review of all existing water services bylaws that apply across the Service Area, and to then report back to the Partners Committee by no later than 30 April 2027 with recommendations on whether new or amended bylaws should be made by the four territorial authority Shareholding Councils;

Final execution

- (11) delegates to the Chief Executive and Mayor of Hutt City Council to:
 - (a) agree any non-material amendments to the Transfer Agreement on behalf of the Council;
 - (b) execute (and, in the case of any document executed as a deed, deliver on behalf of the Council) the Transfer Agreement, the Associated Agreements and any other documents, instruments, notices, and communications required in connection with them, with such documents to be executed by:
 - A. (in the case of agreements) the Chief Executive of Hutt City Council; and
 - B. (in the case of deeds) Chief Executive of Hutt City Council, in reliance on the Power of Attorney provided in relation to the execution of Deeds for Hutt City Council;
 - (c) publish the final executed version of the Transfer Agreement on Council's website (with any appropriate or required redactions) by no later than 7 July 2026;
 - (d) approve the final forms of the Associated Agreements, and all documents, instruments, notices, and communications, relating to or required in connection with, the Transfer Agreement and the Associated Agreements; and

- (e) do such other things in connection with the Transfer Agreement, as they may consider necessary; and

Reporting

- (12) directs Council officers to report back when all processes and requirements have been completed.

Background

4. Through June and July 2025, Greater Wellington Regional Council, Hutt City Council, Porirua City Council, Wellington City Council and Upper Hutt City Council (Shareholding Councils) all agreed to establish a new water services council-controlled organisation (Water Organisation) that would take over responsibility for delivering water, wastewater and stormwater services across the Metropolitan Wellington Area (Service Area).
5. Following those decisions, the Shareholding Council's prepared and submitted a joint Water Services Delivery Plan (WSDP), which outlined the delivery model that the Shareholding Councils had committed to establishing, and the investment requirements in relation to water services for the wider Service Area. The WSDP was reviewed and then accepted by the Department of Internal Affairs (DIA) in October 2025.
6. In terms of the requirements that follow the acceptance of the WSDP by DIA, there are two key aspects:
 - (a) The first arises under section 23 of the Local Government (Water Services Preliminary Arrangements) Act 2024, which requires that the Shareholding Councils "give effect to the proposals and undertakings... specified" in the WSDP. This includes the proposal to establish and transfer to Tiaki Wai responsibility for water services, as well as all assets, etc, by 1 July 2026.
 - (b) The second arises from the Local Government (Water Services) Act 2025, which sets out the requirements and contents of a Transfer Agreement, and requires that where a jointly owned Water Organisation is established, all the Shareholding Councils must separately enter into a Transfer Agreement with the Water Organisation.
7. This report outlines the required content of the Transfer Agreement (attached to this report as Appendix 2) and discusses the processes and other mechanics that will be followed to achieve the intended transfer of responsibilities, assets, etc to Tiaki Wai. The Transfer Agreement is the effective contract between the Council and Tiaki Wai and has been developed with substantial legal input from across all parties.
8. So that a degree of consistency was achieved across each of the Council's Transfer Agreements, the Tiaki Wai Partners' Agreement established a process for agreeing on a template Transfer Agreement and Transfer Principles. This has occurred, with both documents guiding the approach to documenting the matters that will transfer to Tiaki Wai. Any changes made by the Council to the template reflect Council-specific matters, which warrant specific provisions.

9. In terms of next steps, this report approves the Transfer Agreement prepared for the Council as it currently stands and seeks delegation to allow the Chief Executive to approve any minor amendments that may be required before it is executed by the Council. This is considered a practical approach to allowing this process to proceed and reflects the reality that the Transfer Schedules are continuing to be worked on, with several areas that will require resolutions to be found before execution is possible.
10. The Tiaki Wai Board is meeting on 11 June 2026 to approve the Transfer Agreement, which means that the Council will be able to execute at that time.
11. This report also seeks delegation to allow the Chief Executive to approve and enter into other arrangements and agreements that will be required to support the transfer of responsibilities for water services to Tiaki Wai, which will relate to a range of practical activities that will occur in relation to water services (e.g. billing services, shared / support services, etc).
12. Finally, while the transfer will be effective as at 1 July 2026, there will be further work required after 1 July 2026. This will include asset and land transfers (and other arrangements), share adjustments (based on net asset value recalculations), consent transfers, contract novations and other matters. The formal transfer of these matters will be subject to a range of process requirements (guided by the Partners Agreement and Transfer Agreement), and other statutory and procedural steps. In addition, the Transfer Agreement includes a wash-up provision, which allows the parties to (a) tidy up any errors or omissions with the transfer (e.g. returning assets, etc that should not have transferred to Tiaki Wai, and transferring other assets, etc that may have been omitted at the outset), and (b) reallocate liabilities between one another to ensure the debt transferred by Council to Tiaki Wai accurately reflects the Council's 'water debt' (as calculated in accordance with the consistent methodology agreed by all Shareholding Councils).

Discussion

Previous decision-making by Council

13. When the WSDP was reviewed and then accepted by the Department of Internal Affairs (DIA) in October 2025, it triggered a requirement for Council to "give effect to" the commitment made to establish the new Water Organisation.

Establishment of Tiaki Wai Limited

14. As part of its giving effect to the WSDP, in particular the implementation plan included in the WSDP, the Council worked alongside the other Shareholding Councils and mana whenua partners to develop new Foundation Documents for the new Water Organisation. Those Foundation Documents included a Constitution and Shareholders Agreement (called a Partners Agreement). Refer Council report 20 November 2026 "*Tiaki Wai Metrowater Limited – approval of Foundation Documents*" HCC2025/5/291" for further details.

15. In addition, the partners developed the first Statement of Expectations (SOE) as required under the Local Government (Water Services) Act 2025 (LGWSA).
16. The new Water Organisation, called Tiaki Wai Limited (Tiaki Wai), was incorporated in November 2025. It has been established as a Water Organisation under the LGWSA and, as reflected in the Partners Agreement and SOE, is to take over responsibility for the provision of water supply, wastewater, and stormwater services for the Wellington Metropolitan Area.
17. Across the first four months of 2026, a range of matters have been progressed, including the development of the first Water Services Strategy (WSS) by Tiaki Wai, which has been the subject of public consultation and is now being reviewed by Tiaki Wai before adoption in June. Tiaki Wai has also been working closely with Wellington Water Limited and the Shareholding Councils in relation to the transfer process, with a view to achieving a successful transfer on 1 July 2026.

The legal effect of the Transfer Agreement

18. Under the LGWSA, the responsibility for providing water services sits with a territorial authority. However, there are two primary ways in which this responsibility can be satisfied: by providing water services directly, or by entering into a transfer agreement with a water organisation (which can shift the statutory responsibility to that water organisation).
19. In relation to the Shareholding Councils, the context prior to the decisions made in 2025 was that water services were the responsibility of the councils but delivered on a contract basis by a council-controlled organisation (Wellington Water Limited). Unlike a transfer agreement with a water organisation, the contract delivery model does not shift the statutory responsibility.
20. The effect of the Transfer Agreement will be to shift (transfer) responsibility for providing water services to Tiaki Wai, and transfer all assets, contracts and other matters to Tiaki Wai, either on or after 1 July 2026. What this will mean is that Tiaki Wai becomes the Water Service Provider under the LGWSA for the Service Area, and takes on ownership and responsibility for all the Shareholding Councils water assets, liabilities, etc.
21. This is a significant shift of responsibility, but one that has been consulted on for some time by all Shareholding Councils in the context of the WSDP decision-making process.

Outline of the development of the Transfer Agreement

22. The Transfer Agreement is supported by two documents, the Transfer Principles agreed between the Parties, and the Net Asset Calculation Manual (Attached to this report as Appendix 3 and 4). All three documents were developed by the Shareholding Councils and have since been agreed by all the Shareholding Councils and Tiaki Wai. This has occurred in parallel with the development of any Council specific amendments to the Transfer Agreement (which are required to reflect Council-specific matters and arrangements), and the preparation of the associated transfer schedules (discussed below), which contain the specific details about the matters that will transfer to Tiaki Wai.

23. The Transfer Principles have been prepared to inform the approach to the transfer process, by guiding the identification of relevant assets, land and all other matters that will transfer to Tiaki Wai. Council has prepared its Transfer Agreement in line with the Transfer Principles (as described below).
24. In particular, it is noted that Principle 1 states “All Water Services assets (excluding land), liabilities, obligations and water debts owned or controlled by the Shareholding Councils will transfer to Tiaki Wai”. This principle recognises that the WSDP was prepared on the basis that Tiaki Wai become a fully asset owning Water Organisation and will be responsible for the provision of all three waters services.
25. To assist elected members to understand the process that has been worked through to develop the Transfer Agreement and the Associated Agreements, the following table sets out the key process steps:

High level Process Steps	Date
Public consultation on proposed changes for water services in the Wellington region	March- April 2025
HCC agreed to establish and own a new water services council-controlled organisation with Porirua, Upper Hutt and Wellington City Councils and Greater Wellington Regional Council	27 June 2025
Water Services Delivery Plan approved by Department of Internal Affairs	Early October 2025
HCC approval of Tiaki Wai Foundation documents	20 November 2025
Tiaki Wai Board appointed	December 2025
HCC internal assurance, including HCC Steering Committee approval of the Legal Transfer Questionnaire	January 2026
Officers progress work with Tiaki Wai Establishment team on draft Transfer Agreement, and Transfer Principles	End January 2026
Legal Review of template Transfer Agreement by all Parties	January – March 2026
Agreement of template Transfer Agreement, Transfer Principles and Net Asset Calculation Manual by Shareholding Councils	End April 2026
Tiaki Wai Board acceptance/approval of template Transfer Agreement	1 May 2026
Council approval of Transfer Agreement with delegations to Mayor and Chief Executive for consequential approvals	13 May 2026
Resolution of any minor amendments	From 13 May to 11 June 2026
Tiaki Wai Board meeting to approve all Transfer Agreements	11 June 2026
HCC Mayor and Chief Executive to sign Transfer Agreement and associated documents	12 June 2026
Completion occurs under the Transfer Agreement	1 July 2026
Report back to Council on final arrangements - agreed under delegation	August 2026

Transfer Schedules

26. The Transfer Agreement will have appended to it 18 Schedules and 3 appendices. Collectively, these schedules and appendices will set out the specific matters that will transfer, or not, to Tiaki Wai, as well as other arrangements and processes that have been agreed between the Council and Tiaki Wai.
27. Elected Members have been briefed on the Schedule Content on 7 May 2026 and provided with access to these details prior to this Council meeting.
28. There is a considerable amount of detail recorded in the Transfer Schedules, and they are continuing to be reviewed at the time of Council decision-making. Links to the current schedules have been provided to elected members separately. To assist elected members, an outline of the contents of particular schedules, and the approach taken to the documentation of the Schedules has been provided below, by way of the description of the key aspects of the Transfer Agreement in the next section of this report.
29. Transfer Agreement Schedules:

1	Reserve Land Part A Council Administered Reserves (to be transferred under the Public Works Act) Part B Council Reserve to be transferred under Public Works Act
2	Property Interests Part A - Freehold Land Part B - Easements Part C - Road Reserve Assets Part D - Rail Corridor Assets Part E - Land to be retained by Council
3	Excluded Assets
4	Contractual Arrangements (General)
5	Contractual Arrangements (Commercial Suppliers)
6	Contractual Arrangements (Capital Works Contracts)
7	Development Agreements

8	Council Water Debt and Swaps
9	Leased Equipment
10	Owned Plant and Equipment
11	Consents
12	Excluded Contractual Arrangements
13	Statutory Responsibilities, Functions, Duties and Powers
14	Stormwater Matters
15	Excluded Statutory Responsibilities, Functions, Duties and Powers
16	Excluded Liabilities
17	Employees and Contractors
18	Designations

Key Aspects of the Transfer Agreement and related agreements and processes

Overview

30. Schedule 2, clause 2 of the **LGWSA** requires that a transfer agreement describe “the general nature of the responsibilities for providing water services being transferred”, and “any water services infrastructure and any other assets being transferred”. Clauses 3 and 4 of Schedule 2 then require more “specifics” in terms of the matters that will either transfer or not transfer.
31. The collective effect of Schedule 2 is to guide the content of the Transfer Agreements, with the level of detail and matters to transfer to be determined between the parties.
32. The following narrative provides an outline of key aspects of the Transfer Agreement and the content of the transfer schedules listed above.

Statutory responsibilities and matters of shared interest

33. Schedules 13 and 15 are where the statutory responsibilities, obligations, functions, duties and powers that are to transfer to Tiaki Wai, or be retained by the council, will be recorded.

34. The approach to this aspect of the Transfer Agreements has been informed by the Transfer Principle that reads:
- The Transfer Agreements will document and facilitate the transfer and/or sharing of Water Services related statutory functions and responsibilities. This will include, along with other shared service arrangements, any shared Water Services-related statutory functions and responsibilities (eg in relation to the Building Act, land use planning and resource management, and emergency management, etc).*
35. As anticipated by the Transfer Principles, across all Shareholding Councils an effort has been made to ensure that Schedule 13 is as consistent as possible, by transferring to the Water Organisation all statutory responsibilities, obligations, functions, duties and powers under the LGWSA or under any other applicable legislation, that are required to enable Tiaki Wai to deliver the water services as the Water Service Provider for the Service Area.
36. Each Shareholding Council has certain specific responsibilities that it will transfer to Tiaki Wai, as reflected in Schedule 13 for this Council.
37. Our Council and Upper Hutt City Council are part of a statutory joint venture. Originally, the Hutt Valley Drainage Board was established by the Hutt Valley Drainage Act 1967 to provide drainage in the Hutt Valley. The Councils were required to contribute funding to that Board. The Local Government (Wellington Region) Reorganisation Order 1989 transferred the functions and assets of that Board to Hutt City Council, with Upper Hutt City Council continuing to contribute to a drainage fund and having an interest in any joint venture assets, if they were sold.
38. To transfer these functions and assets, we have inserted provisions in our respective transfer agreements to:
- a. Facilitate the transfer of Council's statutory obligations as administrator under the Hutt Valley Drainage Act 1967 to Tiaki Wai.
 - b. Transfer all joint venture assets to Tiaki Wai.
 - c. Confirm that no further contributions to the drainage fund will be required.
39. Council will also enter into a deed with Upper Hutt City Council to confirm that the joint venture arrangements are at an end, upon execution of the transfer agreements.
40. In terms of matters of shared interest, these arrangements – which are largely operational in nature and will support Council's regulatory role under the RMA, Building Act, emergency management, etc – are being resolved separately, and will be reflected in shared services agreements entered into between Tiaki Wai and Council agreed or in preparation ahead of 1 July 2026.

Water services assets and infrastructure

41. The Transfer Principles included a principle that stated:

All Water Services assets (excluding land), liabilities, obligations and water debts owned or controlled by the Shareholding Councils will transfer to Tiaki Wai

42. This principle was guided by further context that anticipated that assets would transfer where they “predominantly or primarily” relate to the provision of the transferring water services, and on an “as is, where is” basis, but that this was not to provide for the transfer of assets that are decommissioned and/or abandoned.
43. Across the Shareholding Councils there is an extensive list of water services assets that will transfer to Tiaki Wai, with the total asset list running to several hundred thousand separate items.
44. In summary, for the Council, the assets that will transfer include all: contractual arrangements, infrastructure (treatment plans, above ground tanks, pump stations, pipes, sewer mains, etc), plant, equipment, buildings and offices, fleet, financial and intangible assets and other rights and interests that relate to water services.
45. Officers note that a significant number of these assets have been managed by Wellington Water Limited or by contractors for some time, and so there will be little discernible change for Council or community from Day 1 post-transfer in many respects. The key change will be that the assets will be owned by Tiaki Wai, rather than the Council.
46. Council has approximately 80km of abandoned assets, including valves, manholes and hydrants. It is proposed that abandoned assets do not transfer on Day 1, and that they are identified and reviewed by Council and Tiaki Wai, with the potential that they could be transferred at a later date, based on whether they may be used for water services, in the future. If they will not transfer, the parties will agree on the next steps for those assets.

Liabilities

47. All liabilities associated with water services will be transferred to Tiaki Wai unless specifically retained by Council.
48. For completeness, these can include: retentions, expenditure, any employee related liabilities, contractual breaches and general disputes, and any non-compliance issues.

Water Debt

49. Part of the consideration payable by Tiaki Wai to Council for the water-related assets it is receiving from the Council under the Transfer Agreement will be satisfied by way of a novation of the Council’s Water Debt with effect from 1 July 2026. For the purposes of the Transfer Agreement, the Council Water Debt, which is intended to transfer from the Council to Tiaki Wai, is the net amount of debt owed by the Council that is related to Water Services Assets. This net debt is calculated in a way that aligns with the Net Asset Calculation Manual, which has been agreed to by all Councils, so as to be fair across the Shareholding Councils.

50. The debt transfer provisions of the Transfer Agreement require Council to deliver to Tiaki Wai, by 31 May 2026, an estimate of its Council Water Debt as at 31 May 2026. Council is also required to identify a portfolio of debt issuances owed by Council to New Zealand Local Government Funding Agency Limited (LGFA), which are in an aggregate amount as close as reasonably practicable to (but not exceeding) the estimated Council Water Debt. The relevant debt issuances (referred to in the Transfer Agreement as the 'Transferring Water Debt') will be identified in Schedule 8 to the Transfer Agreement and will comprise the actual debt obligations novated to Tiaki Wai at completion.
51. The Transferring Water Debt will transfer from the Council to Tiaki Wai on 1 July 2026 pursuant to a 'Substitution and Transfer Deed' to be entered into between LGFA, Tiaki Wai, the Council and the other Shareholding Councils. The Transferring Water Debt will transfer to Tiaki Wai alongside certain borrower notes issued by LGFA to the Council, as these borrower notes are 'stapled' to the relevant debt issuances that are being transferred.
52. The Transfer Agreement includes wash-up provisions providing for an adjustment payment to be made between Council and Tiaki Wai in respect of the Council Water Debt following receipt of the Council's audited annual financial statements for the financial year ending 30 June 2026. Once the final Council Water Debt amount has been confirmed in Council's audited accounts, a wash-up payment will be made between Council and Tiaki Wai to ensure that the amount of debt assumed by Tiaki Wai is equal to the Council Water Debt. This wash-up payment will either be made in cash or (in the case of a wash-up adjustment payable by Tiaki Wai to Council) by way of a further novation by Council of a commercial report to Tiaki Wai.
53. The wash-up payment is required to be made within 60 days following completion of the net asset adjustment process under the Transfer Agreement by reference to the Council's audited accounts. Assuming the net asset adjustment process is completed during October 2026, the wash-up payment is expected to become payable during the course of December 2026.

Swaps

54. The Transfer Agreement also provides for the economic transfer of an agreed proportion of the Council's swaps portfolio. Rather than completing a legal transfer of the Council's swaps to Tiaki Wai, the Shareholding Councils have each agreed to adopt cash settlement arrangements in respect of their existing swap obligations.
55. Under this approach, the Transfer Agreement includes a mechanism for all of the Council's existing swap positions to be valued on a mark-to-market basis as at 5pm on 30 June 2026 (i.e., the day prior to the planned completion date of 1 July 2026). To ensure fairness and consistency in the approach to swap valuation across all Shareholding Councils, PwC is to be engaged as the Swaps Valuer for all Shareholding Councils under a joint engagement to be entered into between all Shareholding Councils and Tiaki Wai prior to 31 May 2026. In valuing Council's swap portfolio (and those of the other Shareholding Councils), PwC (as Swaps Valuer) will apply an agreed valuation methodology, the details of which are specified in Appendix 4 of the Transfer Agreement.

56. The amount of the cash settlement (referred to in the Transfer Agreement as the 'Swaps Settlement Amount') will be based on the aggregate mark-to-market value of the Council's entire swap portfolio (calculated on a net basis), multiplied by the proportion borne by the Council's Council Water Debt to its total net debt (as reflected in the Council's audited financial statements for the financial year ending 30 June 2026). The Transfer Agreement uses the proportion of Council Water Debt to total net debt as the basis for determining the proportion of the Council's swap portfolio which is attributable to Council Water Debt because the Council (and the other Shareholding Councils) have historically entered into swaps on a portfolio basis and not by reference to specified tranches of 'water debt'.
57. The Swaps Settlement Amount must then be paid in cash by Tiaki Wai to the Council (or the Council to Tiaki Wai, depending on whether the net position is an amount payable to, or by, Council) on the date on which the debt wash-up payment is due to be made under the debt wash-up process (summarised under the 'Water Debt' heading above).
58. This approach achieves an effective economic transfer of liability between Council and Tiaki Wai for the Council's swap positions, while allowing the swaps to stay with the Council and be managed by it, without Council needing to terminate the swaps or incur the costs of a legal transfer.

Land

59. The Transfer Principles anticipate the transfer of land to Tiaki Wai where its primary purpose or predominant use relates to the delivery of water services. This has been a challenging matter to address for many Councils given the extent of land owned on which water infrastructure or assets are located, and the status of the land (in particular where it is a Reserve).
60. In addition, a number of sites involve mixed uses, where water services assets are located on the land but other activities also occur. The Transfer Principles do not strictly contemplate the transfer of mixed-use land.
61. The Transfer Agreement addresses these complexities in a number of ways, by including provisions that work to achieve the transfer of relevant land, as follows:
62. *For Freehold Properties:* The Council can agree to transfer such land to Tiaki Wai pursuant to section 50 of the Public Works Act (PWA), on relevant terms and conditions. This is possible as Tiaki Wai will, after the transfer of responsibilities, be a "water service provider" and therefore a "local authority" under the PWA. As a local authority, the PWA process will be available in relation to Tiaki Wai.

63. *For Council Reserves:* Additional process steps arise for Council Reserves. Where any Reserve land is identified for transfer, based on the land being primarily used for water services. All necessary steps will be taken by the parties to apply to LINZ to arrange for the identified Council Reserves to be set apart for Water Services purposes under section 52 of the PWA. The benefit of this “setting apart” is that once the Reserve land has been specifically identified as being for water services purposes, there is a pathway to transfer that land to Tiaki Wai (including partial allotments without subdivision if necessary), so that it will vest in Tiaki Wai under sections 50 and 20(1) of the PWA. Once it has been set apart for water services, the land will no longer be subject to the Reserves Act (which is necessary because Tiaki Wai is not a “local authority” which can act as an administering authority for the purposes of the Reserves Act. This is considered a practical solution to addressing the reserve land, which is agreed for transfer to Tiaki Wai.
64. *Easements:* Council currently has the benefit of thousands of easements in gross for water-related purposes across the city that Tiaki Wai needs. The benefit of these easements is also capable of transfer using the PWA powers once Tiaki Wai is a Water Service Provider under the LGWSA.
65. *As is Where is:* Council will transfer the Freehold Properties, Council Reserves and the benefit of relevant easements, and the Water Organisation will receive the Freehold Properties, Council Reserves and Easements free of any Encumbrances from the Council (but subject to existing registered interests).
66. As noted above, the PWA processes will only be available once Tiaki Wai is a Water Services Provider, under the LGWSA, which will be from 1 July 2026 (once it is transferred the statutory responsibility for water services). As a result, the transfer of responsibilities is a necessary precursor to any PWA transfers.
67. In total, 78 sites are proposed to transfer to Tiaki Wai from the Council. This is set out in Schedules 1 (for Reserve land) and 2A (for freehold land) that were provided to Councillors separately and will be published once complete. These Schedules include the Seaview Wastewater Treatment Plant, pump stations and potable water tanks on freehold land and drainage reserves.
68. As a result of various site-specific matters, not all land will be able to transfer immediately. In addition, there may be some remaining issues to be resolved for specific land as to whether the “primary or predominant use” is water-related or a different use. To accommodate this, the Transfer Agreement provides a process for such issues to be subsequently raised and resolved by agreement. As a result, some land will remain in Council ownership until any required process is completed, with rights granted to Tiaki Wai to access the land in the meantime.
69. These rights are to be given through a standing licence, which will operate to provide for Tiaki Wai to access and use such land for the purpose of addressing the transferred assets, between 1 July 2026 and the completion of any required land transfer process. The standing licence is included in the Transfer Agreement, attached to this report as Appendix 3, Schedule 1.

70. Looking ahead, where land transfers are involved, there may be a need to agree on an instrument that provides for Council access for certain reasons. This will be resolved by the parties as anticipated by the Transfer Agreement, but could involve the use of easements, leases or licences, if not subdivision, so as to create new parcels that can vest in each party.
71. Finally, where land is to be retained by Council, similar instruments will be required to ensure that Tiaki Wai has appropriate rights to access its assets and infrastructure. An example of this is when an asset is transferred to Tiaki Wai, but the land is retained, in which case Tiaki Wai will require rights to occupy and access the land as needed for its water services.

Contracts

72. While most water related contracts will be novated (transferred) to Tiaki Wai, some complex contracts (such as those which relate to specific projects or assets, or ongoing work) will be retained by the Shareholding Councils.
73. Schedules 4, 5 and 6 outline the contracts that are currently proposed to transfer to Tiaki Wai, but officers note that there may be additional contracts that will transfer (either in full or part), following further assessment and advice on the terms of the contracts.
74. In particular, Council's Infrastructure Acceleration Fund (IAF) related contracts are to transfer, and we are working on the most pragmatic way to achieve this with the National Infrastructure Funding and Financing Limited (NIFFCO), which provides significant funding for that project. We are currently considering an agreement that will allow Tiaki Wai to become the delivery agent for the IAF project.

Approvals (consents and designations)

75. The Transfer Principles set an expectation that Tiaki Wai has the benefit of any resource consents and designations that relate to water services for Day 1. This involves the transfer of consents held by the Council for water services assets and activities, and the transfer of all designations that are for water services purposes.
76. Where any approval cannot be transferred to Tiaki Wai at the time of Completion (**Completion** means completion of the transfer of the Business and Assets in accordance with clause 10 of the Transfer Agreement), that Consent will be held by the Council until it can be transferred, with an agreement in favour of Tiaki Wai that it can rely on that approval. In that case, Tiaki Wai – as the entity undertaking the activity allowed by the approval - will be responsible for compliance with consent conditions and obligations.
77. For reference, the approvals that will transfer to Tiaki Wai will be set out in Schedules 11 and 14. Tiaki Wai will also inherit any notices of requirement that have been lodged by Council in relation to water services works, but that have not yet been confirmed.

Wash up process

78. Given the complexity involved in identifying all relevant assets, contracts and other matters to transfer to Tiaki Wai, the Transfer Agreement includes – as a prudent safeguard – a wash-up process. This process applies during an 18-month transitional period, and allows for additional transfers to occur, or the return of assets to Councils, if it is determined that either of those options is appropriate.
79. For example, matters may have been transferred to Tiaki Wai in error, or it may not have been possible to identify all assets for transfer prior to 1 July, which means that the wash-up process must be used. In addition, where there are unresolved issues in terms of the use of land, the wash-up process provides for those issues to be raised and resolved, as described above. Abandoned assets may be transferred under this provision.
80. As the wash-up process may result in a different value of net assets transferred to Tiaki Wai, there will be a need to address any consideration adjustments through the wash-up process, which will be in accordance with the Net Asset Calculation Manual, as per the initial net asset adjustment.
81. It is anticipated that Hutt City Council will need to issue a Wash-Up Notice and use this process, particularly to account for financial matters where calculations could not be exact ahead of transfer e.g. interest and debt calculations.
82. In the event that water services assets or other matters are identified after the Transitional Period, the Transfer Agreement provides for these to be settled individually, outside the wash-up process.

Other Matters*Collection of charges as Agent for Tiaki Wai*

83. A Transfer Agreement is required to set out arrangements that will be put in place for charging and revenue collection for the water services that are being transferred to Tiaki Wai. For the Council, the transfer will see Tiaki Wai set its water charges (in accordance with its Water Services Strategy), but Council collecting those charges as agent for Tiaki Wai on a cost neutral basis.
84. This is to be reflected in the Transfer Agreement and the associated shared services agreement that will be entered into between the Council and Tiaki Wai.

Shared services

85. In tandem with the Transfer Agreement, all Shareholding Councils and Tiaki Wai have been developing a shared services agreement that sets out how the parties will work together in relation to specific matters, including where there are shared interests.
86. These agreements are largely operational and mostly intended to be transitional in nature. This is because it is anticipated that there will be a moving away from shared services over time, other than for matters where the shared interest will be enduring (ie Tiaki Wai's assistance with consent processes, RMA functions and building consent processing).

87. As set out in the recommendations above, it is proposed that the Council approve a delegation to the Chief Executive to finalise these shared service arrangements and agreements.

Bylaws

88. Section 258 of the LGWSA makes it clear that Councils will need to retain and cannot delegate to Tiaki Wai, the responsibility for making, amending, reviewing and revoking water services bylaws. In addition, Councils have until 27 August 2027 to review those bylaws. Those reviews must be undertaken jointly by all Tiaki Wai Shareholding Councils.
89. The Shareholding Councils can, however, delegate responsibilities under existing water services bylaws to Tiaki Wai, which will allow Tiaki Wai to administer, monitor, enforce and set charges associated with water services bylaws.
90. It is proposed that this delegation is made to Tiaki Wai, to ensure that Tiaki Wai can lawfully administer the Trade Waste Bylaw 2016 and Hutt City Council Water Supply Bylaw 2022.
91. An instrument of delegation has been prepared that formalises the proposed delegation and sets out the specific delegations to Tiaki Wai. It is attached as Appendix 5 to this report.
92. Consideration has been given to the process for the requirement under the LGWSA that all Councils must, by 27 August 2027, review each water service bylaw for consistency with the LGWSA and consider whether to amend or replace those bylaws. The decision on whether to amend or replace cannot be delegated, but officers with the Shareholding Councils and Tiaki Wai have agreed that it would be more efficient to invite Tiaki Wai to undertake the review of the existing bylaws and then make recommendations back to the Shareholding Councils on how to achieve consistency with the LGWSA, and consistency across the Service Area.

Assessment of Options, their Risk and Identification of Preferred Option

93. While the Local Government (Preliminary Arrangements) Act 2024 requires the Council to give effect to the commitments made in the joint WSDP, which involve establishing Tiaki Wai and entering into a Transfer Agreement to effect the legal transfer of responsibilities, officers have sought to identify other options that may be available to the Council.
94. In summary, there are essentially two options available to the Council: approving the Transfer Agreement, or not, which will cause a delay to the approval of the Transfer Agreement (with the extent of delay a variable).
95. Because of the legal requirement to give effect to the accepted WSDP, and the terms of the Partners Agreement, which require the Council to establish Tiaki Wai as a Water Organisation, officers do not consider it reasonably practicable at this stage to decide not to approve the Transfer Agreement entirely, without first progressing an amendment to the WSDP to allow the Council to implement another delivery model option. Officers note that there are specific criteria that must be satisfied before the WSDP can be amended, which may not be engaged in this situation.

96. All options other than approving the Transfer Agreement bring with them a high degree of policy and legal complexity, as well as political and process risks. Officers recommend that the Council approves the Transfer Agreement, as set out in the Recommendations in this report.

Option A: Approve Transfer Agreement (Preferred Option)

97. Option A would see the Council proceed to approve the Transfer Agreement with Tiaki Wai, which would in turn authorise the transfer of land, assets, debt and swaps (in the case of swaps, by way of economic transfer only), approvals, and other matters to Tiaki Wai. This option would also involve Council authorising the Chief Executive to execute the Transfer Agreement and enter into all associated arrangements with Tiaki Wai, to ensure that access and the ability to deliver water services are secured.
98. There are clear advantages with Option A, including that:
- a. It gives effect to the commitments made by Council in the joint WSDP;
 - b. It satisfies the commitments made in the Partners Agreement;
 - c. It aligns with Council's public statements made as part of the Local Water Done Well reforms, and the strong support received from submitters in response to the 2025 public consultation process; and
 - d. It will signal the formal legal step in establishing Tiaki Wai as the single water service provider for the Wellington Metropolitan Area and relieve the Council from any of the obligations that sit with water service providers under the LGWSA, including regulatory compliance.
99. There are, however, some complexities and potential disadvantages, including the fact that Tiaki Wai's initial financial position will be challenging and will require a degree of financial support from the Shareholding Councils. In addition, based on the Transfer Agreement and transitional period, there will be continuing work involved in confirming and perfecting the assets, land and other matters that should transfer to Tiaki Wai.

Option B: Do not approve the Transfer Agreement or any associated agreements, and delay the process

100. As noted above, Option B would involve a decision not to approve the Transfer Agreement at this stage and instead seek to delay the process. Whether or not this Option is taken by Council alone, or by more than one Council, it would lead to significant complexities for all parties.
101. The key reasons for delay would likely be linked to the initial financial position of Tiaki Wai, which is addressed in a separate report in this agenda entitled "*Tiaki Wai – Shareholder Support*", or to provide more time to confirm the content of the Transfer Schedules. Whether the delay is limited to three months or longer, there is a range of complexities and risks that need to be considered.

102. The primary advantage of Option B is that it would provide more time for the Shareholding Councils and Tiaki Wai to work together to identify all assets, etc that will need to transfer to Tiaki Wai, and resolve any residual disagreements in relation to any particular land or other matters. Delay would also provide more time for the development of interim shared services arrangements, to avoid any practical risks arising from Day 1.
103. There are a number of disadvantages and risks with Option B. These include:
- a. That Tiaki Wai would not be transferred responsibility for water services, meaning that those responsibilities would remain with Councils. The reason a partial transfer is not possible (ie. by one Council only) is that the LGWSA requires all Shareholding Councils to approve a Transfer Agreement when establishing a joint Water Organisation, and in practice Tiaki Wai would not likely accept a partial transfer when it has been preparing and planning for the full transfer.
 - b. As the Council would remain a water service provider under the LGWSA, it would continue to be subject to all of the responsibilities, obligations and duties under the LGWSA. Importantly, this would require the Council to provide water services, likely in reliance on a rolled over services contract with Wellington Water Limited (or Tiaki Wai).
 - c. As all assets, debt and responsibilities in relation to water services would remain with the Council, it will need to provide funding for those services. This is a particular challenge given that the Shareholding Councils have [all] removed water services from their Long-term Plans and not proposed to set a rate for water services for the 2026-27 financial year. This would run the risk of leaving water services unfunded until such time as a rate could be set to provide funding to this critical service. The options to set a rate on an urgent basis are limited, with complex processes required to achieve a timely resolution of the matter. In practice, were the Councils to set a rate, they would need to quickly develop a Funding Impact Statement and then set a rate, which we assume would be based on Tiaki Wai's proposed water charges. Depending on the extent of delay, there would likely be a need to amend the LTP to reintroduce water services as an activity that remains Council's responsibility, so that a rate can be set on a longer-term basis until transfer.
104. As outlined above, any delay (no matter how long), would involve a breach of the WSDP and Local Government (Water Services Preliminary Arrangements) Act 2024. This could lead to intervention by Central Government, via the Department of Internal Affairs, with the potential for an external facilitator, monitor, or commission to be appointed.
105. A decision to delay and not approve the Transfer Agreement could lead to a risk that the Directors may resign due to the lack of certainty with the transfer process. This would involve additional costs to appoint new Directors, and time, as the new Directors would then want to complete due diligence before agreeing to accept transfer.

106. Separately from the breach of the WSDP, there is the potential for other forms of Central Government intervention in the transfer process, if the Government were to form the view that there was a “problem” with the establishment process that required some form of intervention (which could involve the appointment of a Commission).
107. To the extent that there could be a delay of several months, this could lead to potential challenges with the collection of rates and a need to either adopt a split rates vs water charges approach across the financial year.
108. For any staff who have been identified as transferring to Tiaki Wai, it would lead to uncertainty and confusion, particularly as offers to staff have been made under a separate change process.
109. Finally, a decision not to approve the Transfer Agreement would likely create significant political and reputational risk, including:
- a. Reinforcing central government’s negative perception of the quality of the Wellington region’s local governance. Given that the decision would be inconsistent with the accepted WSDP, intervention would be a likely consequence.
 - b. Damaging relationships between the Shareholding Councils and mana whenua partners, all of which have invested significant time, and financial resources to achieve the transfer date. Leading to a loss of trust across the Wellington Metropolitan community in the commitments made by the Shareholding Councils, particularly given the long-signalled transfer to Tiaki Wai from 1 July 2026. Given that there will soon be a focus on potential reorganisation, any loss of trust now may be unhelpful in terms of achieving meaningful engagement in future reforms.

Financial implications

110. A separate report in this agenda, entitled “*Tiaki Wai – Shareholder Support*” addresses financial matters related to Tiaki Wai.
111. There has been comprehensive reporting and Council decisions related to water services through the Strategy, Long term Plan and Annual Plan Committee as well as the Audit and Risk Subcommittee. This has included Annual Plan 2026/27 decisions to reduce the rates revenue increase to reflect the removal of water services.
112. Provisions have been made for all water services components to be removed from the Long-term Plan 2024-2034 (LTP), given the intention to transfer Water Services to Tiaki Wai via the LTP amendment process. From 2026/27 onwards, Council will not hold budgets for water services.

Implications for Māori

113. Council has included Mana Whenua Partners in a number of briefings on Water Services Transition. Mana Whenua have provided feedback on those occasions, and Council has integrated that feedback into the various processes and agreements prepared for Transition.

114. Mana Whenua are also represented on the Shareholding Councils' Partners Committee. This Committee has some key decision-making powers under the Partners Agreement.

Consideration of climate change impacts

115. Based on the 2024 New Zealand Infrastructure Commission report, freshwater sources are coming under increasing stress, and the effects of climate change are expected to threaten water security. In addition, New Zealand is experiencing more frequent severe weather, which impacts on water services infrastructure and resilience generally.
116. While only one relevant factor, the establishment of Tiaki Wai is intended to support a refreshed approach to the planning and delivery of water services, with an increased focus on resilience to climate change effects and natural hazard events, through a more independent Water Organisation.
117. Shareholding Councils have specifically set Climate Change provisions in the Statement of Expectations for Tiaki Wai and requested further consideration in the Partners Committee feedback to on the Water Services Strategy.

Decision-making process / policy considerations

118. The report and recommendations made are considered consistent with the Council's previous decisions to establish a Water Organisation, and the commitments made to transfer the Council's responsibilities to the Water Organisation.

Significance

119. The matters considered in this report have been assessed as of high significance against the Council's Significance and Engagement Policy. However, consultation to establish Tiaki Wai has previously been undertaken, with a majority of submitters supporting the establishment of a new Water Organisation, and this legal transfer phase – while significant – is now a key aspect of the implementation of Council's earlier decisions.

Legal Considerations

120. The template Transfer Agreement and template Transfer Schedules have been drafted by Simpson Grierson for the Tiaki Wai Establishment Team, with legal review completed by each Council's lawyers. For the Council, Chapman Tripp was engaged to provide legal advice on the draft template Transfer Agreement.
121. Legal advice has also been sought and received in relation to the content of the Transfer Schedules, including from Simpson Grierson on the processes for the transfer of land, in their capacity as advisors to Tiaki Wai, and Chapman Tripp on the treatment of the Joint Venture for the Hutt Valley for water services.
122. In addition, legal advice has been received by all parties in relation to the associated agreements, as well as specialist advice on certain subject matters that will involve shared services support.

123. In terms of legal compliance and risk, in the event that the Council decides not to complete the transfer by 1 July 2026, this would put the Council in breach of its legal obligations to give effect to its accepted WSDP.

Next steps

124. In the event Council approves the recommendations of this report, the following steps will take place in the short-term:

- The Mayor, Chief Executive and Councillor Edwards will exercise their delegations in respect of facilitating the further processes and documentation approvals for transfer, including approval of the final Transfer Agreement and Transfer Schedules, and all Associated Agreements.
- Shared services arrangements will be progressed and finalised.
- Financial responsibilities under the Net Asset Calculation Manual will be undertaken with key activities in May and June 2026.
- The Tiaki Wai Board will meet on 11 June 2026 to approve the Transfer Agreements of Shareholding Councils.

Appendices

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Reviewed By: Bradley Cato, Chief Legal Officer and Jenny Livschitz, Group Chief Financial Officer

Approved By: Jo Miller
Chief Executive

Summary of Transfer Agreement for Hutt City Council

Terms that are capitalised but not defined in this note have the meaning given to those terms in the Transfer Agreement.

TOPIC	
Purpose of agreement	<ul style="list-style-type: none"> The agreement is between Tiaki Wai Limited (the "Water Organisation") and Hutt City Council (the Council). It is made pursuant to the Local Government (Water Services) Act 2025 ("LG(WS) Act") to transfer responsibility for delivering water services, together with associated infrastructure, assets and liabilities, from the Council to the Water Organisation.
Conditions (clause 2)	<ul style="list-style-type: none"> Completion is conditional upon HCC and each other Participating Council (WCC, GWRC, PCC and UHCC) entering into its own Transfer Agreement by 15 June 2026, and upon the Water Organisation acceding to the LGFA debt programme and entering into the LGFA Novation Deed by 20 June 2026.
Transfer Date and nature of transfers (clause 4 and 8)	<ul style="list-style-type: none"> The date of 'completion' is 1 July 2026. On this date, the following transfers from the Council to the Water Organisation: <ul style="list-style-type: none"> Assets: including plant and equipment (including work-in-progress assets), property assets (freehold properties, council reserves, easements), contractual arrangements, consents, stormwater assets, Wellington Water shares, and records. Assumed Liabilities: including Transferring Water Debt, post-Completion contractual obligations, liabilities relating to assets/responsibilities, employee/contractor liabilities accruing post-Completion, and Accrued Employee Benefits. Statutory Responsibilities: functions, duties and powers relating to water services. Operational responsibility: management and operation of water services in the Hutt City district. Consents (including resource consents and building consents) and resource consent responsibilities. Rights and Claims: both claims the Council holds against third parties and third-party claims against the Council relating to Assumed Liabilities. There is an effective 'economic transfer' of swaps from the Council to the Water Organisation. This means there is a cash settlement of swaps between the Council and the Water Organisation based on a proportion of their net value as at 1 July, rather than completing a legal transfer of the Council's swaps. The settlement payment is expected to be made in December 2026 as part of the debt wash-up process summarised below. Agreed employees will transfer from the Council to the Water Organisation. On 1 July, Wellington Water Limited will be amalgamated with Tiaki Wai Limited and continue on as Tiaki Wai Limited.
Purchase Consideration (clause 6)	<ul style="list-style-type: none"> Alongside the Transfer Agreement is a "Net Asset Calculation Manual", which the Council and other Participating Councils will use to calculate the value of their assets and liabilities. The consideration to be paid by the Water Organisation equals the Council's Actual Net Assets (total asset value less total liabilities and

	<p>debt). It is satisfied by the Water Organisation issuing fully paid ordinary shares to the Council and other Participating Councils.</p> <ul style="list-style-type: none"> • The Water Organisation will do a share issue to all Participating Councils on 1 July, based on the estimated net assets notified by Councils. An adjustment process will take place around October 2026 so that the amount of shares issued to Participating Council reflects the Actual Net Assets of that Participating Council.
<p>Steps to be taken (clauses 9-12 and Appendix 3)</p>	<ul style="list-style-type: none"> • The Transfer Agreement sets out the necessary steps to be taken before 1 July, on 1 July and after 1 July. These include matters such as: <ul style="list-style-type: none"> ○ Where required, seeking counterparty consents to assignment of contracts to the Water Organisation or entering into a deed of novation. ○ Entering into an LGFA Novation Deed to novate existing Council debt. ○ Taking actions and signing documents to transfer title to Assets to the Water Organisation. ○ Executing share transfer forms. ○ Taking necessary steps to effect land transfers, transfer of easement rights or entering into other arrangements to give the Water Organisation access to relevant land. • Following delivery of the Council's audited accounts in October 2026, there is a wash-up process to ensure the transferred debt reflects the Council's audited water debt, with a wash-up payment expected in December 2026.
<p>Wash-up process for assets (clauses 12.6 and 12.7)</p>	<ul style="list-style-type: none"> • The Transfer Agreement contains a process whereby additional assets can be agreed to transfer to the Water Organisation or assets transferred back to the Council where it is agreed that they should not have transferred. There is a wash-up of consideration on 30 June 2027 and a second wash-up on 30 June 2028.
<p>Warranties (clause 14)</p>	<ul style="list-style-type: none"> • Assets are transferred to the Water Organisation on an "as is where is" basis. • The Council provides limited warranties that the Assets are the Council's property and not subject to encumbrances, that Contractual Arrangements are valid and binding, that the Council is not in breach, in a material respect of, Contractual Arrangements, Responsibilities or Designations. • Councils can qualify these warranties by making disclosures to the Water Organisation in a disclosure letter.
<p>Standard provisions (clauses 15-22)</p>	<ul style="list-style-type: none"> • The Transfer Agreement contains other standard provisions, such as: <ul style="list-style-type: none"> ○ Force Majeure relief. ○ A dispute escalation process and an expert resolution process. ○ Confidentiality provisions.

13 May 2026

TRANSFER AGREEMENT

TIAKI WAI LIMITED

HUTT CITY COUNCIL

**SIMPSON
GRIERSON**

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APPENDICES

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AN AGREEMENT DATED

2026

PARTIES

1. **TIAKI WAI LIMITED (Water Organisation)**
2. **COUNCIL (Council)**

INTRODUCTION

- A. The Water Organisation is established to provide water services for the Council and for Wellington Regional Council, Porirua City Council, Upper Hutt City Council and Wellington City Council (the "**Participating Councils**").
- B. The Council is currently responsible for providing Water Services and is the owner of various drinking water, stormwater, wastewater and other infrastructure and assets, as well as various associated liabilities.
- C. The Council enters into this agreement with the Water Organisation, pursuant to sections 12 and 13, and Schedule 2, of the LG(WS) Act, to transfer to the Water Organisation on the Completion Date:
 - (a) specified responsibility for providing Water Services; and
 - (b) specified infrastructure, related assets and other matters that are necessary for the Water Organisation to carry out, and be responsible for, providing Water Services in the Service Area.
- D. The Council and the Water Organisation have completed this agreement in accordance with the LG(WS) Act, the Transfer Principles, and the other requirements of, the Partners Agreement.
- E. For completeness, it is noted that further details relevant to a Council's transfer of the Business into the Water Organisation are set out in further agreements between the parties, including:
 - (a) an agreement relating to the services that will be provided by Council to the Water Organisation, and by the Water Organisation to the Council, in the period following the Completion Date ("**Post-Completion Services Agreement**"). This will include the Water Organisation's appointment of the Council as its agent to collect water services related revenues on behalf of the Water Organisation; and
 - (b) an agreement relating to how the parties will work together in relation to matters of shared interest and agree arrangements for any services by the Water Organisation to the Council ("**Shared Services Agreement**").

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this agreement, unless the context otherwise requires:

Abandoned Assets means former Water Services assets, including pipes or other infrastructure, that have been abandoned by the Council, but not yet decommissioned and will no longer be used or connected to the network, or serve any Water Services purpose.

Access Terms Land means land that will remain in the ownership of the Council where Plant and Equipment or Leased Equipment is located, including Council Administered Reserves.

Accrued Employee Benefits means all wages, salary, annual leave, long service leave, alternative holidays, incentive payments and other employee related benefits and entitlements (but excluding sick leave entitlements) accrued to and unpaid at the Completion Date in respect of the Employees, including any amounts payable to the Employees which are referable to their employment with the Council or the termination of that employment.

Actual Net Asset Adjustment Date means the later of:

- (a) the date that is 20 Business Days after the date by which all Participating Councils have given their Final Net Assets Notice under their Transfer Agreement to the Water Organisation and all other Participating Councils; and
- (b) the date that is 10 Business Days after all disputes relating to any such Final Net Assets Notice, or any amount it contains, have been resolved.

Actual Net Assets means the total amount of the Net Assets that the Council transfers to, or is effectively taken or assumed by, the Water Organisation under this agreement through a relevant mechanism provided for in this agreement (including, without limitation, the operation of the Swap Cash Settlement Arrangements and the Water Debt Washup).

Additional Item has the meaning given to that term in clause 9.9.

Arbitration Notice has the meaning given to that term in clause 16.4(a).

Assets means the assets owned by the Council, or that have been agreed to be, or are intended to be, owned by the Council once completed, directly and primarily relating to the provision of Water Services, being:

- (a) the Plant and Equipment;
- (b) the Council's rights under the Contractual Arrangements;
- (c) the Property Assets;
- (d) the Council's rights under the Consents;

- (e) any assets relating to stormwater listed in, or referred to in, Schedule 14;
- (f) the Council's shares in Wellington Water as at the Completion Date; and
- (g) the Records,

but excludes the Excluded Assets.

Assumed Liabilities means:

- (a) the Transferring Water Debt (recognising the operation of the Water Debt Washup to achieve an effective economic assumption by the Water Organisation of all Council Water Debt);
- (b) the Council's obligations under the Contractual Arrangements in relation to the period after Completion;
- (c) subject to (a), (b) and (d), all Liabilities relating to the Assets or the Responsibilities;
- (d) any Liabilities in respect of the period after Completion which relate to the Employees and Contractors; and
- (e) the Accrued Employee Benefits,

but excludes the Excluded Liabilities.

Authorised Representative means:

- (a) in the case of the Water Organisation, the Chief Executive Officer, or his or her delegate notified to the Council; and
- (b) in the case of the Council, the Chief Executive Officer, or his or her delegate notified to the Water Organisation.

Benefits has the meaning given to that term in clause 11.1(a).

Business means the Water Services carried on by the Council in the Service Area at Completion using the Assets, Employees, Contractors and Contractual Arrangements.

Business Day means any day other than a Saturday, Sunday or statutory public holiday in the Service Area.

Claim includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment or Liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort, statute or otherwise and whether involving a third party or a party to this agreement.

Combined Easements means those easements identified as Combined Easements within the Existing Easement Interests listed in Part B of Schedule 2.

Commencement Date means the date on which this agreement is signed by both parties.

Commercial Paper means debt securities issued by the Council to LGFA prior to Completion at a discount to par, with a maturity date of not more than 12 months from the date of issuance.

Companies Act means the Companies Act 1993.

Completion means completion of the transfer of the Business and Assets in accordance with clause 10.

Completion Date means 1 July 2026 or an alternative date agreed in writing by all Participating Councils and the Water Organisation.

Confidential Information means the provisions of this agreement and all other information of a confidential nature (which, where the confidentiality of the information is not expressly stated, shall be determined by the recipient, acting reasonably) obtained by one party from the other party under or in connection with this agreement, provided that where information relates exclusively to one party, nothing in this agreement will require that party to maintain confidentiality in respect of that information.

Consents means:

- (a) the Resource Consents; and
- (b) all building consents and Designations that are held by the Council at Completion that relate to Water Services.

Contractors means those people agreed by the parties whose contracts will be novated in accordance with clause 8.8.

Contractual Arrangements means:

- (a) the agreements, property leases, arrangements or understandings of the Council relating to Water Services in force as at the Commencement Date, as set out in Schedules 4, 5 and 6;
- (b) the Development Agreements;
- (c) the Equipment Leases; and
- (d) any other such agreement, arrangement or understanding entered into by the Council between the Commencement Date and Completion,

but excludes any Council Water Debt or Swaps, and any agreements, arrangements or understandings of the Council relating to Council Water Debt or Swaps.

Council Administered Reserves means land subject to the Reserves Act 1977 on which the Council carries out Water Services as at the Commencement Date, where the land is not vested in the Council in fee simple, but the Council is otherwise appointed as administering body of the reserve (details of which are set out in Part A of Schedule 1).

Council Reserves means land subject to the Reserves Act 1977 on which the Council carries out Water Services as at the Commencement Date, where the land is vested in the Council in fee simple (details of which are set out in Part B of Schedule 1).

Council Water Debt means the net amount of debt owed by the Council (including to LGFA) which is identified as relating to Water Services assets (including any additional debt incurred by the Council relating to the arrangements contemplated by this Agreement which the Net Asset Calculation Manual contemplates forming part of the Council Water Debt), as at the Completion Date, calculated in accordance with the Transfer Principles and Net Asset Calculation Manual, the amount of which is to be confirmed in accordance with clause 6.4(b)(iii) or, if there is a dispute relating to that amount, determined under clause 6.4(c).

Council Weighted Average Rate means the Council's weighted average cost of borrowing as at 30 June 2026 (expressed as a percentage per annum), calculated as the weighted average of the Council's cost of borrowing (taking into account the effect of any derivative contracts) on a basis agreed between the Council and the Water Organisation prior to Completion.

Counterparty Consents has the meaning given to that term in clause 9.8(a).

Customer Data means all information and data relating to any person who receives Water Services provided by the Council prior to the Completion Date.

Data means:

- (a) planning and building data;
- (a) rates databases;
- (b) property files; and
- (c) growth and spatial development planning data,

which are held by the Council.

Designations means the designations listed in Schedule 18.

Development Agreements means:

- (a) the development agreements relating to Water Services in force as at the Commencement Date, as set out in Schedule 7; and
- (b) any other such agreement, arrangement or understanding entered into by the Council between the Commencement Date and Completion.

Difference has the meaning given to it in clause 12.6(b)(iii).

Dispute Notice has the meaning given to that term in clause 17.2.

Disputing Parties has the meaning given to that term in clause 16.4(a).

Employees means those employees (if any) identified by the Council and agreed by the parties under clause 8.1.

Encumbrance means:

- (a) a mortgage, debenture, charge, lien, pledge, hypothecation, security interest (as that term is defined in the Personal Property Securities Act 1999), title retention, preferential right or other similar instrument, device or power; or
- (b) an interest by way of security for the payment of a debt or any monetary obligation,

and includes any agreement or arrangement to grant or create any of the above.

Equipment Leases means all the agreements, arrangements or understandings under which the Council leases or otherwise has a right to use the Leased Equipment.

Estimated Council Water Debt has the meaning given to that term in clause 9.6(a)(ii).

Estimated Net Assets means the Council's estimate of Net Assets provided under clause 7.4 of the Partners Agreement.

Excluded Assets means the following:

- (a) the Council's interest in this agreement and any other documentation entered into in relation to the transaction the subject of this agreement;
- (b) the assets listed in Schedule 3 as being excluded from the transfer pursuant to this agreement; and
- (c) all websites, and associated domain names, which are owned by the Council.

Excluded Liabilities means all liabilities other than the Assumed Liabilities including the liabilities referred to in Schedule 16.

Excluded Matters means excluded obligations and excluded responsibilities that are not transferred by the Council to the Water Organisation under this agreement, including:

- (a) the Excluded Assets;
- (b) the excluded contractual arrangements listed in Schedule 12;
- (c) the excluded resource consents listed in Part B of Schedule 11;
- (d) without prejudice to clause 12.2, the Swaps Portfolio;
- (e) the excluded statutory responsibilities, functions, duties and powers listed in Schedule 15; and
- (f) the Excluded Liabilities.

Existing Easement Interests means the rights and obligations of the Council as grantee under the easements listed in Part B of Schedule 2 (including the Combined

Easements) which are required for, or primarily related to, the provision of Water Services.

Expert has the meaning given to that term in clause 17.3.

Expert Resolution Process means the expert resolution process in clause 17.

Final Net Assets Notice has the meaning given to that term in clause 6.4(b).

Freehold Properties means the freehold properties listed in Part A of Schedule 2, for which the land is required, or primarily related to, the provision of Water Services.

Force Majeure Event has the meaning given to that term in clause 15.1.

Further Item has the meaning given to that term in clause 12.6(a)(i).12.6(a)(ii)

Hutt Valley Joint Venture means the statutory and contractual arrangements between the Council and Upper Hutt City Council pursuant to:

- (a) the Hutt Valley Drainage Act 1967; and
- (b) Part XII of The Local Government (Wellington Region) Reorganisation Order 1989).

Initial Purchase Consideration has the meaning given in clause 6.2.

Initiating Party has the meaning given to that term in clause 16.4(a).

Joint Venture Assets means those assets which relate to the Hutt Valley Joint Venture, as designated under a subheading "Joint Venture Assets" in the Schedules.

Leased Equipment means:

- (a) the plant, equipment (including computer systems), machinery, hardware, furniture, fixtures and fittings, spares, tools and vehicles used by the Council for Water Services on lease, hire purchase or conditional sale agreement, as at the Commencement Date and which are listed in Schedule 9; and
- (b) any such items acquired by the Council between the Commencement Date and Completion,

but excluding any such items which are no longer the subject of such arrangements between the Commencement Date and Completion.

LGFA means the New Zealand Local Government Funding Agency Limited.

LGFA Novation Deed has the meaning given to that term in clause 9.8.

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

Liability means any loss, liability, obligation, overhead, debt, cost, expense or damage (in each case whether known or unknown, actual, contingent or prospective) of any kind and however arising, including penalties, fines and interest, irrespective of when the acts, events or things which give rise to the liability occurred.

LINZ means Toitū Te Whenua Land Information New Zealand.

Matters in Dispute has the meaning given to that term in clause 17.2.

Net Assets means the total amount of the Council's net assets (based on total asset value less total liabilities and debt) that are transferred to, or effectively taken or assumed by, the Water Organisation through a relevant mechanism provided for in this agreement (including the operation of the Swap Cash Settlement Arrangements, and the Water Debt Washup), as calculated in accordance with the Net Asset Calculation Manual.

Net Asset Calculation Manual means the manual, in the form agreed by specified representatives of the Participating Councils and the Water Organisation in accordance with the Partners Agreement, setting out the accounting principles, policies, procedures, methods, estimation techniques and classifications that will be applied to determine total amount of each Participating Council's Estimated Net Assets and Actual Net Assets.

Non-Transferring Item has the meaning given to it in clause 12.6(a)(ii).

NZDRC Rules has the meaning given to that term in clause 16.4(a).

Participating Councils has the meaning given to it in Recital A.

Partners Agreement means the partners agreement entered into by the Water Organisation, the Participating Councils, Taranaki Whānui ki Te Upoko o Te Ika and Te Rūnanga O Toa Rangatira dated 22 December 2025.

Permitted Encumbrance means any:

- (a) reservation of title by suppliers in the ordinary course of business (providing for payment within 90 days and not overdue);
- (b) lien arising by operation of law in the ordinary course of business and securing an amount that is not overdue; or
- (c) right of netting or set-off arising by operation of law in favour of a bank in the ordinary course of business for the purpose of netting debit and credit balances.

Plant and Equipment means:

- (a) all pipes and other infrastructure (whether over or under ground) used, or capable of being used, for the provision of Water Services in the Service Area which is owned by the Council and which does not form part of the real property transferred under this agreement and:
 - (i) is identified or referred to in Schedule 10 (whether by way of a list or through mapping); and
 - (ii) excludes Abandoned Assets referred to in, or shown in any maps referred to in, Schedule 10, unless these are subsequently agreed to transfer in accordance with clause 5.3;

- (b) the items of plant, equipment (including computer systems), machinery (including motor vehicles (if any)), tools, spares, maintenance materials, fixtures, furniture, and fittings owned by the Council and used in connection with Water Services at the Commencement Date, which are referred to in Schedule 10;
- (c) any such items acquired by the Council between the Commencement Date and Completion; and
- (d) any work-in-progress items of plant and equipment as at 30 June 2026 which have been agreed to be, or are intended to be, owned by the Council once completed, which are listed in Schedule 10,

but excluding the Leased Equipment.

Post-Completion Financial Adjustment means the process described in clause 6.4.

Post-Completion Services Agreement has the meaning given to it in Recital E.

Privacy Laws means:

- (a) the Privacy Act 2020;
- (b) an approved code of practice (as defined in the Privacy Act 2020) that applies to each party; and
- (c) any other law relating to the protection, use, disclosure or storage, of Customer Data that each party must observe.

Property Assets collectively means:

- (a) the Freehold Properties;
- (b) the Council Reserves; and
- (c) the Existing Easement Interests.

Purchase Consideration has the meaning given to it in clause 6.1.

PWA means the Public Works Act 1981.

Records means all records of, and all information (in any format) relating to the Water Services that is held by Council at the Completion Date, including financial records, customer and supplier documentation and accounts (including Customer Data), fixed assets registers, stock registers, system controls and procedures, and databases, but excludes the Data.

Referral Notice has the meaning given to that term in clause 17.3.

Relevant Contract has the meaning given to that term in clause 11.1(a).

Required Swap Proportion means the proportion that the Council Water Debt bears to Total Net Debt as at Completion.

Responsibilities means the Statutory Responsibilities, operational and management responsibility for Water Services, Resource Consent Responsibilities and the responsibility for the stormwater zones set out in Schedule 14.

Resource Consents means the resource consents set out in Part A of Schedule 11, but excluding those resource consents set out in Part B of Schedule 11.

Resource Consents Responsibilities means the responsibilities for complying with the resource consents, and for exercising the associated rights and functions, that are relevant to the Water Services that are transferred by the Council to the Water Organisation as set out in Part A of Schedule 11, but excluding those resource consents set out in Part B of Schedule 11.

Second Wash-Up Date means 30 June 2028.

Service Area means Hutt City district, as referred to in Schedule 2 of the Local Government Act 2002.

Shared Services Agreement has the meaning given to it in Recital E.

Statutory Responsibilities means the statutory responsibilities, functions, duties, and powers concerning the provision of Water Services that are transferred by the Council to the Water Organisation, as set out in Schedule 13, but excluding those statutory responsibilities set out in Schedule 15.

Swap means an interest rate swap transaction entered into by the Council with a hedge counterparty to hedge or manage its interest rate exposure under its borrowings, as identified in Part B of Schedule 8.

Swap Cash Settlement Arrangements means the arrangements to provide for the Water Organisation to assume the Required Swap Proportion of the benefit or cost of the Council's Swaps Portfolio at Completion (in lieu of individual swap transactions being transferred by novation to the Water Organisation as at Completion), as set out in clauses 9.7 and 12.2.

Swap Mark-to-Market Amount means, in relation to a Swap, the amount (if any) which would be payable by the Council to a hedge counterparty, or the hedge counterparty to the Council, on the relevant date if the Swap was terminated by agreement on that date, as determined by the Swaps Valuer in accordance with the Swaps Valuation Protocol and clause 9.7.

Swaps Portfolio means the Council's portfolio of all existing Swaps as at the Completion Date.

Swaps Portfolio Mark-to-Market Amount means the total net amount that would be payable by, or to, the Council as a result of netting all Swap Mark-to-Market Amounts in respect of the Swaps (for this purpose, on the assumption that there is only one hedge counterparty), as determined by the Swaps Valuer in accordance with clause 9.7(b)(ii)(A).

Swaps Settlement Amount means the Required Swap Proportion of the Swaps Portfolio Mark-to-Market Amount.

Swaps Valuer means the party responsible for carrying out the mark-to-market valuation of the Swaps Portfolio in accordance with this agreement, being PwC (or such other party as agreed between the Water Organisation and all Participating Councils).

Swaps Valuation Protocol means the protocol set out in Appendix 4.

Total Net Debt means, at any time, the total net debt of the Council at that time, (where applicable) calculated in accordance with the Transfer Principles and the Net Asset Calculation Manual.

Transaction Documents has the meaning given to that term in clause 1.2(q).

Transfer Agreement means a transfer agreement entered into between a Participating Council and the Water Organisation.

Transfer Principles means the document, in the form agreed by specified representatives of the Participating Councils and the Water Organisation in accordance with the Partners Agreement, setting out:

- (a) the principles and methodology for the identification of the Water Services related assets, liabilities and debt of each Participating Council to be transferred to the Water Organisation under each transfer agreement;
- (b) the method (or options for methods) of transferring Water Services related assets, liabilities and debt of the Participating Councils to the Water Organisation (which may include the Water Organisation agreeing to service and repay debt, or a portion of debt, which shall remain owing by a Participating Council); and
- (c) to the extent not addressed in debt transfer, the method (or options for methods) for recovery by each Participating Council from the Water Organisation of costs incurred by that Participating Council in relation to the planning for, formation of and preparation for provision of any transitional support to, the Water Organisation as a water organisation and water services provider under the LG(WS) Act.

Transferring Water Debt means the particular debt issuances owed by Council to LGFA that are to be transferred by novation to the Water Organisation as at the Completion Date:

- (a) an indicative list of which is set out in Part A of Schedule 8; and
- (b) as such list is finalised in accordance with clause 9.6(b).

Transitional Period means the period from the Completion Date until 30 June 2027.

UHCC Transfer Agreement means the transfer agreement entered into between Upper Hutt City Council and the Water Organisation on or around the date of this Agreement.

Warranty Claim means a Claim under any of the warranties in clause 14.1.

Wash-Up Notice means the notice provided by the Council under clause 12.6(b)(iii).

Water Debt Washup means the arrangements contemplated by clause 12.1.

Water Debt Washup Amount means an amount equal to the Council Water Debt less the Transferring Water Debt, where:

- (a) a positive number represents an amount payable by the Water Organisation to the Council; and
- (b) a negative number represents an amount payable by the Council to the Water Organisation,

in each case, as adjusted in accordance with the proviso contained in clause 12.1

Water Debt Washup and Swaps Settlement Payment Date means the date falling 60 days after the Actual Net Asset Adjustment Date.

Water Services has the meaning given to that term in the LG(WS) Act.

Wellington Water means Wellington Water Limited, a New Zealand company, with company number 1337122.

Wellington Water Amalgamation means the amalgamation of Wellington Water and the Water Organisation, to be effected on or as soon as practicable after Completion.

Wellington Water MWPEs means the MWPEs (as defined in the Wellington Water Shareholders Agreement) which have acceded to the Wellington Water Shareholders Agreement in accordance with clause 2.3 of the Wellington Water Shareholders Agreement.

Wellington Water Services Agreement means the Agreement for Provision of Management Services Relating to Water Services dated 9 August 2019, the sixth variation of which was agreed between Hutt City Council and Wellington Water Limited and expires on 30 September 2026.

Wellington Water Shareholders Agreement means the Shareholders and Partnership Agreement relating to Wellington Water Limited as amended and restated on 9 August 2019, and as subsequently amended and acceded to.

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

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) words in this agreement have the same meaning as in the Companies Act 1993 unless inconsistent with the context;
- (e) a reference to a party, person or entity includes:

- (i) an individual, firm, company, trust, partnership, joint venture, association, corporation, body corporate, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case, whether or not having a separate legal personality); and
 - (ii) an employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person, entity;
- (f) a reference to dollars or \$ is to New Zealand currency and excludes every tax and duty;
- (g) a reference to a clause, appendix or schedule is to a clause, appendix or schedule of this agreement. A reference to a schedule refers to the schedules attached to Appendix 2;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) references to the word 'include' or 'including' are to be construed without limitation;
- (j) a reference to any enactment is a reference to that enactment as is in force in New Zealand and includes any enactment which amends, consolidates, supplements or replaces it, and includes a reference to any regulation, rule, ordinance or by-law made under that enactment. Any terms used in this agreement that refer or relate to an enactment have the same meaning as those terms have in that enactment;
- (k) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (l) an obligation not to do something includes an obligation not to allow or cause that thing to be done;
- (m) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (n) references to one party notifying another, or agreeing or objecting to any matter, or requesting anything, means such party notifying, agreeing, objecting or requesting in writing;
- (o) 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;
- (p) an obligation not to do something includes an obligation not to allow or cause that thing to be done;

- (q) in the event of any inconsistency between any of the following, they will have precedence in the descending order of priority set out below:
- (i) this agreement;
 - (ii) the Post-Completion Services Agreement;
 - (iii) the Shared Services Agreement;
 - (iv) the Net Asset Calculation Manual;
 - (v) the Transfer Principles; and
 - (vi) the Partners Agreement,
- (the **Transaction Documents**).

2. CONDITIONS

2.1 Conditions to be Satisfied: Completion is conditional upon:

- (a) each Participating Council other than the Council entering into a Transfer Agreement with the Water Organisation by 15 June 2026, or such later date as is agreed in writing between the Water Organisation and all Participating Councils; and
- (b) the Water Organisation:
 - (i) acceding to the debt issuance programme operated by LGFA; and
 - (ii) entering into the LGFA Novation Deed with the Council and LGFA,

in each case, by no later than 20 June 2026, or such later date as is agreed in writing between the Water Organisation and all Participating Councils.

2.2 Non-Fulfilment: If the conditions in clauses 2.1(a) and 2.1(b) are not satisfied on or before the condition deadline specified in the relevant clause, this agreement and all other Transfer Agreements will immediately terminate and clause 20.2 shall apply upon such termination.

2.3 Waiver of Conditions: The conditions in clauses 2.1(a) and 2.1(b) are for the benefit of the Water Organisation and all Participating Councils, and may only be waived by agreement between the Water Organisation and all Participating Councils.

3. TERM

3.1 Term: This agreement commences on the Commencement Date and continues until terminated in accordance with clause 20.

4. PURPOSE AND MATTERS TO BE TRANSFERRED

4.1 Purpose of agreement: The parties acknowledge and agree that this agreement is being made pursuant to the LG(W.S) Act and the intention is for the parties to give effect to the decisions made by the Council in relation to the provision of Water Services in the Service Area.

4.2 Agreement to transfer: With effect from Completion (except where this agreement provides otherwise) and on and subject to the terms set out in this agreement:

(a) **Assets and Assumed Liabilities:** The Council shall transfer the Assets and Assumed Liabilities to the Water Organisation, and the Water Organisation shall:

(i) receive the Assets; and

(ii) assume the Assumed Liabilities, including by taking an assignment/novation of the Contractual Arrangements and Transferring Water Debt under clauses 9.8 and 11 (with a further effective economic assumption of liability for the Water Debt Washup Amount (if any) in accordance with clause 12.1),

from the Council, in accordance with this agreement.

(b) **Swaps transaction:** To reflect the economic transfer of an agreed proportion of the Council's Swaps Portfolio in accordance with the Transfer Principles and Net Asset Calculation Manual, the Council and the Water Organisation shall perform their obligations under clauses 9.7 and 12.2.

(c) **Statutory responsibilities, functions, duties and powers:** The Council shall transfer the Statutory Responsibilities to the Water Organisation, and the Water Organisation shall comply with the Statutory Responsibilities as required by this agreement, and the relevant legislation.

(d) **Operational and management responsibility:** The Council shall transfer to the Water Organisation, and the Water Organisation will assume, the overall responsibility for managing and operating the Water Services in the Service Area as required by this agreement, and the relevant legislation.

(e) **Consents and Resource Consents Responsibilities:** The Council shall transfer the Consents and the Resource Consents Responsibilities to the Water Organisation, and the Water Organisation shall comply with the Consents and Resource Consents Responsibilities as required by this agreement, and the relevant legislation.

(f) **Rights and Claims:** The Council shall transfer to the Water Organisation, and the Water Organisation will assume:

(i) all rights that the Council has in relation to any Claims that Council may have against a third party; and

- (ii) all Claims made against the Council by any third party, to the extent such Claims are Assumed Liabilities and in accordance with clause 12.12,

relating to the Assets, Assumed Liabilities or Responsibilities.

- 4.3 Title, property and risk:** Subject to Completion occurring, title to, possession of, property in and the benefit and risk of, the Assets:

- (a) until Completion, remains solely with the Council; and
 (b) passes to the Water Organisation on and from Completion;

except where this agreement provides for legal title to an Asset to transfer after Completion, in which case legal title will pass at the relevant time of transfer, and beneficial ownership, possession, and risk of the Asset will pass at Completion, unless otherwise expressly provided in this agreement.

5. MATTERS NOT TRANSFERRED

- 5.1 No transfer:** Without prejudice to clause 12.2, the Council does not transfer any of the Excluded Matters or any other matters not specified in this agreement as transferring to the Water Organisation, and those matters shall continue to be owned, retained and/or performed and exercised by the Council.

- 5.2 No assumption of Liabilities:** Without prejudice to clause 12.2 and except as expressly provided in this agreement, the Water Organisation only assumes the Responsibilities and the Assumed Liabilities, and does not assume any other Liabilities of the Council in relation to the Assets or otherwise.

- 5.3 Abandoned Assets:** The Council and the Water Organisation agree that Abandoned Assets will not transfer on the Completion Date. The parties have agreed that the process specified in the document entitled "Process for Resolving Abandoned Assets Owned by the Council" will be followed to confirm the status of Abandoned Assets that are not currently used for Water Services, and to determine whether they could subsequently be transferred to the Water Organisation by agreement. If any Abandoned Assets are inadvertently transferred to the Water Organisation on 1 July 2026 and are not subsequently agreed to be retained by Tiaki Wai, such assets will be transferred back to the Council.

6. PURCHASE CONSIDERATION

- 6.1 Purchase Consideration:** The Purchase Consideration is the amount to be paid or otherwise satisfied by the Water Organisation for:

- (a) taking the transfer of the Assets;
 (b) assuming the Assumed Liabilities; and
 (c) entering into the Swap Cash Settlement Arrangements,

being Initial Purchase Consideration, subject to the Post-Completion Financial Adjustment ("**Purchase Consideration**").

6.2 Calculation of Initial Purchase Consideration: The Initial Purchase Consideration will equate to the Council's Estimated Net Assets, which was calculated by the Council and notified to the Water Organisation and each other Participating Council no later than the end of May 2026 in accordance with the Partners Agreement ("**Initial Purchase Consideration**").

6.3 Satisfaction of Initial Purchase Consideration: The Initial Purchase Consideration will be satisfied on Completion by the Water Organisation:

- (a) issuing to the Council such number of fully paid ordinary shares as represents the amount of the Initial Purchase Consideration divided by \$10, and rounded to the nearest whole number (with the final issue price of those shares to be determined under clause 6.4(f)); and
- (b) entering into, and performing its obligations under, the LGFA Novation Deed.

6.4 Post-Completion Financial Adjustment:

(a) The parties acknowledge that the Initial Purchase Consideration is calculated on the basis of the Council's best estimate of its Estimated Net Assets as at the end of May 2026.

(b) On or prior to the date falling 15 Business Days after the date on which the Council's auditors issue their final sign-off in respect of the Council's audited annual financial statements for the financial year ending 30 June 2026, the Council will give notice ("**Final Net Assets Notice**") to the Water Organisation and the other Participating Councils, in accordance with clause 7.5 of the Partners Agreement, setting out:

- (i) the Council's Actual Net Assets as at the Completion Date;
- (ii) Total Net Debt as at the Completion Date;
- (iii) the actual amount of Council Water Debt reflected in the calculation of the Council's Actual Net Assets as at the Completion Date;
- (iv) the Water Debt Washup Amount; and
- (v) the Swaps Settlement Amount,

together with sufficient supporting information evidencing the calculation of those amounts (including details of all calculations anticipated by the Net Asset Calculation Manual). If the audit sign-off in respect of the Council's audited annual financial statements is qualified, then the Council will include in its Final Net Assets Notice full details of the qualification and how the qualification has been taken into account in any information or figures included in the Final Net Assets Notice, including the amount of any adjustment made to figures which would otherwise have been included in the Final Net Assets Notice.

- (c) Once the Council has received the Final Net Assets Notice of all other Participating Councils under their Transfer Agreements, it will have 15 Business Days to raise any disputes under clause 2.2(b) of the Partners Agreement, and the expert resolution process in clause 15 of the Partners Agreement shall then be followed in relation to any such dispute, otherwise the Council will be taken to have accepted the Final Net Assets Notices of all other Participating Councils. For the avoidance of doubt, in applying clauses 2.2(b) and 15 of the Partners Agreement to any such dispute, those clauses shall extend to any dispute relating to information contained in the Final Net Assets Notice, as if it was a dispute relating to the Actual Net Assets of the Council.
- (d) Once the Water Organisation has received the Final Net Assets Notice of all Participating Councils under their Transfer Agreements, it will have 15 Business Days to raise any dispute relating to information contained in the Final Net Assets Notice, and the expert resolution process in clause 15 of the Partners Agreement shall then be followed in relation to any such dispute, otherwise the Water Organisation will be taken to have accepted the Final Net Assets Notices of all Participating Councils.
- (e) The Water Organisation will use:
- (i) the amount of Actual Net Assets finally determined under clauses 6.4(b), 6.4(c) and 6.4(d), after resolution of any disputes; and
 - (ii) the equivalent amounts of actual net assets finally determined for the other Participating Councils under their Transfer Agreements and the Partners Agreement,
- to calculate the amount of additional fully paid ordinary shares in the Water Organisation to be issued to the Council and the other Participating Councils so that:
- (iii) each Participating Council's total number of shares in the Water Organisation is equivalent to the dollar amount of their Actual Net Assets (rounded to the nearest dollar); and
 - (iv) the issue price of all shares in the Water Organisation is one dollar per share.
- On the Actual Net Asset Adjustment Date, in full and final satisfaction of the Purchase Consideration, the board of the Water Organisation will issue each Participating Council an additional number of fully paid ordinary shares to reflect the amounts calculated in accordance with this clause, make entries in the share register of the Water Organisation to record the issue of shares and notify the Companies Office of the issue of shares, and the Council consents to such issue.
- (f) The final Purchase Consideration will be the amount of Actual Net Assets finally determined under this clause 6.4 and the Partners Agreement, and the final consideration per share issued to the Council under this clause 6 shall

be one dollar, reflecting the Actual Net Assets of the Council (rounded to the nearest dollar) divided by the number of shares issued to the Council.

7. TAX

7.1 The parties agree and acknowledge that, pursuant to section 255 of the LG(WS) Act, they are treated as the same person for the purposes of the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994) and, therefore, no tax consequences arise in respect of the transaction contemplated by this agreement as the transaction involves the Council transferring the role of providing Water Services to the Water Organisation.

7.2 If a payment under or in connection with this agreement relates to or is expressly calculated under this agreement by reference to any cost, expense, loss or outgoing of any person (relevant expense), then notwithstanding anything else in this agreement the payment will be determined in the first instance with reference to the relevant expense reduced by an amount equal to any input tax deduction available to the person in respect of the relevant expense under the Goods and Services Tax Act 1985.

8. EMPLOYEES/CONTRACTORS

8.1 Identification of affected employees: Pursuant to clause 1 of Schedule 1 of the LG(WS) Act, the Council has identified, and the parties have agreed on, the individuals affected by that legislation. Those individuals who have been offered and accepted employment with the Water Organisation are listed in Schedule 17.

8.2 Reasonable endeavours: The parties shall use all reasonable endeavours to facilitate the transfer of each Employee.

8.3 Consultation with Employees: The Council has, prior to the Commencement Date, undertaken a consultation period as required by the Council's employment agreements with the Employees, which may have included consultation with Employees and their union.

8.4 Offer of employment: The offers of employment that have been made by the Water Organisation were:

(a) on the same terms as the Employees' current terms with the Council and with their continuous service recognised; and

(b) conditional on:

(i) the transfer proceeding and with effect from the Completion Date; and

(ii) Employees remaining employed by the Council until the Completion Date.

8.5 Access to Employees and Contractors: The Council has allowed, prior to the Commencement Date, and will allow between the Commencement Date and

Completion, at such times as mutually agreed by the parties, each acting reasonably and in good faith, the Water Organisation:

- (a) access to each Employee and Contractor to discuss the transfer; and
- (b) subject to obtaining each Employee's and Contractor's consent to disclosure, if required, a copy of each Employee's employment records (or equivalent for Contractors) with the timing of delivery to take into account the Council's operational activities.

8.6 Water Organisation's Assumed Accrued Employee Benefits: From Completion, the Water Organisation assumes responsibility for, and indemnifies the Council against, any Liability arising from or in connection with Accrued Employee Benefits.

8.7 Return of Employee information: Where any Council employee, prior to the date of this agreement or Completion, did or does not accept an offer of employment from the Water Organisation (and therefore is not an Employee for the purposes of this agreement), the Water Organisation will, at the option of the Council, return to the Council or destroy all personal information provided to the Water Organisation in relation to such employee (including but not limited to all employment records obtained).

8.8 Identification of Contractors: The parties have agreed, prior to the Commencement Date, which individuals will have their terms and conditions novated to the Water Organisation ("**Contractors**"). Those Contractors are listed in Schedule 17.

9. PRE-COMPLETION OBLIGATIONS

9.1 Positive obligations of Council: Between the Commencement Date and Completion, the Council shall, subject to clause 9.4 (but without limiting the negative obligations of the Council in clause 9.2 or 9.3):

- (a) continue to perform the Water Services, and operate and maintain the Assets, in the normal course in accordance with the business practices employed by the Council as at the Commencement Date;
- (b) continue to make such payments and discharge such obligations in a manner consistent with the timing and method of payment or discharge employed by the Council in the 12 month period prior to the Commencement Date; and
- (c) promptly notify the Water Organisation of:
 - (i) any law suits, Claims, proceedings (other than normal debt collection proceedings), investigations or adverse events which may occur, be threatened, brought, asserted or commenced against it, its councillors or employees, involving or affecting the Business, the Assets, the Assumed Liabilities, and/or the Responsibilities; and
 - (ii) any breach by the Council, in any material respect, of any of the Responsibilities, any of the Designations, or the Contractual

Arrangements, or any breach, in any material respect, by any counterparty to the Contractual Arrangements.

9.2 Negative obligations of Council: Between the Commencement Date and Completion, the Council shall not, subject to clause 9.4 (but without limiting the positive obligations of the Council in clause 9.1 or 9.3):

- (a) alter any of the conditions of employment and/or engagement of the Employees or Contractors (other than as required to provide for changes required to meet agreements with unions, salary increases and the payment of bonuses in accordance with the ordinary course of operations of the Council, provided such changes have been notified in advance to the Water Organisation);
- (b) agree to amend any of the terms of any Contractual Arrangement; or
- (c) acquire or dispose of any of the Assets, or enter into any new Assumed Liabilities or swap transactions, other than in the ordinary course of conducting the Business (or, in the case of swap transactions, in the ordinary course of the Council's business).

9.3 Interim property obligations: Between the Commencement Date and the later of Completion or registration of any declaration or transfer instrument relating to any Property Asset, the Council shall (in addition to complying with its obligations in clause 9):

- (a) maintain all Property Assets according to existing practice and existing maintenance and works schedules;
- (b) not acquire any new Property Assets or dispose of, vary or otherwise in any way deal with any of the Property Assets, unless otherwise agreed between the Council and the Water Organisation; and
- (c) take such steps as required by Appendix 3 to prepare for the transfer of the Property Assets.

9.4 Exceptions: Clauses 9.1, 9.2 and 9.3 do not prevent the Council from doing anything that:

- (a) is expressly permitted by this agreement or is otherwise agreed by the parties in writing; or
- (b) is approved in writing by the Water Organisation.

9.5 Additional agreements: The parties will negotiate and agree the form of the following documents and these documents will be signed on or before the Completion Date:

- (a) the Post-Completion Services Agreement, which will include statements of work covering amongst other matters:
 - (i) the terms relating to the Water Organisation appointing the Council as its agent to collect Water Services related revenues on

behalf of the Water Organisation, in accordance with clause 6 of Schedule 2 of the LG(WS) Act;

- (ii) how and when the Council will pass revenue collected on to the Water Organisation, including details of transitional arrangements and the duration of those arrangements; and
 - (iii) any associated fees and expenses that will be charged and retained by the Council;
 - (iv) the payment by the Council of development contributions, or financial contributions to which section 129(3) of the LG(WS) Act applies; and
- (b) the Shared Services Agreement, which will detail how the parties will work together in relation to matters of shared interest, including:
- (i) when the Council is performing and exercising its functions, duties, and powers under the Building Act 2004;
 - (ii) land use planning and resource management planning (including consent processes); and
 - (iii) the performance or exercise of any statutory duties, and powers of the parties that are relevant to both parties, such as in respect of emergency management.

9.6 Determination of Transferring Water Debt: The Council shall, at the same time as it delivers its Estimated Net Assets in accordance with clause 7.4 of the Partners Agreement, deliver to the Water Organisation a notice:

- (a) specifying the amount of:
 - (i) estimated Council Water Debt taken into account in the Estimated Net Assets;
 - (ii) estimated Council Water Debt that would have been taken into account in the Estimated Net Assets if any debt that will or may be incurred by the Council in the period from the date of the estimate to the Completion Date was disregarded (**Estimated Council Water Debt**); and
 - (iii) estimated Total Net Debt as at the Completion Date (to be used for the purposes of calculating the estimated Required Swap Proportion under clause 9.7(b)(ii)(B)); and
- (b) attaching an updated version of Part A of Schedule 8, determined in accordance with the Transfer Principles and the Net Asset Calculation Manual, which shall consist of whole (and not partial) debt issuances owed by the Council to LGFA that, in aggregate, amount to a sum that is as close as reasonably practicable to, but does not exceed, the Estimated Council Water Debt (which shall be the final Transferring Water Debt).

9.7 Determination of Swap Values:

- (a) Prior to 31 May 2026, the Water Organisation and the Council (together with the other Participating Councils) agreed the engagement of the Swaps Valuer (who shall be engaged by the Water Organisation and the Participating Councils on a joint basis).
- (b) The parties shall ensure that:
- (i) as at 5pm on the Business Day immediately prior to the Completion Date, the Swaps Valuer shall undertake an independent valuation of each Swap as at that time in accordance with the Swaps Valuation Protocol, in order to determine:
- (A) the Swap Mark-to-Market Amount for each Swap; and
- (B) the Swaps Portfolio Mark-to-Market Amount; and
- (ii) promptly, on the Completion Date, the Swaps Valuer shall deliver a notice to the Council and the Water Organisation setting out:
- (A) the Swap Mark-to-Market Amount for each Swap and the Swaps Portfolio Mark-to-Market Amount, in each case determined in accordance with the Swaps Valuation Protocol;
- (B) the estimated Required Swap Proportion (for this purpose, based on the Estimated Council Water Debt instead of the Council Water Debt and the estimate of Total Net Debt provided under clause 9.6(a)(iii)); and
- (C) based on the foregoing, the estimated Swaps Settlement Amount that will be payable by the Water Organisation or the Council (as the case may be) to the other in order to reflect the economic transfer of an agreed proportion of the Council's Swaps Portfolio in accordance with the Transfer Principles and Net Asset Calculation Manual,
- together with sufficient supporting information evidencing the calculation of those amounts.

9.8 Novation and Counterparty Consents:

- (a) Prior to Completion:
- (i) if a Contractual Arrangement requires counterparty consent to assignment or novation, the Council shall use all reasonable endeavours to have each of the counterparties to the Contractual Arrangement:
- (A) provide such consent to the assignment of the Contractual Arrangement to the Water Organisation with effect from Completion, on terms that are acceptable to

both the Council and Water Organisation ("**Counterparty Consents**"); or

(B) where novation is required by the Contractual Arrangement, enter into a deed of novation, on terms acceptable to each of the Council and the Water Organisation (acting reasonably), to novate the Contractual Arrangement to the Water Organisation with effect from Completion; and

(ii) in respect of any agreements relating to Transferring Water Debt, the Council must use best endeavours to procure that LGFA enters into a deed of novation with the Council and the Water Organisation, on terms acceptable to each of the Council and the Water Organisation (acting reasonably), to novate the relevant agreements relating to Transferring Water Debt (together with all outstanding 'borrower notes' associated with that debt) to the Water Organisation with effect from Completion (**LGFA Novation Deed**).

(b) The Water Organisation shall provide such assistance to the Council as it reasonably requests in relation to clause 9.8(a).

(c) If, in relation to any Contractual Arrangement falling under clause 9.8(a)(i):

(i) no deed of novation has been entered into in respect of that Contractual Arrangement; and

(ii) where a Counterparty Consent is required in respect of that Contractual Arrangement, that Counterparty Consent has not been obtained,

on or before Completion, the Water Organisation shall not delay or fail to undertake Completion and clause 11 will apply.

9.9 Additional assets, responsibilities, liabilities and Consents: If, before Completion, the Council or the Water Organisation identifies any asset, responsibility, Liability, contract or Consent held by the Council that:

(a) is necessary for the Water Organisation to carry on the Business after Completion in a manner consistent with how the Business was carried on during the 12 months prior to Completion; and/or

(b) primarily relates to the provision of Water Services,

other than an Excluded Asset ("**Additional Item**"), then the Authorised Representatives may agree to vary this agreement, so that the Additional Item is added to the relevant schedule of this agreement, and any asset or liability associated with that Additional Item will be accounted for in the calculation of Actual Net Assets. If the parties cannot agree on such a variation, the Expert Resolution Process will apply.

10. COMPLETION

10.1 Time of Completion: Completion of the transfer of the Assets, Assumed Liabilities, and Responsibilities ("**Completion**") shall take place electronically not later than 10am on the Completion Date, or at such other time and place as may be agreed between the parties.

10.2 Obligations on Completion: At Completion:

- (a) the Water Organisation shall satisfy the Initial Purchase Consideration in accordance with clause 6.3, make entries in the share register of the Water Organisation to record the issue of shares under clause 6.3 and notify the Companies Office of the issue of shares, and the Council consents to such issue;
- (b) subject to clause 10.4, legal and beneficial title to, risk to, and possession of, the Assets shall be given by the Council and accepted by the Water Organisation, and the Council will deliver all Assets, possession of which passes by delivery, at the places they are situated;
- (c) the Council shall take such actions, and sign and deliver to the Water Organisation (together with all relevant documents of or evidencing ownership) such documents and other things necessary, to transfer to the Water Organisation full and unencumbered (other than by way of Permitted Encumbrances) legal and beneficial title to, and possession of, the Assets as the Water Organisation may reasonably require, including by following the procedures set out in Appendix 3;
- (d) the Water Organisation assumes the Assumed Liabilities and shall take such actions, and sign and deliver to the Council such documents and other things necessary, for the Water Organisation to assume full responsibility for the Assumed Liabilities (including as provided for in clauses 9.8 and 11), as the Council may reasonably require;
- (e) the Water Organisation or the Council (as the case may be) assumes the obligations provided for in clause 12.2 in respect of the Swaps Portfolio;
- (f) the Water Organisation assumes the Responsibilities and shall take such actions for the Water Organisation to assume full responsibility for the Responsibilities as the Council may reasonably require;
- (g) the Council will provide the Water Organisation with access to the Records and the Data in accordance with clause 12.10;
- (h) each party must sign (to the extent it has not already done so) and deliver to the other party a copy of the Post-Completion Services Agreement, the Shared Services Agreement and the LGFA Novation Deed;
- (i) the Council must deliver to the Water Organisation:

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- (i) duly executed transfers to the Water Organisation of all the shares it holds in Wellington Water in registrable form together with the share certificates (if any) for those shares;
 - (ii) evidence reasonably satisfactory to the Water Organisation that the transfer of those shares to the Water Organisation has been recorded in Wellington Water's share register so that the Water Organisation is recorded as the legal owner of those shares;
 - (iii) evidence reasonably satisfactory to the Water Organisation that the transfer of those shares to the Water Organisation has been notified to the Companies Office, such that the Water Organisation is shown on the Companies Register as the holder of those shares; and
 - (iv) a resolution of the board of directors of Wellington Water approving the transfers of those shares and directing that, on presentation of the executed transfer, the Water Organisation be entered in Wellington Water's share register as the holder of those shares and the existing share certificates (if any) for those shares be cancelled; and
- (j) the Council must deliver to the Water Organisation:
- (i) transfers of the Consents (if any), which do not automatically pass to the Water Organisation on Completion as the registered owner of any freehold land comprising part of the Assets, duly executed by the Council (to the extent held by the Council) or executed by the relevant consent holder(s) (which the Council shall procure, to the extent the Consents are held by a related party of the Council) in each case in a form satisfactory to the Water Organisation (acting reasonably); and
 - (ii) confirmation that the Council has advised the Minister for the Environment and the relevant territorial authority of the transfer of any Designation(s) pursuant to section 180 of the Resource Management Act 1991 (or any corresponding section of any successor legislation).
- 10.3 Assignment of rights:** With effect from Completion, and subject to clauses 9.8, 10.4 and 11, the Council assigns to the Water Organisation all its property and contractual rights in the Assets.
- 10.4 Qualification of Council delivery obligations:** To the extent that it is not reasonably practicable for the Council to comply with clause 10.2 on the Completion Date in relation to:
- (a) any Plant and Equipment, the relevant Plant and Equipment will be transferred to the Water Organisation as soon as is reasonably practicable after Completion, the Water Organisation shall be provided with access to, and shall take operational responsibility for, that Plant and Equipment, and

the Council will follow all reasonable directions of the Water Organisation in relation to such Plant and Equipment;

- (b) any Contractual Arrangement, clause 11 shall apply to that Contractual Arrangement;
- (c) any of the Property Assets for which the transfer is not completed on the Completion Date, the Council will grant a licence to the Water Organisation as described in paragraph 3 of Appendix 3;
- (d) any Consents, the arrangements specified in clause 12.5 shall apply to those Consents; and
- (e) any Records, the Council shall provide access to or copies of those records to the Water Organisation to the maximum extent which is reasonably practicable, and use all reasonable endeavours to transfer those records to the Water Organisation as soon as is reasonably practicable in accordance with clause 12.10,

and the Council's obligations under clause 10.2 are qualified accordingly. The effect of this clause shall not be taken into account in the calculation of Actual Net Assets.

10.5 Completion simultaneous: The actions specified in clauses 10.2 and 10.3 must take place on the same day. Subject to clause 10.4, if any of the documents required to be delivered, or actions required to be taken, pursuant to clause 10.2 are not delivered or taken for any reason, the Water Organisation is entitled, without prejudice to any of its other rights or remedies to:

- (a) effect Completion so far as is practicable having regard to the defaults which have occurred and in so doing either to release, or without releasing (as the Water Organisation may elect), the Council from Liability to comply as soon as reasonably practicable with its obligations under that clause; and/or
- (b) if any default is not remedied within 20 Business Days after the Completion Date, sue for specific performance.

10.6 Wellington Water Provisions:

- (a) With effect from the end of the day immediately prior to the Completion Date, but subject to Completion and the agreement of the Wellington Water MWPEs and all other Participating Councils, the Council agrees that the Wellington Water Shareholders Agreement is terminated and of no further effect. This clause, together with the corresponding clauses in the Transfer Agreements of the other Participating Councils, constitutes and has effect as notice of termination.
- (b) The transfer of all shares in Wellington Water to the Water Organisation is approved, and the Water Organisation is approved as a transferee of those shares, for the purposes of clause 7 of Wellington Water's constitution. This clause, together with the corresponding clauses in the Transfer Agreements of the other Participating Councils, constitutes and has effect as a special resolution of Class A Shareholders in Wellington Water in writing under

section 122 of the Companies Act and clause 9.4 of Wellington Water's constitution.

- (c) The Wellington Water Amalgamation is approved as a "Shareholder Reserved Matter" for the purposes of clause 5.3(b) of the Partners Agreement and, to the extent the Wellington Water Amalgamation is a major transaction (as defined in the Companies Act) of Wellington Water or the Water Organisation, it is approved for the purposes of section 129 of the Companies Act. This clause, together with the corresponding clauses in the Transfer Agreements of the other Participating Councils, constitutes and has effect as:
- (i) a special resolution of Class A Shareholders in Wellington Water in writing under section 122 of the Companies Act and clause 9.4 of Wellington Water's constitution; and
 - (ii) a special resolution of shareholders in the Water Organisation in writing under section 122 of the Companies Act.
- (d) With effect on and from the Wellington Water Amalgamation, the Council's Wellington Water Services Agreement shall terminate with effect from the end of 30 June 2026, and Wellington Water, the Water Organisation and the Council shall have no further rights or Liabilities under the Wellington Water Services Agreement, other than service charges or other fees payable by the Council in respect of the period up to the end of 30 June 2026.

11. CONTRACTUAL ARRANGEMENTS

11.1 Assignment and Novation:

- (a) Subject to clause 9.8 and Completion, and on and with effect from the Completion Date, the Council assigns and the Water Organisation accepts an assignment of all of the Council's rights under, benefits of and interests in ("Benefits"), and assumes the burden of, the Contractual Arrangements (each a "Relevant Contract") which are capable of assignment without the consent of the counterparty.
- (b) This agreement does not constitute an assignment or an attempted assignment, or novation or attempted novation as the case may be, of a Relevant Contract if an assignment or attempted assignment requires the consent of the counterparty to the Relevant Contract and would constitute a breach of that Relevant Contract if an assignment were made without that consent.

11.2 Consent to transfer of Relevant Contracts:

- (a) If the consent of a third party is required for the assignment, and has not been obtained prior to Completion, the Council must continue to use all reasonable endeavours to obtain that consent by or as soon as reasonably practicable after Completion, on terms that are acceptable to both the Council and the Water Organisation.

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- (b) Pending the transfer of any Relevant Contract to the Water Organisation under 11.1, the Council must:
- (i) hold the Benefits of the Relevant Contract on trust for the Water Organisation and account to the Water Organisation promptly after receipt by it for the value of any Benefit of the Relevant Contract that arises (or relates to the period) after the Completion Date; and
 - (ii) not agree to any termination, amendment or variation of, or waiver of any of the Council's rights under the Relevant Contract without the prior written approval of the Water Organisation.

11.3 Performance of Relevant Contracts:

- (a) The Council must perform and observe all obligations of the Council under any Relevant Contract which are due to be performed (or relate to the period) before the Completion Date.
- (b) The Water Organisation must, to the extent it lawfully can, assume, perform and observe all obligations of the Council under any Relevant Contract (including any Relevant Contract the Benefits of which are held on trust under clause 11.2(b)(i)) which are due to be performed (or relate to the period) on and after the Completion Date, as well as any obligation to make any payment in respect of the Relevant Contracts.

11.4 Transfer of Relevant Contracts Unavailable: If, despite their reasonable endeavours, the Council and the Water Organisation are unable to (including because any third party consent required cannot be obtained) transfer a Relevant Contract under 11.2(a):

- (a) clause 11.3 will continue to apply, unless the Council and the Water Organisation otherwise agree; and
- (b) if the Water Organisation is of the reasonable opinion (notified to the Council, with supporting detail) that the Relevant Contract:
 - (i) involves unreasonably burdensome obligations (to be performed by the Water Organisation under clause 11.3(b));
 - (ii) is causing or is likely to cause the Water Organisation to incur losses (i.e. the revenues recovered under the Relevant Contract do not cover the costs of performance); or
 - (iii) is not on arm's length commercial terms,then the Council must, if requested by the Water Organisation:
 - (iv) seek termination of the Relevant Contract on reasonable terms approved by the Water Organisation; or
 - (v) seek to renegotiate the Relevant Contract in accordance with the Water Organisation's instructions,

provided that the Water Organisation will meet the costs of the Council reasonably incurred in relation to meeting such a request.

The effect of this clause shall not be taken into account in the calculation of Actual Net Assets.

12. POST-COMPLETION PROVISIONS

12.1 Payment of Water Debt Washup Amount: In order to ensure that the amount of debt that is assumed by the Water Organisation under this agreement is equal to the Council Water Debt, the parties shall ensure that, by no later than the Water Debt Washup and Swaps Settlement Payment Date:

- (a) if the Water Debt Washup Amount is a positive number, the Water Organisation shall either:
 - (i) (if the Council holds sufficient Commercial Paper) enter into a deed of novation with the Council and LGFA, on terms acceptable to each of the Council and the Water Organisation, to novate an amount of Commercial Paper that has an aggregate purchase price (at the relevant discounted rate) that is equal to the Water Debt Washup Amount to the Water Organisation, with effect from the Water Debt Washup and Swaps Settlement Payment Date; or
 - (ii) make a payment of cash to the Council in an amount equal to the Water Debt Washup Amount,
- at the election of the Water Organisation; or
- (b) if the Water Debt Washup Amount is a negative number, the Council shall make a payment of cash to the Water Organisation in an amount equal to the Water Debt Washup Amount,

provided that, in calculating the Water Debt Washup Amount in accordance with this clause 12.1, an adjustment shall be made to the Water Debt Washup Amount to account for any LGFA borrower notes that either (A) (in the case of paragraph (a) above) would have been novated by the Council to the Water Organisation at Completion if the relevant Council Water Debt had transferred to the Water Organisation in accordance with this Agreement, or (B) (in the case of paragraph (b) above) would have been retained by the Council as an asset instead of being transferred to the Water Organisation at Completion.

In addition, where:

- (a) clause 12.1(a)(ii) applies, the Water Organisation shall, at the same time that it pays the Water Debt Washup Amount, pay to the Council interest on the Water Debt Washup Amount calculated at the Council Weighted Average Rate in respect the period from the Completion Date to the date of actual payment of the Water Debt Washup Amount; and
- (b) clause 12.1(b) applies, the Council shall, at the same time that it pays the Water Debt Washup Amount, pay to the Water Organisation interest on the

Water Debt Washup Amount calculated at the Council Weighted Average Rate in respect the period from the Completion Date to the date of actual payment of the Water Debt Washup Amount.

12.2 Payment of Swaps Settlement Amount: In order to provide for the economic transfer of an agreed proportion of the Council's Swaps Portfolio in accordance with the Transfer Principles and Net Asset Calculation Manual, the parties shall ensure that:

(a) by no later than ten (10) Business Days prior to the date on which the Council is required to deliver the Final Net Assets Notice in accordance with 6.4(b), the Council delivers a notice to the Swaps Valuer and the Water Organisation specifying:

(i) Total Net Debt as at the Completion Date; and

(ii) the actual amount of Council Water Debt reflected in the calculation of the Council's Actual Net Assets as at the Completion Date,

(together with sufficient supporting information evidencing the calculation of those amounts);

(b) by no later than five Business Days prior to the date on which the Council is required to deliver the Final Net Assets Notice in accordance with clause 6.4(b), the Swaps Valuer delivers a notice to the Council and the Water Organisation, confirming:

(i) the Required Swap Proportion; and

(ii) the resulting Swaps Settlement Amount that is payable by the Water Organisation or the Council (as the case may be) to the other,

together with sufficient supporting information evidencing the calculation of those amounts; and

(c) the Water Organisation or the Council (as the case may be) pays the Swaps Settlement Amount in freely available funds to the other, by no later than the Water Debt Washup and Swaps Settlement Payment Date.

12.3 Transitional Period: The parties acknowledge that, following Completion and during the Transitional Period, the parties agree (without limiting, and subject to, any provision of this agreement, the Post-Completion Services Agreement, the Shared Services Agreement and the property-related matters set out in Appendix 3):

(a) that the Council will do all reasonable things to support the Water Organisation and the provision of Water Services during the Transitional Period, provided that this obligation will not require the Council to provide any services or undertake any activities which were provided or undertaken by Wellington Water prior to Completion, or to obtain or apply any additional resources to those resources it used to provide Water Services in the 12 months prior to the Completion Date;

- (b) to conduct monthly meetings to review any matters in relation to this agreement and to resolve any issues which arise during the Transitional Period; and
- (c) that the overriding intention of the parties is to ensure that there is no interruption to the provision of Water Services being provided to consumers as a result of this agreement, and that such provision of Water Services should be materially on the same basis as has occurred in the 12 months prior to the Completion Date.

12.4 Trust for non-assigned Assets: Except for any Contractual Arrangements which are covered by clause 11, if any of the Assets are not able to be assigned or transferred to the Water Organisation at Completion, the Council shall as from Completion and until such time as those Assets are assigned or transferred to the Water Organisation (which must occur within five Business Days of those Assets becoming able to be assigned or transferred to the Water Organisation), hold such Assets on trust for the Water Organisation. The Water Organisation is entitled to enforce its and the Council's rights in respect of such Assets in the name of the Council, acting always in accordance with any relevant contracts and the law, in good faith, for a proper purpose and having due regard to protecting the reputation of the Council. Except in cases of emergency, the Water Organisation must not commence any legal proceedings relating to any Asset held on trust without the Council's consent (such consent not to be unreasonably delayed or withheld) and must conduct the proceedings in accordance with any reasonable directions of the Council. In the case of an emergency, if the Water Organisation commences legal proceedings without the Council's prior written consent, the Water Organisation must:

- (a) give the Council written notice as soon as reasonably practicable and, in any event, within 24 hours of commencement, summarising the nature of the proceedings and the emergency circumstances; and
- (b) thereafter comply with this clause 12.4.

12.5 Consents: Where any Consent cannot be transferred to the Water Organisation at Completion, that Consent will be held by Council for the benefit of the Water Organisation until such Consent is able to be transferred to the Water Organisation, and each party will do all things and sign all documents in order to give effect to such transfers. Prior to any such transfers taking place:

- (a) the Council will provide the Water Organisation with all correspondence received relating to such Consents;
- (b) the Council will exercise and enforce such Consents for the benefit of the Water Organisation, as directed by the Water Organisation (subject to such directions not breaching the terms of the Consent, any laws or health and safety obligations), and at the Water Organisation's cost; and
- (c) the Water Organisation will be responsible for compliance with all conditions of, and obligations relating to or arising from, such Consents.

12.6 Additional or non-transferring assets, contracts and liabilities:

- (a) If, after Completion, the Council or the Water Organisation identifies:

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- (i) any asset or contract held by the Council that:
- (A) is necessary for the Water Organisation to carry on the Business after Completion in a manner consistent with how the Business was carried on during the 12 months prior to Completion; and/or
- (B) primarily relates to the provision of Water Services, (including any liabilities relating to such asset or contract), other than an Excluded Matter ("**Further Item**"), then the Authorised Representatives of the parties may agree (taking into account the Transfer Principles) that the Further Item is to be transferred to the Water Organisation (subject to obtaining any applicable counterparty consent on terms satisfactory to both the Council and Water Organisation), on terms and for consideration agreed to by the Authorised Representatives; or
- (ii) any asset, contract or liability that has transferred to, or which the parties purported to transfer to, the Water Organisation, but which the parties agree should not have been, or should not be, transferred to the Water Organisation, (a "**Non-Transferring Item**") then the Authorised Representatives of the parties may agree such steps as are necessary to deal with the Non-Transferring Item, which may include the parties agreeing in writing that the Non-Transferring Item has not transferred to the Water Organisation or, where transfer has occurred, may involve a transfer back to the Council. The Authorised Representatives will agree on the terms relating to any such agreement and any such consideration that may need to be paid by the Council to Water Organisation. The parties agree that such consideration should represent the value of the consideration allocated to such Non-Transferring Item as part of the Purchase Consideration, unless the parties agree otherwise.
- (b) In respect of the Further Items and Non-Transferring Items referred to in clause 12.6(a) that the parties agree will transfer, and are transferred, prior to the end of the Transitional Period and prior to the Second Wash-Up Date:
- (i) the consideration shall be agreed and fixed on a basis, as far as possible, consistent with the Net Asset Calculation Manual. If the parties cannot agree on such terms and consideration, the Expert Resolution Process will apply, but without binding any party to agree to the terms or consideration fixed under that process;
- (ii) the Council and the Water Organisation will each keep a record of the amounts of consideration that have been agreed to be payable in respect of the Further Item(s) and Non-Transferring Item(s) throughout the Transitional Period and from 1 July 2027 to the Second Wash-Up Date;
- (iii) within 15 Business Days after each of the end of the Transitional Period and after the Second Wash-Up Date, the Council will provide

a written notice to the Water Organisation setting out the total amounts of consideration payable by, the Water Organisation in respect of any Further Item(s) and by the Council in respect of any Non-Transferring Items ("**Wash-Up Notice**"). Each Wash-Up Notice will also include the amount of the difference between the amount of consideration payable in respect of the Further Item(s) and the amount of consideration payable in respect of the Non-Transferring Item(s) ("**Difference**"), which:

- (A) if the consideration for the Further Item(s) is greater than the consideration for the Non-Transferring Item(s), will be payable by Water Organisation to the Council; and
- (B) if the consideration for the Further Item(s) is less than the consideration for the Non-Transferring Item(s), will be payable by the Council to the Water Organisation,

in accordance with clause 12.6(b)(v).

- (iv) within 10 Business Days of the Water Organisation's receipt of each Wash-Up Notice, the Water Organisation will notify the Council whether it agrees with the Wash-Up Notice or whether it disagrees, explaining the reasons for disagreement. The parties will attempt to reach agreement on the amounts of consideration payable, but if the parties are unable to reach agreement within 10 Business Days of the Water Organisation's notice, the Expert Resolution Process will apply;
- (v) within 10 Business Days of the later of:
 - (A) notice that the Water Organisation agrees with the Wash-Up Notice; or
 - (B) if applicable, the amount of consideration for the Further Item(s) and Non-Transferring Item(s) (and the resulting Difference) being agreed or determined in accordance with the Expert Resolution Process,

the relevant party with the payment obligation under clause 12.6(b)(iii) above will pay the Difference to the other (subject to any adjustment to such amount agreed or determined under clause 12.6(b)(iv)) as follows:

- (C) where the Council is the party with the payment obligation, in freely available funds; and
- (D) where the Water Organisation is the party with the payment obligation, is the party with the payment obligation, in accordance with clause 12.6(c).

The effect of this clause shall not be taken into account in the calculation of Actual Net Assets.

- (c) Where the Water Organisation is the party with the payment obligation under clause 12.6(b)(v), the parties agree that the Water Organisation will satisfy its payment obligation by issuing to the Council an amount of additional fully paid shares in the Water Organisation:
- (i) with the number of shares in the Water Organisation to be equivalent to the dollar amount of the Difference (rounded to the nearest dollar); and
 - (ii) such shares to have an issue price of one dollar per share. The number of shares in the Water Organisation will be equivalent to the dollar amount of the Difference (rounded to the nearest dollar).

The board of the Water Organisation will issue the Council with the amount of shares calculated in accordance with this clause, make entries in the share register of the Water Organisation to record the issue of shares and notify the Companies Office of the issue of shares, and the Council consents to such issue and will take such actions, and sign and deliver to the Water Organisation such documents and other things necessary in relation to the issue of such shares.

- (d) If the parties become aware of any Further Items after the Second Wash-Up Date, that the parties agree will transfer, and are transferred, after the Second Wash-Up Date:
- (i) the consideration shall be agreed and fixed on a basis, as far as possible, consistent with the Net Asset Calculation Manual. If the parties cannot agree on such terms and consideration, the Expert Resolution Process will apply, but without binding any party to agree to the terms or consideration fixed under that process; and
 - (ii) the amount of such consideration will be payable by the relevant party within 10 Business Days of the later of it being agreed or determined under clause 12.6(d)(i) and transfer of the relevant Further Item or Non-Transferring Item. The Water Organisation may elect to satisfy its payment obligation by issuing additional shares in the Water Organisation to the Council.

12.7 Facilitation of additional share issues: The parties agree that the Water Organisation may be required to issue additional shares to the Council under clause 12.6 and additional shares to Participating Councils under the equivalent provisions of their respective Transfer Agreements. In this regard, the Council agrees that:

- (a) it consents for all purposes (including for the purposes of section 50 of the Companies Act) to being a being a shareholder of the Water Organisation in respect of any shares issued to it in accordance with clause 12.6 and its name being entered in the share register and of the Water Organisation in respect of those shares;
- (b) the Council expressly confirms that:
 - (i) the issue by the board of the Water Organisation of shares to the Council under clause 12.6 or to a Participating Council under the

equivalent provision of its Transfer Agreement is approved as a “Shareholder Reserved Matter” for the purposes of clause 5.3(b) of the Partners Agreement. This clause, together with the corresponding clauses in the Transfer Agreements of the other Participating Councils, constitutes and has effect as a special resolution of shareholders in the Water Organisation in writing under section 122 of the Companies Act;

- (ii) no further consent or authorisation is required of the Council to permit the board of the Water Organisation to:
 - (A) issue shares to the Council under clause 12.6 or to a Participating Council under the equivalent provision of its Transfer Agreement; and
 - (B) update the share register of the Water Organisation to record the issue of such shares; and
- (iii) this clause 12.7 will serve to the extent required:
 - (A) as a waiver of any pre-emptive rights of the Council in relation to any such issue including under section 45 of the Companies Act;
 - (B) as the agreement and concurrence of all entitled persons for the purposes of section 107 of the Companies Act; and
 - (C) as adequate agreement, consent and authorisation under this document and the constitution of the Water Organisation.

12.8 Receipt of post-Completion amounts: On and from Completion, the Water Organisation shall be entitled to receive and retain all amounts payable in respect of the Assets and Contractual Arrangements. The Council shall make such payments to the Water Organisation as are necessary to give effect to this entitlement and, until such payments are made, shall hold the relevant amounts on trust for the Water Organisation. The Council shall promptly provide to the Water Organisation such information as is necessary to enable the Water Organisation to calculate amounts payable under this clause. The Council shall use all reasonable endeavours to ensure that the amount of each payment to be made under this clause is determined, and paid, as quickly as is reasonably practicable.

12.9 Water Organisation to provide information: Following Completion, the Water Organisation shall permit the Council such access to its records as shall be reasonably necessary to enable the Council to complete tax returns and to comply with other statutory obligations of the Council relating to the Business and/or the provision of Water Services.

12.10 Council to provide Records and Data: Following Completion and during the Transitional Period (or such longer period as the parties may agree in writing), the Council shall, subject to clause 12.10(c), provide:

- (a) the Water Organisation with electronic access to and/or copies of the Records, with a view to enabling the Water Organisation to transfer all relevant information to its own systems, as necessary for the purpose of conducting the Business or complying with other statutory obligations of the Water Organisation relating to the Business, the Responsibilities and/or the provision of Water Services;
- (b) the Water Organisation with access to the Data, as reasonably required by the Water Organisation in order to provide the Water Services; and
- (c) any such transfer or access will be carried out in a secure manner agreed by the parties. The Council will notify the Water Organisation if it considers the agreed security requirements are not being followed, and may suspend the transfer or access until such time as it is confident (acting reasonably) they will be followed.

12.11 Joint Post-Completion Review: Not less than 20 Business Days prior to the end of the Transitional Period, the parties will conduct a joint review of this agreement and the transfer of the Assets and Assumed Liabilities to confirm that:

- (a) all assets and liabilities held by the Council prior to the Completion Date; or
- (b) any Further Item identified in accordance with clause 12.6,

which the parties agree (acting reasonably) relates to the delivery of Water Services, has been transferred to the Water Organisation. If the parties are unable to agree on whether an asset or liability relates to the delivery of Water Services, the Expert Resolution Process will apply.

12.12 Post-Completion Claims:

- (a) Subject to clauses 12.12(b) and 12.12(c), if after Completion, a third party makes a Claim against the Council or the Water Organisation and, that Claim relates to both the Council and the Water Organisation ("**Post-Completion Claim**"), the party that received the Claim will notify the other party as soon as reasonably practicable and provide such details relating to the Claim as are available to the receiving party. The parties will then discuss in good faith possible steps for responding to the Post-Completion Claim. Neither party will make any admission, or enter into any settlement agreement, in relation to a Post-Completion Claim without the prior written approval of the other party, such approval not to be unreasonably withheld.
- (b) Subject to clause 12.12(c), if after Completion, a third party makes a Claim against the Council and such Claim relates to an Assumed Liability, the Water Organisation will defend and indemnify the Council against any Liabilities arising from such Claim and the following provisions shall apply:
 - (i) the Council will notify the Water Organisation in writing as soon as reasonably practicable after becoming aware of such a Claim and provide to the Water Organisation such details relating to the Claim as are available to it;

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- (ii) the Water Organisation will, at its own cost and expense, take over dealing with the Claim on the Council's behalf (but the Water Organisation acknowledges and agrees that the Council may appoint its own advisers in respect of any such Claim);
 - (iii) in dealing with the Claim on behalf of the Council, the Water Organisation may take such actions in the name of the Council as it sees fit, but shall always act in accordance with the law, in good faith, for a proper purpose and having due regard to protecting the reputation of the Council;
 - (iv) notwithstanding clause 12.12(b)(iii), neither party will make any admission, or enter into any settlement agreement, in relation to the Claim without the prior written approval of the other party, such approval not to be unreasonably withheld; and
 - (v) the Council will provide the Water Organisation with a reasonable level of assistance in relation to the Claim at the Water Organisation's cost and expense.
- (c) If, after Completion, the Water Organisation has a valid Warranty Claim against the Council in relation to a Claim made by a third party or a third party makes a Claim against the Water Organisation and such Claim relates to an Excluded Liability, the Council will defend and indemnify the Water Organisation against any Liabilities arising from such Claim (fully, in the case of a Claim relating to an Excluded Liability, and to the extent of the Council's liability for the relevant Warranty Claim, where the Water Organisation has such a Warranty Claim) and the following provisions shall apply:
- (i) the Water Organisation will notify the Council in writing as soon as reasonably practicable after becoming aware of such a Claim and provide to the Council such details relating to the Claim (and any associated Warranty Claim) as are available to it;
 - (ii) the Council will, at its own cost and expense, take over dealing with the Claim on the Water Organisation's behalf (but the Council acknowledges and agrees that the Water Organisation may appoint its own advisers in respect of any such Claim);
 - (iii) in dealing with the Claim on behalf of the Water Organisation, the Council may take such actions in the name of the Water Organisation as it sees fit, but shall always act in accordance with the law, in good faith, for a proper purpose and having due regard to protecting the reputation of the Water Organisation;
 - (iv) notwithstanding clause 12.12(c)(iii), neither party will make any admission, or enter into any settlement agreement, in relation to the Claim without the prior written approval of the other party, such approval not to be unreasonably withheld; and

- (v) the Water Organisation will provide the Council with a reasonable level of assistance in relation to the Claim at the Council's cost and expense.

12.13 Exercise of Statutory Powers: The Water Organisation acknowledges and agrees that it is entitled to exercise statutory powers to enter land on which the Plant and Equipment or Leased Equipment is located (subject to the relevant terms of the LG(WS) Act) including entry pursuant to:

- (a) Entry to private land, Council Administered Reserve and Freehold Properties: sections 161 and 177 of the LG(WS) Act; and
- (b) Access to legal road: sections 172 and 177 of the LG(WS) Act.

13. LIABILITY

13.1 Consequential loss: Neither party will be liable to the other party for any loss of profits, loss of saving, loss of goodwill or any consequential, indirect or special loss or damages arising directly or indirectly from any breach of this agreement or from any negligence or other act or omission.

13.2 Maximum aggregate liability for Claims: In no event will the Council's aggregate total liability for any Warranty Claims or any other Claims under this agreement exceed the amount of the Purchase Consideration.

13.3 Other limits: The liability of a party in respect of any Claim is reduced or extinguished (as the case may be) to the extent that:

- (a) the breach giving rise to the Claim is capable of remedy and, within 30 Business Days after receiving notice of the Claim, the Council remedies the breach to the reasonable satisfaction of the other party; or
- (b) the Claim is a contingent liability unless and until it becomes an actual liability.

14. WARRANTIES

14.1 Warranties: In consideration of the Water Organisation entering into this agreement, the Council warrants to the Water Organisation that:

- (a) as at the Completion Date, the Assets:
 - (i) are the absolute property of, and under the control of, the Council; and
 - (ii) are not subject to any Encumbrance (other than Permitted Encumbrances);
- (b) the Contractual Arrangements are valid, binding and enforceable in accordance with their terms;

- (c) to the best of its knowledge, after due inquiry, as at the Commencement Date the Council is not in breach, in any material respect, of any Contractual Arrangement, nor is the Council reasonably expecting to be in breach, in any material respect, of any Contractual Arrangement at any time up to Completion and after Completion (on the assumption Completion does not occur and the Council continues with the Contractual Arrangement in the ordinary course);
- (d) as at the Commencement Date, the Council is not aware of any breach, in any material respect, of any Contractual Arrangement by any counterparty to a Contractual Arrangement, nor is the Council reasonably expecting a counterparty to be in breach, in any material respect, of any Contractual Arrangement at any time up to and after Completion; and
- (e) to the best of its knowledge, after due inquiry, as at the Commencement Date the Council is not in breach, in any material respect, of any of the Responsibilities or Designations, nor is the Council reasonably expecting to be in breach, in any material respect, of any of the Responsibilities or Designations at any time up to Completion and after Completion (on the assumption Completion does not occur and the Council continues with the Responsibilities and actions under the Designations in the ordinary course).

14.2 Qualifications: The warranties in clause 14.1 are given subject to:

- (a) any exception or qualification fairly disclosed in any formal disclosure letter given by or on behalf of the Council to the Water Organisation before execution of this agreement by the Water Organisation; and
- (b) any matter or thing done or omitted to be done in accordance with any provision of this agreement or at the request, or with the prior approval, of the Water Organisation.

14.3 Water Organisation Acknowledgement: The Water Organisation acknowledges and agrees that:

- (a) the Assets are sold on a strictly "as is where is" basis;
- (b) the Council has not made any statement, representation or warranty (express or implied) as to, and the Water Organisation has no Claim against the Council in respect of, the fitness, quality, condition or state of repair of any of the Assets; and
- (c) when populating the schedules to this agreement to describe the Assets, the Council has, in some cases, used and relied on asset data from Wellington Water's asset management system and, in those cases, the Water Organisation has no Claim against the Council in relation to errors in that asset data of which the Council was not aware prior to the Commencement Date.

15. FORCE MAJEURE EVENT

15.1 Events of Force Majeure: If any party is delayed in or prevented from carrying out any of its obligations under this agreement (other than a payment of money) due to any circumstances beyond its reasonable control, including:

- (a) changes to legislation;
- (b) interference by a third party; or
- (c) natural disaster,

("Force Majeure Event") the party affected is to be excused from performance of those obligations for as long as and to the extent that the prevention or delay lasts.

15.2 Notice to the other party: The party seeking to rely on a Force Majeure Event to excuse its non-performance must give written notice to the other party of the circumstances and the way in which and the extent to which its obligations are prevented or impeded by the event within 10 Business Days of it first becoming aware of that event.

15.3 Mitigation and co-operation: Following notice of a Force Majeure Event, the parties are to:

- (a) take all reasonably practicable steps to limit the effects of the Force Majeure Event on the performance of this agreement; and
- (b) continue to carry out all obligations under this agreement to the extent possible despite the Force Majeure Event.

15.4 No liability: A party is not liable for failure to perform or for delay in performance of any obligations under this agreement where it is prevented from performance during the Force Majeure Event.

16. DISPUTE RESOLUTION

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

16.2 Negotiation:

- (a) On receipt of a notice delivered in accordance with clause 16.1 and before any party may refer a dispute to mediation, a nominated representative of each party (notified by that party to the other party in writing) must, in good faith and acting reasonably, do their best to resolve the dispute quickly and efficiently through negotiation.
- (b) If any nominated representative considers that the dispute is not being resolved in a timely manner, such nominated representative may serve written notice on the other party's nominated representatives to escalate the dispute to the Chief Executives or equivalent (where the nominated

representatives are not the Chief Executive or equivalent) of the applicable parties for resolution.

- (c) If the dispute has not been resolved within 20 Business Days (or within such other period as agreed by the parties) of the date of the notice referred to in clause 16.1, any party may submit the dispute to mediation.

16.3 Mediation:

- (a) If the parties do not resolve the dispute by negotiation in accordance with the timeframe set out in clause 16.2(c), the parties must, in good faith and acting reasonably, do their best to resolve the dispute by participating in mediation with an independent mediator.
- (b) If the parties do not agree on a mediator, then the mediator will be appointed by the New Zealand Dispute Resolution Centre.
- (c) The parties must mediate the dispute in accordance with principles agreed between them or, if no agreement can be reached, the New Zealand Dispute Resolution Centre Mediation Rules.
- (d) Unless the parties agree otherwise, the mediator's fee and any other costs of the mediation itself (such as for venue hire or refreshments) will be shared equally between the parties, but the parties will each pay their own costs of preparing for and participating in the mediation (such as for travel and legal representation).

16.4 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 party (the "**Initiating Party**") may refer such dispute to binding arbitration by issuing a written notice ("**Arbitration Notice**") to the other party (together with the Initiating Party, the "**Disputing Parties**") for final resolution in accordance with the provisions of this clause 16.4 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 Parties or, failing agreement within 10 Business Days of the date of the Arbitration Notice, in accordance with the NZDRC Rules.
- (c) The seat of arbitration shall be in Wellington and the arbitration shall be conducted in the English language.
- (d) The award of the arbitration shall be in writing and must include reasons for the decision.
- (e) The award of the arbitration shall be final and binding on the parties. No party may appeal to the High Court under Clause 5 of the Second Schedule of the Arbitration Act 1996 on any question of law arising out of an award.

(f) The award shall allocate or apportion the costs of the arbitration as the arbitrator deems fair.

(g) Neither the existence of any dispute nor the fact that any arbitration is pending hereunder shall relieve any of the parties of their respective obligations under this agreement.

16.5 Implementation of agreement: The parties must do whatever is reasonably necessary to put into effect any negotiated or mediated agreement, arbitral award or other resolution.

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

16.7 Interlocutory relief: This clause does not restrict or limit the right of a party to obtain interlocutory relief.

17. EXPERT RESOLUTION PROCESS

17.1 Application of Process: The dispute resolution process in this clause shall be followed when this document expressly states that the Expert Resolution Process applies to an issue or dispute.

17.2 Notice: The party raising the issue or dispute must give notice to other party, giving details of the issue or dispute ("**Matters in Dispute**"), to the Expert Resolution Process ("**Dispute Notice**").

17.3 Resolution by Agreement: Nominated representatives of the Council and the Water Organisation shall engage and communicate (and meet, if requested by a party) with a view to resolving the issue or dispute. The Water Organisation and the Council must meet within five Business Days of the date of the Dispute Note and attempt to resolve the Matters in Dispute. If any nominated representative considers that the dispute is not being resolved in a timely manner, such nominated representative may serve written notice on the other party's nominated representatives to escalate the dispute to the Chief Executives or equivalent (where the nominated representatives are not the Chief Executive or equivalent) of the applicable parties for resolution.

17.4 Referral to an Expert: If the Matters in Dispute are not resolved by the Water Organisation and the Council within 20 Business Days (or within such other period as agreed by the parties) of the date of the Dispute Notice, then either the Water Organisation or the Council may give notice ("**Referral Notice**") to the other referring the Matters in Dispute to such firm of chartered accountants or lawyers or other appropriate expert (depending on the nature of the matters in issue) with suitable experience in dealing with such matters as are in dispute:

(a) as is agreed by the parties; or

(b) failing agreement within five Business Days of the party's receipt of the Referral Notice, as is appointed by the President for the time being of the New Zealand Law Society,

(the “**Expert**”). The Expert will be required to make a decision in respect of the issue or dispute (and any consequential adjustments) within 10 Business Days from the date upon which the matter is referred to him or her.

17.5 Expert Decision Binding: The decision of the Expert will, in the absence of fraud or manifest error, be conclusive and binding on the parties.

17.6 Failure to Refer: If neither party refers an unresolved issue or dispute to an Expert pursuant to clause 17.3, then the notice under clause 17.2 (and under any relevant clause referring the issue or dispute to the Expert Resolution Process) will be deemed to have been withdrawn, and the issue or dispute may no longer be pursued.

17.7 Expert Process Provisions: In resolving an issue or dispute under this clause:

- (a) the Expert will be deemed to be acting as an expert, not as a mediator or an arbitrator;
- (b) nothing in this clause will constitute a submission to arbitration under the Arbitration Act 1996;
- (c) each of the Council and the Water Organisation must give the Expert any information and assistance, and will ensure that its duly authorised representatives meet with the Expert, as the Expert may reasonably require in order to expedite the resolution of the issue or dispute; and
- (d) the parties will bear their own costs (including legal costs) and an equal share of the costs and expenses of the Expert.

18. INFORMATION SHARING, CONFIDENTIALITY AND CO-OPERATION

18.1 Information sharing: The parties agree that, in respect of information shared between the parties under this agreement:

- (a) subject at all times to a party's obligations at law, both parties will use all reasonable endeavours to share information with each other where that information assists a party to carry out its statutory functions, powers and duties;
- (b) where information is shared, to the extent permitted by law, the party receiving the information will adhere to any conditions imposed by the other concerning the release and storage of that information;
- (c) the parties will act in good faith when a party reasonably makes a request for information to be shared; and
- (d) where information is in the public domain (other than as a result of an unpermitted act or omission of a party that obtained that information), then any conditions imposed in relation to the release and storage of that information, no longer apply.

18.2 Managing issues: Any concern or dispute in relation to a party not sharing information, conditions imposed in relation to the storage or use of that information or the use by

a party of information that has been shared, will be notified to the other party and if not resolved will be dealt with under the dispute resolution process at clause 16.

18.3 Confidentiality: Each party shall:

- (a) use its reasonable endeavours to identify Confidential Information relating to that party at the time it is supplied to the other party; and
- (b) deal with all Confidential Information in accordance with clause 19.

18.4 Privacy Laws: The parties agree to comply with all Privacy Laws in respect of all Customer Data received by each party or in each party's possession in connection with this agreement.

18.5 Use of Customer Data: The Water Organisation may only use the Customer Data for the purpose of complying with its obligations under this agreement or otherwise by Law and for the Water Services.

18.6 Customer Notification: Unless the parties agree otherwise in writing, the Council will be responsible for providing any required notification to the persons to whom the Customer Data relates regarding the sharing of their Customer Data with the Water Organisation in relation to the provision by the Water Organisation of the Water Services.

19. CONFIDENTIAL INFORMATION AND PUBLIC ANNOUNCEMENTS

19.1 Confidentiality: Each party must keep confidential the Confidential Information, and must not disclose or permit the disclosure of such Confidential Information to any other person. If a party becomes aware of a breach of this obligation, that party will immediately notify the other party.

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

- (a) the other party has consented to the disclosure of the relevant Confidential Information;
- (b) the disclosure is specifically contemplated and permitted by this agreement;
- (c) the disclosure of Confidential Information is to a shareholder of a party, an elected member or pou iwi of a party or such shareholder or a regulatory authority (including to The Water Services Authority – Taumata Arowai, the Commerce Commission or the Department of Internal Affairs);
- (d) the disclosure of Confidential Information is to an employee, subcontractor, agent or representative who needs it for the purposes of this agreement;
- (e) the disclosure is to a professional adviser in order for it to provide advice in relation to matters arising under or in connection with this agreement;
- (f) the disclosure is required by a court or governmental or administrative authority;

- (g) the disclosure is required in accordance with clause 19.4; or
- (h) the disclosure is otherwise required by law.

To the extent disclosure is required to be made in accordance with sub-clauses (f), (g) or (h), the disclosing party must, as far as reasonably possible, consult with the other party as to the content of such disclosure and only disclose such information as is reasonably required.

- 19.3 Public announcements and media releases:** Each party agrees that it will not make any public announcements or issue media releases in connection with, or on behalf of, the other party or the Water Organisation in relation to the Water Organisation or Water Services, except with the written consent of the other party. Nothing in this provision shall prohibit or restrict a party from making a public announcements or media releases in connection with the party's own involvement with, or policies in relation to, the Water Organisation.
- 19.4 Local Government Official Information and Meetings Act 1987:** The parties acknowledge that the use or disclosure of information relating to the other party may be required by law (including under the Local Government Official Information and Meetings Act 1987 ("LGOIMA")), so that a party may be obliged to disclose Confidential Information or other information of the other party. Each party will consult with the other party following a request for information relating to this agreement and will take the other relevant party's views into account prior to deciding the response to any such request, including whether under LGOIMA any grounds for withholding of information apply. The parties acknowledge that the final decision as to the release of information will be made by the party that holds the information and has received the request in accordance with LGOIMA. The party making the decision will notify the other party of that decision and if it is a decision to release, before the date of that release.
- 19.5 Public release of this agreement:** The parties acknowledge that, under section 16 of the LG(W.S) Act, each party to a transfer agreement must make that agreement publicly available. Prior to the public release of this agreement by either party, the parties must seek to agree on such redactions to the publicly released version of this agreement as are permissible at law. Neither party will publicly release a version of this agreement until either the redactions are agreed between the parties, or any dispute in relation to such redactions has been resolved, under the Expert Resolution Process.

20. TERMINATION

- 20.1 Termination:** This agreement may only be terminated by mutual agreement between the Water Organisation and all Participating Councils, and may not be terminated after Completion.
- 20.2 Effect of termination:** Any termination of this agreement is without prejudice to and will not affect any rights, powers, remedies or obligations of a party that have and before termination or expiry, or limit either party's rights to recover damages from the other party under this agreement or pursue any additional or alternative remedies provided by law.

21. NOTICES

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

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

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

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

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, five Business Days after it is posted.
- (c) If it is sent by email, when it is received in readable form addressed in the manner specified above.

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

22. GENERAL

22.1 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 parties, and a party may not make, or allow to be made, any representation that any such relationship exists between any of the parties. A party shall not have authority to act for, or to incur any obligation on behalf of, any other party, except as expressly provided for in this agreement.

22.2 Contracts privity: Clauses 1 (to the extent relevant to the interpretation of clauses 2, 9.7(a) and 20), 2, 9.7(a) and 20 are intended to be for the benefit of, and enforceable by, the Water Organisation and all Participating Councils for the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017. Other than those clauses, this agreement is not intended to confer a benefit on any person or class of persons who is not a party to it.

22.3 Counterparts: This agreement is deemed to be signed by a party if that party has signed or attached that party's signatures to any of the following formats of this agreement:

- (a) an original; or

(b) a photocopy; or

(c) an electronic copy;

and if every party has signed or attached that party's signatures to any such format and delivered it in any such format to the other party, the executed formats shall together constitute a binding agreement between the parties.

22.4 Entire agreement: The Transaction Documents record the entire understanding and agreement of the parties in relation to the subject matter that the Transaction Documents deal with. No party can rely on an earlier written agreement or anything said or done by or on behalf of another party before this agreement or the other Transaction Documents were executed.

22.5 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.

22.6 Further assurance: Each party 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.

22.7 Variation: No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.

22.8 Assignments and transfer: Subject to clause 22.10, a party must not assign or transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

22.9 Final decision responsibility: The Water Organisation's:

(a) capital expenditure and operating expenditure for the Water Services provided by the Water Organisation; and

(b) level of water charges for the Water Services,

will be as set out in the Water Organisation's annual water services budget, and the final decision-maker in respect of such matters will be as set out in the constitution of the Water Organisation.

22.10 Local Government Reorganisation: In the event of a local government reorganisation in the Wellington region, the Council may elect to assign its rights or novate its rights and obligations under this agreement to a relevant successor public entity. In the event that the Council exercises its right under this clause to assign or novate this agreement, the Water Organisation agrees to sign all documents and do all things necessary to give effect to such assignment or novation, subject to any duties owed by the board of the Water Organisation.

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

22.12 Records:

- (a) The parties acknowledge that, as the provision of Water Services is being carried out by the Water Organisation rather than the Council, certain records previously held by the Council constitute public records and/or local authority records relating to that function and will be transferred to, and become the responsibility of, the Water Organisation to the extent required by the Public Records Act 2005 (including section 23).
- (b) Each party agrees to comply with the requirements of section 23 of the Public Records Act 2005 as it applies to those records.
- (c) For the avoidance of doubt, nothing in this agreement limits or derogates from either party's obligations under the Public Records Act 2005.
- (d) Both parties must keep and maintain full records and documentation in relation to this agreement in accordance with the Public Records Act 2005, the Local Government Official Information and Meetings Act 1987, the Building Act 2004, the Local Government Act 2002, the LG(W.S) Act and any applicable standards or policies.

22.13 No merger: The provisions of this agreement and anything done under, or in connection with this agreement shall not operate as a merger of any of the rights, powers or remedies of either party under or in connection with this agreement or at law, and those rights, powers and remedies shall survive and continue in full force and effect to the extent that they are unfulfilled.

22.14 Survival: Following termination of this agreement, the provisions of clauses 13, 16, 17, 18, 19, 20.2 and 22, together with any provisions that by their nature are intended to survive, will remain in full force and effect.

22.15 Regulatory Authority:

- (a) Other than as expressly provided in this agreement, this agreement does not bind any party when acting in its capacity as a regulatory authority, and any consent or agreement given by any party under this agreement is not an agreement or consent in its regulatory capacity, and vice versa.
- (b) Each party acknowledges that its commitment to the obligations under this agreement does not limit or pre-empt each party's own obligations as local authorities at law, including in respect of any decision-making and public consultation obligations or requirements.
- (c) To the extent the Council enters into this agreement as transferor of any interest in land, it is acknowledged that the Council enters into this agreement as the owner of that interest in the land and not as an authority. The two roles are different, and any approval or consent given or other action taken by the Council as a landowner under this agreement will not be deemed to waive or imply the consent of the Council as an authority. For clarity, "authority" includes a government, territorial, statutory or public authority appointed or established by statute with jurisdiction over or in respect of the land and any person entitled to carry out a statutory function.

22.16 Waivers:

- (a) A waiver of any right, power or remedy under this agreement must be in writing signed by the party granting it. A waiver only affects the particular right, obligation or breach for which it is given. It is not an implied waiver of any other right, obligation or breach or an implied waiver of that right, obligation or breach on any other occasion.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement does not amount to a waiver.

22.17 Governing law: This agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of any proceedings arising out of or relating to this agreement.

SIGNATURES

HUTT CITY COUNCIL

by:

Name of Authorised Signatory

Signature of Authorised Signatory

In the presence of:

Signature of witness

Name of witness

Occupation

City/town of residence

TIAKI WAI LIMITED

by:

Signature of Director

Signature of Director

Name of Director

Name of Director

APPENDIX 1

NOTICE DETAILS

Address for notices	Council	Water Organisation
	30 Laings Road, Lower Hutt, 5010 Private Bag 31912 Lower Hutt 5040 Email: jo.miller@huttcity.govt.nz Attention: Jo Miller, Chief Executive	Level 3, 79 Boulcott Street, Wellington Central, Wellington 6011 Email: michael.brewster@metrowaterwellington.co.nz Attention: Michael Brewster

APPENDIX 2

DETAILS OF TRANSFER

Schedule 1 – Reserve Land

Schedule 2 – Property Matters

Schedule 3 – Excluded Assets

Schedule 4 – Contractual Arrangements (General)

Schedule 5 – Contractual Arrangements (Commercial Suppliers)

Schedule 6 – Contractual Arrangements (Capital Works Contracts)

Schedule 7 – Development Agreements

Schedule 8 – Transferring Water Debt and Swaps

Schedule 9 – Leased Plant and Equipment

Schedule 10 – Owned Plant and Equipment

Schedule 11 – Consents

Schedule 12 – Excluded Contractual Arrangements

Schedule 13 – Statutory Responsibilities, Functions, Duties and Powers

Schedule 14 – Stormwater Matters

Schedule 15 – Excluded Statutory Responsibilities, Functions, Duties and Powers

Schedule 16 – Excluded Liabilities

Schedule 17 – Employees and Contractors

Schedule 18 – Designations

APPENDIX 3

PROPERTY MATTERS

1. TERMS OF TRANSFER OF FREEHOLD PROPERTIES AND COUNCIL RESERVES

- 1.1 Freehold Properties:** The Council agrees to transfer, and the Water Organisation accepts, the Freehold Properties for a public work (Water Services) pursuant to section 50 of the PWA on the terms and conditions of this agreement.
- 1.2 Council Reserves:** The Council and the Water Organisation agree to take all steps necessary to make an application to LINZ to arrange for the Council Reserves to be set apart for Water Services purposes under section 52 of the PWA and vested in the Water Organisation under sections 50 and 20(1) of the PWA.
- 1.3 PWA Obligations:** As the Freehold Properties and Council Reserves are required by the Water Organisation for a public work any future obligation to offer all or any part of the Freehold Properties and Council Reserves back to a former owner pursuant to sections 40 to 42 of the PWA (if any) will rest with the Water Organisation and not the Council and, as required by clause 3 of Schedule 9 of the Local Government Act 2002, a caveat will be registered to protect any former owner's interest.
- 1.4 As is Where is:** The Council shall transfer the Freehold Properties and Council Reserves to the Water Organisation, and the Water Organisation will receive the Freehold Properties and Council Reserves free of any Encumbrances from the Council. To avoid doubt, the Freehold Properties and Council Reserves will otherwise transfer on an "as is, where is" basis and the Council is not required to procure the withdrawal or discharge of any registered or unregistered interests or memorials from Records of Titles to the Freehold Properties and Council Reserves.
- 1.5 Condition Subsequent:** The parties acknowledge that the Water Organisation will become a local authority for the purposes of the PWA when the Statutory Responsibilities are transferred to the Water Organisation under this agreement and therefore, the obligations in paragraphs 1.1 and 1.2 above are conditional (as a condition subsequent) on the transfer of the Statutory Responsibilities to the Water Organisation on the Completion Date.
- 1.6 Legalisation:** The transfer of the Freehold Properties and Council Reserves will, by agreement between the parties (acting reasonably), be legalised either by:
- (a) declaration under sections 20(1) and 50 of the PWA, which the parties will use best endeavours to obtain as soon as practicable after the Completion Date in accordance with paragraphs 1.9 and 1.12; or
 - (b) an appropriate transfer instrument (or other instrument, all referred to in this Schedule as a "**transfer instrument**") under the Land Transfer Act 2017 with registration of the transfer to occur on the Completion Date in accordance with paragraph 1.10 or any later date agreed by the parties if it is not practical to achieve transfer on the Completion Date, in which case paragraph 3 will apply.

- 1.7 Compensation certificate:** Where legalisation of the transfer will not occur on Completion, following Completion, the Water Organisation may elect to lodge a compensation certificate pursuant to section 19 of the PWA against one or more of the Freehold Properties and Council Reserves. The Water Organisation will:
- (c) notify the Council following registration of the compensation certificate; and
 - (d) promptly following the acquisition by the Water Organisation of the applicable Freehold Properties and Council Reserves, withdraw the compensation certificate.
- 1.8 Survey plans:** Where required to give effect to a transfer contemplated by this agreement (including any setting apart under section 52 of the PWA), unless otherwise agreed in writing, the Council (at its cost) will arrange for a surveyor to prepare any required survey office or land transfer plans and provide the same to the Water Organisation for review and comment. The Water Organisation will not unreasonably withhold or delay its approval to any such survey plan.
- 1.9 Declaration:** Where the transfer of all or part of a Freehold Property and Council Reserve is to occur by declaration under sections 20(1) and 50 of the PWA, the Council will prepare a declaration pursuant to sections 20 and 50 of the PWA with respect to those Freehold Properties and Council Reserves and arrange for LINZ to sign such declaration. The Council will publish and register the declaration together with a caveat as required by clause 3 of Schedule 9 of the Local Government Act 2002 following execution by the Crown (through LINZ).
- 1.10 Transfer:** Where the transfer of all or part of the Freehold Properties is to occur by transfer instrument under the Land Transfer Act 2017, the following provisions will apply:
- (a) the Water Organisation shall procure its solicitors to:
 - (i) within a reasonable time prior to the Completion Date, create a Landonline Workspace (“**Workspace**”) for the transaction, notify the Council’s solicitors of the dealing number allocated by LINZ, and prepare in the Workspace a transfer instrument in respect of the applicable Freehold Properties;
 - (ii) prior to Completion:
 - (A) (where applicable) prepare a notice of sale for the Freehold Properties in accordance with the Local Government (Rating) Act 2002 by way of an electronic platform;
 - (B) (where applicable) lodge in the Workspace the tax information contained in the Water Organisation’s tax statement; and
 - (C) certify and sign the transfer instrument; and

- (b) provide the Council's solicitors with a written undertaking and do all things as may be required to effect Completion in the manner contemplated by the most recent edition of the Property Transactions and E-Dealing Practice Guidelines prepared by the Property Law Section of the New Zealand Law Society (insofar as the same relates to the conduct of the Water Organisation's solicitors); and
- (c) the Council's solicitors shall:
- (i) within a reasonable time prior to the Completion Date, prepare in the Workspace all other electronic instruments required to confer title in the applicable Freehold Properties on the Water Organisation free from Encumbrances but subject to all existing registered interests and memorials; and
- (ii) prior to Completion:
- (A) prepare in the Workspace a caveat, as required by clause 3 of Schedule 9 of the LGA;
- (B) (where applicable) lodge in the Workspace the tax information contained in the Council's tax statement;
- (C) have those instruments and the transfer instrument certified, signed and, where possible, pre-validated; and
- (D) provide the Water Organisation's solicitors with a written undertaking that the Council's solicitors:
- A.1. have signed and certified as correct, and where possible, prevalidated (as transferor) the transfer instrument(s) in the Workspace (quoting the eDealing number);
- A.2. have prepared, signed and certified as correct, and where possible pre-validated all other electronic instruments in the Workspace created by the Council's solicitors (quoting the eDealing number);
- A.3. will not attempt to withdraw the release of the instruments (once released (as contemplated in paragraph 1.10(c)(ii)(D)A.4 or attempt any alteration of the instrument or do anything to prevent registration of the instruments following Completion or release; and
- A.4. release the transfer instrument(s) and all other electronic instruments into the Workspace immediately following Completion occurring for registration as electronic instruments, in accordance with the protocol for remote

settlement set out in the most recent edition of the Property Transactions and E-Dealing Practice Guidelines prepared by the Property Law Section of the New Zealand Law Society.

1.11 Alternative transfer mechanism: Notwithstanding clauses 1.1 and 1.2, if any of the Freehold Properties and Council Reserves cannot be transferred pursuant to section 50 of the PWA, the parties will, acting reasonably, mutually agree on an alternative transfer mechanism in writing.

1.12 Gazette: In respect of the Council Reserves, the Council will instruct a LINZ accredited supplier to:

- (a) prepare a declaration to:
 - (i) set the Council Reserves apart for transfer to Water Services purposes under section 52 of the PWA; and
 - (ii) vest the Council Reserves in the Water Organisation under sections 50 and 20(1) of the PWA;

and provide such declaration to LINZ for signing;
- (b) seek any necessary consent (including under delegated authority, if applicable) of the Minister of Conservation section 52(2) of the PWA;
- (c) arrange publication of the declaration pursuant to the PWA in the New Zealand Gazette; and
- (d) lodge the declaration pursuant to the PWA (in the form of a Gazette notice) for registration against the records of title for the Council Reserves,

with the intention that the declaration be published promptly following (but not prior to) Completion, and the Council will provide all such consents and undertake such actions in support of and as may be reasonably required by the Water Organisation to assist in giving effect to the setting apart and vesting of the Council Reserves.

2. TRANSFER OF EXISTING EASEMENT INTERESTS

2.1 Existing Easement Interests: The Council agrees to transfer, and the Water Organisation accepts, the interests of the Council as grantee in respect of the Existing Easement Interests pursuant to section 50 of the PWA on the terms and conditions of this agreement.

2.2 Condition Subsequent: The parties acknowledge that the Water Organisation will become a local authority for the purposes of the PWA when the Statutory Responsibilities are transferred to the Water Organisation under this agreement and therefore, the obligations in clause 2.1 above are conditional (as a condition subsequent) on the transfer of the Statutory Responsibilities to the Water Organisation on the Completion Date.

- 2.3 Legalisation:** The transfer of the Existing Easement Interests will be legalised by declaration under sections 20(1) and 50 of the PWA.
- 2.4 Combined Easements:** In respect of the Combined Easements, the parties acknowledge and agree:
- (a) the Combined Easements include, together with water related rights, non-water related rights that the Council needs to continue to exercise post Completion;
 - (b) the Council will retain non-water related rights with respect to the Combined Easements and following transfer of the rights of the grantee under the Combined Easements to the Water Organisation, the Water Organisation irrevocably grants to the Council, and the Council accepts, a licence for the Council to exercise the rights of the grantee under the Combined Easements;
 - (c) any damage, breakage or defects in or to any part of the easement areas or burdened land under the Combined Easements that is a direct or indirect result of the Council's exercise of its rights under the Combined Easements, or has been caused by the Council, its staff, or persons otherwise under the Council's control will be promptly repaired by the Council, at its cost in all respects; and
 - (d) the Council indemnifies the Water Organisation against all actions, claims, demands, losses, damages, liabilities, costs and expenses (including legal costs on a solicitor-and-client basis) suffered or incurred by the Water Organisation arising out of or in connection with the Council's exercise of the rights granted under the Combined Easements, except to the extent that such loss is caused by the negligent or wrongful act or omission of the Water Organisation.
- 2.5 Protocol if Transfer not Possible:** While the parties agree that their intention is to transfer the benefit of Existing Easement Interests (including Combined Easements) to Tiaki Wai, the parties agree that, if a transfer of a particular Existing Easement Interest is not possible, the provisions of clause 3 will apply until such time as the parties have agreed upon and implemented an alternative permanent solution to provide Tiaki Wai with access and use rights to the relevant land.

3. POST-COMPLETION LICENCE

- 3.1 Post-completion Licence:** In the event that the transfer of all or any of the Freehold Properties, Council Reserves and Existing Easement Interests is not completed on the Completion Date, the Council will grant a licence to the Water Organisation and the Water Organisation accepts a licence, for the non-exclusive use of the relevant Freehold Properties, Council Reserves and Existing Easement Interests on the terms set out in Schedule 1 to Appendix 3. To avoid doubt, the licence will operate as a standing licence for the Water Organisation to enter the Freehold Properties and Council Reserves and to exercise the Existing Easement Interests for the purposes of section 161 of the LG(W)S Act until the necessary transfers are completed.

4. ACCESS TERMS LAND

- 4.1 Access Terms:** In respect of the Access Terms Land the parties agree that, subject to compliance with any relevant statutory processes and requirements, from the Completion Date, the Council will grant the Water Organisation an agreement in the form of a lease, licence or easement on terms agreed between them as suitable for the Water Organisation's particular access or use requirements, expected to be substantially on the terms set out in Schedule 1 to this Appendix 3. If the parties cannot reach agreement on the terms of access, this will be dealt with under the dispute resolution process at clause 16.

5. CONTINUED COUNCIL ACCESS AND USE REQUIREMENTS

- 5.1 Council access and use:** To the extent that the Council (and/or the public) accesses and uses, and requires continued access and use of, any Freehold Properties and Council Reserves transferred to the Water Organisation under this agreement, the parties will, subject to compliance with any relevant statutory processes and requirements, enter into an agreement in the form of a lease, licence or easement on terms agreed between them as suitable for the particular access or use requirements of the Council following the Completion Date. If the parties cannot reach agreement on the terms of access, this will be dealt with under the dispute resolution process at clause 16.

6. PART E OF SCHEDULE LAND TO BE RETAINED

- 6.1 Status of Land in Part E of Schedule 2:** The parties acknowledge and agree that:
- (a) to avoid doubt, for the purposes of this agreement, all land listed in Part E of Schedule 2 is deemed to be Access Terms Land;
 - (b) Part E of Schedule 2 identifies parcels of land (including Freehold Properties and Council Reserves) that, as at the Completion Date, the Council considers should remain in Council ownership; and
 - (c) the Council position is on the basis that, in accordance with the Transfer Principles, it considers that the primary purpose or predominant use of that land does not relate to the delivery of Water Services.
- 6.2 No concession on primary purpose:** The Council acknowledges that:
- (a) the Water Organisation reserves its position and does not necessarily agree with or concede the Council's assessment of the primary purpose or predominant use of each parcel of land identified in Part E of Schedule 2 as being non-water related; and
 - (b) due to time and information constraints prior to Completion, neither the Council, nor the Water Organisation, has completed a comprehensive parcel-by-parcel assessment of all land identified in Part E of Schedule 2.
- 6.3 Post-completion reassessment process:** The parties agree that, following Completion and prior to the Second Wash-Up Date either party may request a reassessment of any individual parcel of land listed in Part E of Schedule 2 to determine whether, having

regard to its actual use and function, it is required for, or primarily related to, the provision of Water Services and should therefore have transferred to the Water Organisation.

- 6.4 Steps for reassessment:** Any reassessment under clause 6.3 must:
- (a) be undertaken in good faith, acting reasonably and consistently with the Transfer Principles;
 - (b) take into account any designation of the land, together with its operational use(s); and
 - (c) if transfer is agreed, be implemented by updating the relevant Schedules and effecting transfer in accordance with this agreement (including using the appropriate statutory or registration mechanism set out in clause 1 of Appendix 3). The land will be considered a Further Item that transfers to the Water Organisation in accordance with clause 12.6, with consideration to be agreed in accordance with clause 12.6(b).
- 6.5 Resolution of disputes:** If the parties cannot agree on the outcome of a reassessment, the matter may be referred to the Expert Resolution Process.
- 6.6 Access and use under the Access Terms Land framework:** The parties agree that, following Completion and for so long as any land in Part E of Schedule 2 remains in Council ownership, access to and use of the land by the Water Organisation will be provided in accordance with the Access Terms Land framework set out in clause 4.1 of Appendix 3, including the requirement for the parties to enter into a lease, licence or easement (as appropriate and as acceptable to the Water Organisation) reflecting the Water Organisation's access and operational requirements.
- 6.7 Principles that apply to access:** Without limiting clause 6.6 above, or clause 4.1 of Appendix 3, the Council acknowledges and agrees that:
- (a) Water Services assets are located on land in Part E of Schedule 2 and Water Services activities are carried out on, or in connection with, that land;
 - (b) the Water Organisation must be able to exercise its statutory functions, powers and duties in relation to those assets in an effective and cost-efficient manner, minimising cost impacts on the Water Organisation and Water Services consumers;
 - (c) long-term access arrangements in respect of land in Part E of Schedule 2 must facilitate the ongoing operation, maintenance, repair, renewal and upgrade of Water Services assets by the Water Organisation; and
 - (d) it will charge the Water Organisation no more than a nominal rental or licence fee for any lease, licence or easement granted under clause 4.1 of Appendix 3, recognising the statutory, public and essential nature of the Water Services activities undertaken on that land and to ensure that Water Services consumers do not bear unnecessary land access costs.

SCHEDULE 1 TO APPENDIX 3

AGREEMENT RELATING TO CONSENT AND ENTRY TO LAND PURSUANT TO THE LOCAL GOVERNMENT (WATER SERVICES) ACT 2025

HUTT CITY COUNCIL

TIAKI WAI LIMITED

AGREEMENT DATED

2026

PARTIES

1. **HUTT CITY COUNCIL**, a territorial authority established under the Local Government Act 2002 (**Council**)
2. **TIAKI WAI LIMITED**, a company incorporated in New Zealand (company number 9382007) (**Tiaki Wai**)

BACKGROUND

- A. The Council owns or manages and controls the Land.
- B. Tiaki Wai is a Council-Controlled Organisation and, from the Completion Date under the Transfer Agreement, will be a Water Service Provider established by the Council to deliver Water Services for the Council.
- C. The Council will transfer the Assets on the Land to Tiaki Wai from the Completion Date under the Transfer Agreement.
- D. The LG(WS) Act provides rights to Tiaki Wai as a Water Service Provider to enter the Land and carry out work subject to consent and conditions.
- E. The Council and Tiaki Wai have entered into this agreement to record the consent and conditions which are applicable to Tiaki Wai's rights to enter and carry out work in accordance with the LG(WS) Act on land owned or managed by the Council.

THIS AGREEMENT RECORDS THAT:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this agreement, unless the context indicates otherwise:

Assets means the plant and equipment situated on the Land used in connection with the provision of Water Services, that are transferred by the Council to Tiaki Wai from the Completion Date under the Transfer Agreement pursuant to the Transfer Agreement, and includes any new plant and equipment used in connection with the provision of Water Services on the Land after the date of this agreement.

Authority means every governmental, local, territorial and statutory authority having jurisdiction or authority over the Land or its use and may include a utility supplier, but does not include the Council or Tiaki Wai in their capacities as licensor and licensee under this agreement.

Building Act means the Building Act 2004.

Building Work has the same meaning as in the Building Act.

Code Compliance Certificate has the same meaning as in the Building Act.

Council-Controlled Organisation has the meaning given to it in the Local Government Act 2002.

Existing Easement Interests means the rights and obligations of the Council as grantee under the easements which are required for, or primarily related to, the provision of Water Services (details of which, as at the date of this agreement, are listed in Schedule 3).

Freehold Properties means the land subject to this licence that is owned by the Council (details of which, as at the date of this agreement are listed in Schedule 2).

Land means that part of the land subject to this licence that is owned or administered by the Council including the Freehold Properties, the Reserves and any other land owned or administered by the Council from time to time during the Term and on which any Assets are located at the date of this agreement, or subsequently located or constructed by Tiaki Wai during the Term.

Laws means any legislation, regulations, bylaws, ordinances, orders, proclamations, district plan, Management Plan and rules.

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

Licence Rights means the rights granted to Tiaki Wai under section 161 of the LG(WS) Act.

Notifiable Event has the same meaning as in the Health and Safety at Work Act 2015.

Notified Activities means:

- (a) the activities set out in section 161(1)(a) being “constructing or placing water services infrastructure on, over, or under land or under a building on land”; and
- (b) any activities which will require entry into, or works on, in or under any building on the Land which is not an Asset owned by Tiaki Wai.

Reserves means the land subject to this licence that is subject to the Reserves Act 1977 that is either vested in the Council in fee simple, or where the Council is otherwise appointed as administering body of the reserve (details of which, as at the date of this agreement, are listed in Schedule 1).

Road means any road located within Hutt City district where the Council is the road controlling authority.

Standard Activities means all activities permitted under section 161(1) of the LG(WS) Act other than the Notified Activities.

Third Party Rights means any lease, licence or occupation right to any third party over the Land.

Transfer Agreement means the transfer agreement between the Council and Tiaki Wai which, among other things, transferred the Assets to Tiaki Wai.

Term means, subject to clause 7 of this agreement, the period from the effective date of the Transfer Agreement until such time as Tiaki Wai is no longer a Water Services Provider for the Hutt City district under the LG(WS) Act, or no longer owns the Assets.

Water Service Provider has the meaning given to it in the LG(WS) Act.

Water Services has the meaning given to that term in the LG(WS) Act.

Working Day has the meaning given to it in the Property Law Act 2007.

1.2 Interpretation: In this agreement, unless the context indicates otherwise:

- (a) **Defined Expressions:** expressions defined in the main body of this agreement have the defined meaning throughout this agreement, including the background;
- (b) **Headings:** clause and other headings are for ease of reference only and will not affect this agreement's interpretation;
- (c) **Parties:** references to any **party** include that party's executors, administrators, successors and permitted assigns;
- (d) **Persons:** references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) **Plural and Singular:** references to the singular include the plural and vice versa;
- (f) **Clauses/Schedules/Attachments:** references to clauses, schedules and attachments are to clauses in, and the schedules and attachments to, this agreement. Each such schedule and attachment forms part of this agreement;
- (g) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (h) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (i) **Inclusive Expressions:** the term **includes** or **including** (or any similar expression) is deemed to be followed by the words **without limitation**; and

- (j) **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.

2. GRANT OF LICENCE

- 2.1** The Licence Rights to which this agreement relates are granted to Tiaki Wai pursuant to section 161 of the LG(WS) Act.
- 2.2** In exercising the Licence Rights, Tiaki Wai will use reasonable endeavours to minimise disruption to other users of the Land and will not impede public access to, or the free use and enjoyment of, any part of the Land or any other public area in proximity to the Land without the Council's prior approval (not to be unreasonably withheld or delayed).
- 2.3** To avoid doubt, this agreement does not relate to any Road and notice and entry requirements for access to Road are set out in sections 172, 173 and 177 of the LG(WS) Act.

3. NOTIFICATION AND CONSENT

- 3.1** Subject always to compliance with clauses 3.2 and 4 of this agreement, written notice under section 162 of the LG(WS) Act is deemed to have been provided by this agreement and no conditions are imposed for any Standard Activities on the Land (except for any areas that are subject to Third Party Rights).
- 3.2** Where Tiaki Wai needs to undertake any Standard Activities on any area of the Land that is, or may be, subject to Third Party Rights, Tiaki Wai must notify the Council of such works and comply with the requirements of Part 3, Subpart 4 of the LG(WS) Act with respect to the third party occupier. Once access is granted, Tiaki Wai must carry out the works in accordance with clause 4.3 of this agreement and use reasonable endeavours to minimise any disruption to the third party occupier.
- 3.3** Where Tiaki Wai needs to undertake any Notified Activities on the Land, consent is deemed to have been provided for any works under section 161(1)(a) of the LG(WS) Act provided Tiaki Wai first complies with clause 4 of this agreement.

4. NOTIFIED ACTIVITIES

- 4.1** Tiaki Wai must provide to the Council copies of the plans and specifications for Notified Activities no later than 20 Working Days prior to the commencement of the works.
- 4.2** Where any Notified Activities are being carried out on Reserve, Tiaki Wai must first install all necessary fencing, hoardings and signage to prevent access to the works area by members of the public and must ensure that the Assets do not compromise the use of the Reserve for the purpose for which the relevant reserve is classified.
- 4.3** Tiaki Wai must carry out the works:

- (a) in a skilful and efficient manner;
- (b) in conformity with the resource consents, building consents and other approvals obtained from the relevant Authorities (if applicable);
- (c) in accordance with best trade practices; and
- (d) in compliance with the requirements of all Laws as they affect the works and Tiaki Wai's use of the Land.

4.4 Tiaki Wai must not allow any area of the Land to be open to members of the public or allow the use of the Land by members of the public if that would be in breach of section 363 of the Building Act.

5. EXISTING EASEMENT INTERESTS

5.1 With respect to any Existing Easement Interests that have not been transferred to Tiaki Wai under the Transfer Agreement by the commencement of the Term, the Council grants to Tiaki Wai, and Tiaki Wai accepts the right for Tiaki Wai to exercise the rights and obligations of the Council, as its licensee or agent under the Existing Easement Interests until such time as a transfer of the Existing Easement Interests is effected.

5.2 From the date of transfer of any Existing Easement Interests to Tiaki Wai, this agreement will cease to have any force or effect in relation to that Existing Easement Interest but will otherwise continue in full force and effect in respect of all remaining Existing Easement Interests.

6. HEALTH & SAFETY

6.1 In completing any work on Land under this agreement, Tiaki Wai must at all times:

- (a) comply with all health and safety legislation, regulations and applicable codes of practice and standards;
- (b) ensure, so far as is reasonably practicable, that Tiaki Wai's activities do not put at risk the health and safety of all personnel of Tiaki Wai, and any other persons on the Land, including Council personnel, other service providers, the public, and visitors;
- (c) keep full records and documentation in relation to its use and occupation of the Land and immediately provide the Council with information about any health and safety matters relating to the Land and its use and occupation of the same, if requested; and
- (d) comply with all of the Council's reasonable directions in relation to health and safety in connection with the Land and Tiaki Wai's occupation of the same.

6.2 Tiaki Wai must, to the extent that its health and safety duties overlap with the Council:

- (a) so far as is reasonably practicable, consult, co-operate with and co-ordinate its activities on the Land with the Council; and
- (b) ensure that any feedback, agreed changes or improvements to health and safety processes and procedures are implemented immediately.

6.3 If there are multiple occupants on the Land, then Tiaki Wai must:

- (a) participate in the Council's emergency procedures, workplace assessments, training or orientation and any other relevant health and safety activities (if requested); and
- (b) identify and address any special needs requirements.

6.4 Tiaki Wai must immediately notify the Council of any:

- (a) Notifiable Event; or
- (b) WorkSafe inspection, investigation or information request,

in connection with the Land.

6.5 Tiaki Wai must undertake a site specific risk assessment and prepare (and update as required) a site specific safety plan for its use and occupation of the Land. Such plan must address any risks the Council identifies to Tiaki Wai.

7. TERMINATION

7.1 This agreement has a term of 5 years from the effective date of the Transfer Agreement unless earlier replaced or superseded for particular land by the registration of a registrable interest in land, including but not limited to a transfer of title from the Council to Tiaki Wai, an easement, or other interest that provides Tiaki Wai with suitable access and use rights.

7.2 Not less than 90 Working Days before the expiry of the timeframe in clause 7.1 either party may request that the term of this agreement be extended for a further period. The parties must engage in good faith and the Council must not unreasonably withhold or delay agreement to an extension to the extent the agreement remains reasonably necessary and relevant land has not yet been transferred.

8. DEALINGS WITH LAND

8.1 If the Council intends to dispose of the whole or any part of the Land to a party other than Tiaki Wai:

- (a) the Council must advise any prospective purchaser of the existence of these Access Terms, and provide details of the same in any agreement for the disposal; and
- (b) before the completion of any disposal, the Council must at its cost obtain from the purchaser a deed of covenant in favour of Tiaki Wai (in a form

acceptable to Tiaki Wai) agreeing to be bound by the provisions of these Access Terms.

9. COMPLIANCE WITH STATUTORY REQUIREMENTS

Tiaki Wai must at its own expense comply with all Laws and regulations including requisitions by any competent authority, in respect of the Assets and any works on the Land. In particular, but without limitation, Tiaki Wai must take all practicable steps to ensure that any person in or on the Land or in the vicinity of the Assets is not harmed by any hazard arising from the Assets, Tiaki Wai's use of the Land or any works on the Land.

10. REGULATORY POSITION

10.1 The Council and Tiaki Wai have respectively signed this agreement as licensor and licensee of the Land and in their non-regulatory capacities. This agreement does not bind either party in their regulatory capacity in any way and any consent or agreement the Council gives as licensor under this agreement is not an agreement or consent in its regulatory capacity and vice versa.

10.2 When acting in its regulatory capacity, the Council is entitled to consider all applications to it without regard to this agreement. The Council is not liable to Tiaki Wai or any other party if, in its regulatory capacity, the Council declines or imposes conditions on any consent or permission that Tiaki Wai or any other party seeks for any purpose associated with this agreement.

11. DISPUTE RESOLUTION

The parties will resolve all disputes related to this agreement in accordance with the dispute resolution provisions in the Transfer Agreement.

12. GENERAL

12.1 If any part of this agreement is held by any Court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of this agreement. The invalidity of any part or provision of this agreement will not affect the enforceability of any other part or provision of this agreement.

12.2 The parties acknowledge and agree that certain covenants set out in this agreement will continue beyond the expiry or sooner determination of this agreement for the benefit of the parties notwithstanding expiry or sooner determination of this agreement.

12.3 No amendments, variations or modifications to this agreement will be effective unless made in writing and signed by or on behalf of each of the parties.

12.4 This agreement may be executed by scan, and in any number of counterparts all of which will be deemed an original and together be taken as a single instrument.

12.5 Each party irrevocably consents to the signing of this agreement by electronic signature(s) in accordance with the Contract and Commercial Law Act 2017 and agrees to be bound if this agreement is signed by electronic signature(s). If either party signs this agreement by electronic signature, they must, if requested, provide separate written confirmation to the other party that:

- (a) the electronic signature was legitimately applied with the relevant authority;
- (b) the signatory has full knowledge of the contents of this agreement and intends to be bound by it; and
- (c) the electronic signature complied with the requirements of section 228 of the Contract and Commercial Law Act 2017 (if applicable).

12.6 Clause 12.5 of this agreement does not detract from the Contract and Commercial Law Act 2017 nor does it limit the ability of any party signing this agreement by any other means so permitted at law.

SIGNATURES

SIGNED on behalf of **HUTT CITY COUNCIL** by:

Signature of authorised signatory

Name of authorised signatory

SIGNED on behalf of **TIAKI WAI LIMITED** by:

Signature of director/authorised signatory

Name of director/authorised signatory

SCHEDULE 1 (Published Separately)

RESERVE

LAND USE	NAME	LOCATION	VALUATION ID	RECORD OF TITLE	LEGAL DESCRIPTION
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SCHEDULE 2 (Published Separately)

FREEHOLD LAND

LAND USE	NAME	VALUATION ID	RECORD OF TITLE	LEGAL DESCRIPTION

SCHEDULE 3 (Published Separately)

EASEMENT INTERESTS

EASEMENT INSTRUMENT	PURPOSE	REGISTERED OWNER	RECORD OF TITLE	LEGAL DESCRIPTION

APPENDIX 4
SWAPS VALUATION PROTOCOL

The Swaps Valuer will determine the marked-to-market valuation of each Swap in accordance with the following inputs.

- **Valuation Date (Yield Curve Date):** 30 June 2026
- **Yield Curve Time:** 5:00pm (NZT)
- **Swap Curve Source:** Bloomberg CRV function sourcing NDBB3M, NDBB6M, NDSWAP 1-10 mid-market yield-to-maturity (YTM) mid-market rates
- **Accrued Interest:** Included from the most recent rate-set date to the Valuation Date

Privileged and Confidential

Transfer Agreements

Principles (as at 24 April 2026)

This document has been prepared for the purpose of discussion only and does not constitute council policy or a decision.

Privileged and Confidential**Transfer Agreements – Principles****Introduction**

1. This document set outs the Transfer Principles that will guide the development of transfer agreements and the transfer of responsibility, water related infrastructure and assets, liabilities and debts that wholly or primarily relate to the provision of water supply, wastewater, and stormwater (**Water Services**).
2. The transfer is to be from each **Shareholding Council**¹ to Tiaki Wai Limited.
3. As it is intended that Wellington Water Limited (**Wellington Water**) will amalgamate with Tiaki Wai, it is not anticipated that a formal transfer will be required, but these provisions make provision for potential Transfer Agreements with Wellington Water.²
4. These principles have been developed with a view to informing the preparation of the transfer agreements that will be entered into between Tiaki Wai and each Shareholding Council (each of which will be a separate **Transfer Agreement**).
5. This document contains three sections:
 - (a) **Part One** - Legislative context.
 - (b) **Part Two** – The Transfer Principles and associated explanation.
 - (c) **Part Three** – Variations to the Transfer Principles that will be applied to Wellington Water, if required.

Purpose of the Transfer Principles

6. The Transfer Principles are intended to assist the parties with identifying all responsibilities, infrastructure and assets, liabilities and water debts that are to be included in the Transfer Agreements.

Assumptions

7. **Purchase Consideration:** The Transfer Principles will not apply to financial matters under the Transfer Agreements, but they will work alongside the accounting and financial process. We have assumed that:
 - (a) consideration payable by Tiaki Wai for the transfer of assets and liabilities will be satisfied by:

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- 1 The Shareholding Councils are:
 - Wellington Regional Council;
 - Hutt City Council;
 - Porirua City Council;
 - Upper Hutt City Council; and
 - Wellington City Council
 - 2 If the current proposed approach to amalgamate Wellington Water into Tiaki Wai proceeds, the transfer principles will not be relevant to Wellington Water. If the amalgamation doesn't proceed then Tiaki Wai and Wellington Water will need to enter into a Transfer Agreement on substantially the same terms of the Transfer Agreements for the Shareholding Councils, with a transfer of employees at or below "Tier 2".

This document has been prepared for the purpose of discussion only and does not constitute council policy or a decision.

- (i) the assumption (in some form) by Tiaki Wai of the confirmed amount of water debt from each relevant Shareholder Council; and
 - (ii) the issue of fully paid shares in Tiaki Wai to the relevant Shareholding Council;
- (b) the assets will transfer at the relevant Shareholding Council's most recent book value (or at \$0 if not recorded, eg contractual arrangements), and the liabilities will transfer on a dollar-for-dollar basis; and
 - (c) the Transfer Agreements will provide for post-closing adjustments to the purchase consideration.
8. **Valuation Methodology:** A common valuation methodology and transparent debt value will be adopted in each Transfer Agreement for the purposes of calculating net value of the transferring assets.
 9. **Common Terms:** To the extent possible, each Transfer Agreement will adopt common terms as between the Shareholding Councils (and Wellington Water if the proposed amalgamation does not proceed). A template Transfer Agreement will be drafted for use by all the Shareholding Councils (and by Wellington Water as required). It is acknowledged that the Transfer Agreement between Tiaki Wai and the Wellington Regional Council will be different, due to the different nature of Wellington Regional Council's role and responsibilities in relation to the provision of water services.
 10. **Arm's Length Terms:** The Transfer Agreements with Tiaki Wai will be on a fair basis (arm's length and market-based assessment) to ensure the success of Tiaki Wai as a new water services provider, and to address Tiaki Wai's directors' legitimate concerns regarding directors' duties, and will not knowingly transfer undue burdens or liabilities to Tiaki Wai.
 11. **Potential restrictions on transfer of certain assets:** We understand that Wellington Regional Council³ and Hutt City Council⁴ have previously received assets transferred to them by legislation from disestablished statutory entities. On the assumption that the original instruments that provided for the transfer of these assets were legally effective, then in principle there should not be an issue with transferring ownership of these assets to Tiaki Wai. This principle equally applies to the statutory functions, powers, and duties that were transferred to the Wellington Regional Council and the Hutt City Council by the historic legislation. To the extent that any practical accommodations are required, this will be addressed through due diligence.

3 Wellington Regional Council received assets from the *Wellington Regional Water Board* established under the Wellington Regional Water Board Act 1972.

4 Hutt City Council received assets from the Hutt Valley Drainage Board established under the Hutt Valley Drainage Act 1967.

Privileged and Confidential**PART ONE****LEGISLATIVE CONTEXT****The legislative framework applying to the transfer of responsibilities and Transfer Agreements**

1. Section 9 of the Local Government (Water Services) Act 2025 (**LG(WS) Act**) provides that a territorial authority is responsible for ensuring that water services are provided in its district, but that it can discharge that responsibility by entering into a transfer agreement with a water organisation.
2. In this context, other than Wellington Regional Council, the Shareholding Councils are territorial authorities, and Tiaki Wai is to be established as a water organisation under the LG(WS) Act.
3. Once a Transfer Agreement is executed, and the transfer is complete (i.e., when all assets, liabilities, obligations, and water debts transfer to the water organisation), the water organisation becomes the water service provider for the relevant service area in relation to the transferred services. This is intended for Tiaki Wai, which requires the execution of Transfer Agreements by the Shareholding Councils.
4. The LG(WS) Act sets out the required content of a Transfer Agreement in Schedule 2, which informs the approach to preparing the draft Transfer Agreement template.
5. There are several statutory exclusions, with a Transfer Agreement not allowed to transfer:⁵
 - (a) the territorial authority's power to make bylaws under the LG(WS) Act;
 - (b) the territorial authority's role as a shareholder of a water organisation; and
 - (c) the authority's power to delegate a responsibility, function, duty, or power under the Local Government Act 2002 (**LGA02**).
6. Any matter that a Transfer Agreement does not specify as being transferred is taken to be retained by the territorial authority. Schedule 9 of the Local Government Act 2002 (**LGA02**) (transfer of undertakings) applies, with necessary modifications, to a Transfer Agreement.
7. As there will be a separate Transfer Agreement for each Shareholding Council, it is important for principles to be agreed that will guide the preparation of the draft Transfer Agreements, and guide the approach to identifying all matters relating to the water services that will transfer.

5 Section 12(8), LG(WS) Act.

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PART TWO

TRANSFER PRINCIPLES AND ASSOCIATED EXPLANATION

The Transfer Principles are:

Principle 1	All Water Services assets (excluding land), liabilities, obligations and water debts owned or controlled by the Shareholding Councils will transfer to Tiaki Wai.
Principle 2	Land should only transfer where its primary purpose or predominant use relates to the delivery of Water Services.
Principle 3	Third party rights will be protected and not materially altered, including by: <ul style="list-style-type: none"> Existing contractual arrangements with third parties being, to the extent reasonably possible, protected and transferring to Tiaki Wai materially unaltered. Any third party rights remaining unaltered by the transfer of assets, liabilities and other matters to Tiaki Wai, to the extent reasonably possible.
Principle 4	Each Shareholding Council will receive shares in Tiaki Wai that are commensurate with the net value of assets transferred.
Principle 5	Water Services debt will transfer to Tiaki Wai from each Shareholding Council based on a consistent methodology.
Principle 6	The Shareholding Councils (and Wellington Water) will remain responsible for the provision of Water Services until “Day 1” or the completion date of transfer where agreed, and will continue to discharge all relevant water service provider obligations.
Principle 7	The Shareholding Councils will take all necessary steps to ensure that Tiaki Wai has the benefit of any resource consents and designations that relate primarily to the Water Services for “Day 1”, including through the transfer of consent and designations under the Resource Management Act 1991.
Principle 8	The Transfer Agreements will document and facilitate the transfer and/or sharing of Water Services related statutory functions and responsibilities, along with other shared service arrangements
Principle 9	The Shareholding Councils, Wellington Water and Tiaki Wai will adopt a “no-surprises” approach to information disclosure and due diligence as part of preparing the Transfer Agreements, including in relation to any financial or legal risks and other issues.

These Transfer Principles are further detailed below.

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Transfer Principle 1 – All Water Services assets (excluding land), liabilities, obligations and water debts owned or controlled by the Shareholding Councils will transfer to Tiaki Wai

Description	<ol style="list-style-type: none"> 1. All assets (excluding land), liabilities, obligations and water debts owned or operated by a Shareholding Council that wholly or solely relate to the provision of Water Services will transfer to Tiaki Wai.⁶ 2. Any of a Shareholding Council’s assets (excluding land), liability or obligations that: <ol style="list-style-type: none"> (a) predominantly/primarily relate to the provision of Water Services will transfer to Tiaki Wai; and (b) do not predominantly/primarily relate to the provision of Water Services will be retained by the Shareholding Council with necessary rights granted to Tiaki Wai. 3. In the case of all assets owned or operated by a Shareholding Council that have a mixed purpose or use (mixed water services assets) (i.e., Water Services and another purpose or use), the parties will discuss and agree the best approach, including the potential for transfer. As far as is practicable, a consistent approach will be taken to the treatment of mixed water services assets for the purpose of transfer.
Context	<ol style="list-style-type: none"> 4. Tiaki Wai is being established to own, operate, maintain, renew and build water assets, instead of and on behalf of the Shareholding Councils. It is intended that Tiaki Wai be established in a way that allows it to provide Water Services in the service area in a manner that is more effective than under the current arrangements. 5. In order to achieve that objective, Tiaki Wai will need to have transferred to it everything it requires to effectively provide and/or operate Water Services from Day 1. 6. This will include all assets, liabilities, obligations and water debts owned by a Shareholding Council or by Wellington Water which relate wholly or solely to the provision of Water Services. 7. It is understood that the assets will transfer on an “as is, where is” basis, but this is not to provide an opportunity for the transfer of assets that are no longer used for Water Services, of assets that are decommissioned and/or abandoned.

⁶ The Wellington Council has indicated that it has a number of historic built water supply assets that it wishes to retain, primarily two dams in the Wainuiomata Regional Park.

Transfer Principle 1 – All Water Services assets (excluding land), liabilities, obligations and water debts owned or controlled by the Shareholding Councils will transfer to Tiaki Wai

8. It is also not intended that assets, liabilities and obligations that do not primarily or predominantly relate to Water Services will transfer, with those being dealt with separately (e.g., under a shared services agreement). The parties will work together to determine which assets fit into the mixed water services asset category at an early stage, and resolve any necessary arrangements required in respect of those assets.
9. The LG(WS) Act does not provide a full statutory vesting mechanism for all assets, liabilities or other matters, which provides for the transfer from a territorial authority to a water organisation. Instead, it provides a limited transfer framework by applying Schedule 9 of the LGA02 (with necessary modifications) to a Transfer Agreement.
10. In relation to assets, Schedule 9 provides that, despite anything in any enactment or rule of law, property that is fixed to, or under or over, any land may be transferred by a local authority to a council-controlled organisation (**CCO**) in which it holds equity securities, whether or not any interest in the land is also transferred. If any such property is transferred, the property and the land must be regarded as separate property, each capable of separate ownership.

Assets (excluding land)

11. The LG(WS) Act does not prescribe the types of assets that must transfer under a Transfer Agreement, but they can include:
 - (a) contractual arrangements;
 - (b) above ground Water Services assets, e.g., treatment plants, above-ground tanks, pump stations;
 - (c) below ground Water Services assets, e.g., distribution pipes, sewer mains, in-ground concrete structures;
 - (d) plant and equipment;
 - (e) buildings and offices;
 - (f) fleet;
 - (g) financial assets, e.g., development contributions, financial contributions, cash reserves allocated to but not yet spent on Water Services, self-insurance funds such as the one operated by the Wellington Regional Council;

Transfer Principle 1 – All Water Services assets (excluding land), liabilities, obligations and water debts owned or controlled by the Shareholding Councils will transfer to Tiaki Wai

- (h) stormwater assets, e.g., hard infrastructure, engineered green assets (but the LG(WS) Act expressly excludes transport corridor stormwater infrastructure from transferring);
- (i) shares and interests, including in joint-ventures;
- (j) intellectual property;
- (k) information technology and systems;
- (l) warranties;
- (m) rights and interests, e.g., easements, consents, permits, designations, other regulatory approvals, shares in third party assets; and
- (n) “mixed water services assets” and “shared assets” (see discussion below).

Transport corridor stormwater infrastructure

12. Where a Shareholding Council is a corridor manager in relation to one or more roads in its district, the Shareholding Council must ensure that any Transfer Agreement does not transfer the ownership or control of any **transport corridor stormwater infrastructure**.⁷

Assets still under construction at the date of the transfer

13. For assets that will wholly relate to the provision of Water Services but are under construction at the time of transfer, the approach will be for these assets to transfer at the same time as the other assets, i.e. on “Day 1”. As ownership in these assets will be transferring before practical completion, all rights relating to the assets, e.g., warranties, claims, etc. will also transfer to Tiaki Wai.

Liabilities

⁷ Defined in the LG(WS) Act as infrastructure that:
 (a) relates to the transport function of a transport corridor managed by a territorial authority; and
 (b) is used to collect, treat, drain, reuse, or discharge stormwater.

Transfer Principle 1 – All Water Services assets (excluding land), liabilities, obligations and water debts owned or controlled by the Shareholding Councils will transfer to Tiaki Wai

14. The LG(WS) Act does not prescribe the types of liabilities that must transfer under a Transfer Agreement, but they can include:
 - (a) retentions;
 - (b) contractual breaches and general disputes;
 - (c) employee related liabilities; and
 - (d) non-compliance with consents and approvals.
15. Under Schedule 9, a local authority may also transfer its liabilities in relation to an undertaking to a CCO if the transfer is agreed to by:
 - (a) the local authority;
 - (b) the CCO; and
 - (c) any other affected parties.
16. If agreed, the CCO assumes the liabilities in relation to the undertaking as if it had entered into the contract or agreement that gave rise to the undertaking itself. Such a transfer will not constitute a breach of the relevant contract or a civil wrong and does not affect the right of any person to cancel or amend the relevant contract or release any surety or guarantor from any obligation with respect to the undertaking.
17. Schedule 9 will not automatically vest ownership of transferring liabilities and other matters into Tiaki Wai. Instead, a Transfer Agreement is required, together with any necessary third party consents.

Employees

18. Schedule 1 of the LG(WS) Act provides a transitional process for the Shareholding Councils and Wellington Water (jointly the current provider) to identify relevant employees to receive offers of employment from Tiaki Wai.
19. The Chief Executives of the current provider must identify:

Transfer Principle 1 – All Water Services assets (excluding land), liabilities, obligations and water debts owned or controlled by the Shareholding Councils will transfer to Tiaki Wai

- (a) those employees whose employment relates more to the water services being transferred to Tiaki Wai than to the functions the current provider will retain after the transfer; and
 - (b) those employees who are not identified under paragraph (a) above but whose employment will cease as a result of the transfer.
20. An employee identified who receives an offer of employment (whether accepted or not) from the chief executive of Tiaki Wai is not entitled to any payment or other benefit (including redundancy), as a result of the transfer, if the offer of employment is:
- (a) for substantially the same position as the position the employee currently holds;
 - (b) for employment in substantially the same general locality; and
 - (c) on the same, or better, terms and conditions as the employee’s current terms and conditions.
21. Tiaki Wai will make offers of employment to employees identified as having employment more related to the Water Services being transferred to Tiaki Wai. Under the LG(W.S) Act, if an offer of employment is accepted their employment will be treated as continuous for the purposes of any entitlements or benefits, i.e., such as leave entitlements under the *Holidays Act 2003*.
- Mixed water services assets*
22. Each Shareholding Council is anticipated to have a range of assets that only partly relate to the provision of Water Services (i.e. where assets are also owned and/or used for other purpose(s)).
23. A Shareholding Council’s assets that partly relate to the provision of Water Services should only transfer if their primary purpose or predominant use is related to the delivery of Water Services.
24. Whether an asset has a ‘primary purpose’ or ‘predominant use’ of delivering Water Services will be fact dependent and will require assessment and agreement between the parties. Shareholding Councils are to agree a consistent approach and/or process for assessing such assets, with the intention that a consistent approach is taken to transfer.

Transfer Principle 1 – All Water Services assets (excluding land), liabilities, obligations and water debts owned or controlled by the Shareholding Councils will transfer to Tiaki Wai

To the extent that Tiaki Wai will need to use or have access to a mixed water services asset that does not transfer to it (ie. an asset that does not predominantly/primarily relate to the provision of Water Services), arrangements will need to be put in place between the parties to ensure access is guaranteed, through a licence or other arrangement. It is expected that this will be described in the Transfer Agreement, and documented as appropriate. This will also apply to the Shareholding Councils in relation to mixed water services assets that do transfer to Tiaki Wai, with equivalent arrangements needed to provide the Shareholding Councils' with continued access and use as required.

Water debts

25. The Shareholding Councils do not raise separate 'water debt'. A methodology for ascertaining the amount of external debt that is to be treated as "water debt" to be transferred from each Shareholding Council to Tiaki Wai will be designed that is consistent, transparent, and auditable, with principles applicable across Shareholding Councils (while allowing for particular agreed considerations in the case of Wellington City Council).

Transfer Principle 2 – Land should only transfer where its primary purpose or predominant use relates to the delivery of Water Services

Description	<ol style="list-style-type: none"> 1. To the extent practicable, land currently owned by, or vested in, a Shareholding Council should only transfer where its primary purpose or predominant use relates to the delivery of Water Services. This is unless there is good reason for it to not transfer, or where parties otherwise agree. ⁸ 2. Where any assets are transferred, but the land does not transfer from the Shareholding Council to Tiaki Wai, the parties will ensure that either: <ol style="list-style-type: none"> (i) Tiaki Wai can rely on its statutory powers to operate, inspect, maintain, complete, alter, renew or replace any asset on that land; or (ii) Tiaki Wai can enter into contractual or licence arrangements with the Shareholding Council regarding rights of access to the land; or (iii) any existing registered or documented access and usage rights related to the land transfer to Tiaki Wai, where possible. 3. To the extent that any existing rights are insufficient, or there are no rights currently registered or documented, new rights will need to be created (either through the exercise of statutory powers or by arrangement between the Tiaki Wai and the relevant Shareholding Council/landowner). These arrangements will need to be reached and agreed prior to ‘Day 1’. 4. Any arrangements not transferred to Tiaki Wai by Day 1 will be held on trust by the Shareholding Council for Tiaki Wai until the arrangements are transferred or terminated.
Context	<ol style="list-style-type: none"> 5. Only the land that is necessary for Tiaki Wai to maintain continuity of Water Services should transfer for Day 1. It follows that the focus for transfer is on land owned by a Shareholding Council that has existing or planned Water Services assets on or under it.

⁸ The Wellington Regional Council has indicated that it wishes to avoid subdivision within regional parks and catchment areas. However, it will consider the transfer of land outside of regional parks and catchment areas on a case-by-case basis. The Wellington Regional Council also intends to explore other legal mechanisms that can be put in place for Tiaki Wai to access, operate and develop its assets on Wellington Regional Council land that avoid the requirement for it to be a consent holder as a provider of water services (but it will remain as regulator). For completeness, the Wellington Regional Council wishes to manage land that is not yet used for water services to achieve agreed outcomes, without prejudicing the future use of the land for water supply purposes.

Transfer Principle 2 – Land should only transfer where its primary purpose or predominant use relates to the delivery of Water Services

6. Whether a land parcel is necessary for transfer from the Shareholding Council to Tiaki Wai will depend on a number of factors, including:
 - (a) the primary purpose or predominant use of the land on which the Water Services asset is located or on which a Water Services asset is planned to be located;
 - (b) whether the land is held for separate purposes or uses, each occupying different portions of the same land and whether it could be easily subdivided from a parent title;
 - (c) whether the land is held for more than one purpose or use, with non-Water Services being the primary purpose or predominant use;
 - (d) existing third party interests or rights (including but not limited to rights of first refusal and/or transfer restrictions in Treaty settlement legislation); and
 - (e) future growth needs (including any land that has been designated under the Resource Management Act 1991 – noting that Tiaki Wai will be a ‘requiring authority’ for the purposes of the RMA.
7. Where land is owned or used wholly or solely for the provision of Water Services, or where the primary purpose or predominant use relates to the delivery of Water Services, then the land should be in scope to transfer to Tiaki Wai.
8. Where the land is owned or used for more than one purpose, but the primary purpose or predominant use is not related to the provision of Water Services, then the land should be considered for transfer but it will be expected to remain with the Shareholding Council, unless the parties agree otherwise (e.g. land where the primary purpose or predominant use is a sports field, but has a secondary purpose of providing drainage for stormwater). In such circumstances, the arrangements for any Water Services related aspect will need to be discussed and agreed.
9. Where a transferring asset is on land that is owned by a Shareholding Council, it may be appropriate for that portion of the land to be subdivided and transferred to Tiaki Wai. Where it is not appropriate and/or not cost effective to subdivide, Tiaki Wai will either need to rely on its statutory powers to locate, access, and maintain the asset on that land, or enter into other arrangements with the Shareholding Council regarding rights of access to the land. Tiaki Wai will have statutory powers to enter land (including land owned by a Shareholding Council), as set out in the LG(WS) Act, which are intended to reflect similar powers that apply to utility operators, in particular the right to construct, inspect and maintain Water Services infrastructure. However, the preferred outcome is, where possible, for Tiaki Wai to have expressly documented

Transfer Principle 2 – Land should only transfer where its primary purpose or predominant use relates to the delivery of Water Services

- perpetual contractual and/or statutory registered rights that provide access on or over land to where its assets are located.
10. There are other situations where it may be inappropriate for certain land to transfer from a Shareholding Council to Tiaki Wai, such as land within a reserve, regional park or legal road. These areas often incorporate land that has significant environmental, cultural, and/or recreational value or there may be other factors that make transfer difficult. A consequence may be that the relevant Shareholding Council may not be able to transfer some land without revocation of reserve status or the stopping of road, which would require separate statutory processes to be followed, with no guarantee of a successful outcome. Therefore, it will be important for Tiaki Wai to have influence over how these areas are protected and managed given that Tiaki Wai will have responsibility for managing drinking water supply quality. For this reason, Tiaki Wai needs secure and ongoing access and operational rights to the land that does not materially affect the use of the land by Shareholding Councils.
 11. In relation to transferring assets that are not located on land owned by a Shareholding Council, any existing registered or documented access and usage rights related to the land the asset is located on will also need to transfer to Tiaki Wai where possible. To the extent that the existing rights are not sufficient or sufficiently documented, or there are no rights currently registered or documented, new rights will need to be created by negotiation between Tiaki Wai and the relevant land owner, or Tiaki Wai will need to rely on its statutory powers in the LG(WS) Act and/or the Public Works Act 1981(**PWA**). Consideration is needed as to whether shareholding councils will charge Tiaki Wai for having assets located on its land. It is preferable if a consistent approach is adopted by all shareholding councils, for example, Hutt City Council has suggested that Tiaki Wai should be charged for assets located on councils' land as the councils will be incurring costs, but the charges should be set on a cost recovery basis only.
 12. For completeness, under Schedule 9 of the LGA02, nothing in sections 40 to 42 of the PWA applies to the transfer of land from a shareholding council to Tiaki Wai but sections 40 and 41 of the PWA apply to the land after transfer. Therefore, any land transferred from a Shareholder Council to Tiaki Wai that is subject to the PWA must have a caveat lodged against it by the Shareholder Council to protect the rights of former owners of land to have it offered back to them under sections 40 to 42 of the PWA.

Transfer Principle 3 – Third party rights will be protected and not materially altered

Description	1.	Existing contractual arrangements with third parties will transfer materially unaltered. Where this is not possible, alternative arrangements will need to be explored, including putting in place new arrangements.
	2.	This will involve: <ul style="list-style-type: none"> (a) Existing contractual arrangements with third parties will, to the extent reasonably possible, be protected and transfer to Tiaki Wai materially unaltered. (b) Any third party rights will be unaltered by the transfer of assets, liabilities and other matters to Tiaki Wai, to the extent reasonably possible.
	<hr/>	
Context	3.	The transfer of existing contractual arrangements with third parties will require the agreement of the third-party because there is no statutory vesting mechanism provided for in the LG(WS) Act.
	4.	What this means is that each contract will need to be novated individually, to the extent the contract allows for novation. In circumstances where novation is not possible, or where the third-party does not agree to the novation, a new contract will need to be entered into.
	5.	Transfer Principle 3 reflects the approach that, where possible, third-party rights will not be adversely affected by the transfer. To achieve this, existing contractual arrangements with third parties will transfer from shareholding councils to Tiaki Wai materially unaltered, i.e., the transfer process will not be used as an opportunity to materially alter existing contractual arrangements or third-party rights.

Transfer Principle 4 – Each Shareholding Council will receive shares in Tiaki Wai that are commensurate with the net value of assets transferred

Description	1.	Each shareholding council will receive shares in Tiaki Wai consistent with the net value of assets transferred (the net value of assets refers to the book value of the relevant water services assets less associated water-related liabilities held by
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Transfer Principle 4 – Each Shareholding Council will receive shares in Tiaki Wai that are commensurate with the net value of assets transferred

shareholding Councils at the point of transfer. Specific valuation and liability recognition methodologies will be confirmed during the due diligence and transition process).

2. No market-based cash payment will be provided for assets transferred. We note that the final net value position will not be known until after the transfer. Therefore, a reconciliation and wash-up process will need to be provided for following the transfer. This will be part of the financial settlement process and will inform the final allocation of shares as between each shareholding council.
3. The water debt related to the transferring assets will be transferred to Tiaki Wai (either by assumption or discharged by a payment), in accordance with Transfer Principle 5.
4. In summary, Transfer Principle 4 will involve:
 - (a) the net value of assets transferred by the five shareholding councils being paid for by the issue of shares in Tiaki Wai;
 - (b) the value of the shares issued will be the net value of the assets transferred less the value of the debt transferred;
 - (c) the debt related to the transferring assets will transfer to Tiaki Wai (either by assumption or discharged by a payment), in accordance with Transfer Principle 5; and
 - (d) if required, options are explored to address the payment for assets transferred by Wellington Water in a way that is cash-flow neutral for Tiaki Wai.

Context	5. Shareholding councils will not receive a market-based payment for their water infrastructure assets. Instead, the debt related to the transferring assets will be “transferred” to Tiaki Wai and the Shareholding Councils will be issued shares in Tiaki Wai consistent with the net value of assets transferred.
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Transfer Principle 4 – Each Shareholding Council will receive shares in Tiaki Wai that are commensurate with the net value of assets transferred

6. The net value of assets refers to the book value of the relevant Water Services assets less associated water-related liabilities held by Shareholding Councils at the point of transfer.⁹
7. Specific valuation and liability recognition methodologies will be confirmed during the due diligence and transition process.¹⁰ Wellington City Council debt will be aligned with its existing approach of allocating interest costs based on relative asset value.
8. For the Wellington Water Transfer Agreement (if required), it will need to address the fact that South Wairarapa District Council (being a shareholder of Wellington Water) will not be a Shareholding Council of Tiaki Wai.
9. It will be important to ensure that each Shareholding Council's financial sustainability and borrowing capacity is not adversely impacted in a material way due to the transfer of assets to Tiaki Wai. For this reason, the debt related to the transferring assets will be "transferred" to Tiaki Wai. This can occur either on 'Day 1' or after 'Day 1' and can be structured as a number of payments. Ultimately, the timing and method of the payments will reflect each Shareholding Council's current debt and financing arrangements.
10. Requiring Tiaki Wai to pay any more for these assets, such as market valuation, would mean that communities (and future water customers) would pay twice for the same assets.

⁹ We note that the final net value position will not be known until after the transfer. Therefore, the purchase consideration will be subject to a post-closing adjustment. This will be part of the financial settlement process. For this purpose, it will be important to have the most up-to-date valuations as practicable.

¹⁰ We understand that not all councils have used the same valuation methodology. Therefore, agreement will be required on a common approach.

Transfer Principle 5 – Water Services debt will transfer to Tiaki Wai from each Shareholding Council based on a consistent methodology

Description	<ol style="list-style-type: none"> 1. Each Shareholding Council will transfer water debt to Tiaki Wai through a consistent method of transfer. 2. Where practicable, Shareholding Councils will novate particular debt issuances that are representative of the Shareholding Council’s total debt portfolio. 3. In connection with this, Shareholding Councils will also transfer the requisite value of outstanding swap transactions to Tiaki Wai through a consistent method of transfer.
Context	<ol style="list-style-type: none"> 4. Each Shareholding Council raises long and short term debt with The New Zealand Local Government Funding Agency (LGFA). This debt is constituted by a series of separate debt issuances placed from time to time, which are not necessarily linked to water assets or the provision of water services. 5. Each Shareholding Council has also entered into multiple fixed rate swap transactions to manage its interest rate exposure. 6. A consistent methodology will be taken to provide for the effective transfer of that debt, and a fair proportion of swap positions, to Tiaki Wai to ensure fairness and, where feasible, economic neutrality for each Shareholding Council and Tiaki Wai. <p><i>Selection of transferring water debt and swaps</i></p> <ol style="list-style-type: none"> 7. To achieve a novation of water debt, particular debt issuances of each Shareholding Council (up to the amount of the water debt to be transferred, as determined in accordance with Transfer Principle 1) will need to be selected for novation to Tiaki Wai. 8. Where practicable, Shareholding Councils will novate debt issuances that are representative of the Shareholding Council’s total debt portfolio, based on the weighted average term and cost of funds, to ensure the novation can be executed on an economically neutral basis, as practicably feasible. 9. Shareholding Councils will also need to transfer the requisite value of outstanding swap transactions to Tiaki Wai. For consistency, the total value of each Shareholding Council’s transferred water debt relative to that Council’s total gross debt (pre-transfer) will provide the proportion of swaps that Metro Wellington will transfer.

Transfer Principle 5 – Water Services debt will transfer to Tiaki Wai from each Shareholding Council based on a consistent methodology*Method of transfer*

10. LGFA has confirmed that it is able to facilitate the novation of the Shareholding Councils' water debt to Tiaki Wai. Novation constitutes the legal transfer of the debt obligation from the Shareholding Council to Tiaki Wai and removes the Shareholding Council's obligation to LGFA from Day One (to the extent novated).
 11. Tiaki Wai and the Shareholding Councils will work with LGFA to facilitate the transfer of the selected debt portfolios for each Shareholding Council through novation on Day 1 (with a final wash-up mechanism to apply following production of each Shareholding Council's audited accounts).
 12. Water-related swap positions will however be cash-settled on transfer (or settled via an adjustment to the net assets valuation feeding into Shareholding Council relative equity calculations), rather than novated. This approach provides for a synthetic transfer, but avoids the administrative burden of novating multiple swaps across different notional amounts, maturities and banks (noting that Shareholding Councils often have multiple swaps linked to a single debt tranche), avoids bank novation costs (including credit adjustments) that could undermine economic neutrality, and avoids the need to novate a swap portfolio reflecting the overall portfolio.
-

Transfer Principle 6 – The Shareholding Councils (and Wellington Water) will remain responsible for the provision of Water Services until “Day 1” or the completion date of transfer (where separately agreed), and will continue to discharge all relevant water service provider obligations

Description	<ol style="list-style-type: none"> 1. The Shareholding Councils (and Wellington Water) will remain responsible for the provision of Water Services until Day 1. This will involve each Shareholding Council taking reasonable steps to preserve the status quo between Day 0 and Day 1. 2. To the extent that Tiaki Wai requires the Shareholding Councils to support it to provide Water Services after Day 1, transitional services arrangements and service level agreements will be agreed.
Context	<ol style="list-style-type: none"> 3. The Shareholding Councils will ensure the Water Services assets continue to meet the required standards for maintenance and management and will continue to be liable for loss or damage to assets up to Day 1. 4. This will primarily be managed by Wellington Water, as the existing water service provider for the Shareholding Councils, to the extent that any new contracts or agreements (including debt and financing arrangements) are entered into, or any existing contracts or agreements renewed by a Shareholding Council during the period between Day 0 and Day 1. As a safeguard measure, it is proposed that certain types of decisions during the transition period, that engage the major decisions policy, will not have a term of longer than 12 months past Day 1, unless endorsed by the Board of Tiaki Wai. 5. The reason for these measures is to ensure continuity of service past Day 1 and avoid Tiaki Wai having to renegotiate significant or material new contracts or agreements. 6. Given that any contracts and agreements will not transfer to Tiaki Wai by legislation, the relevant contracting Shareholding Council should negotiate appropriate assignment provisions in any new or renewed contracts and agreements entered into between Day 0 and Day 1 to address the transfer to Tiaki Wai. Where this is not practical, i.e. in the case of capital projects, then Tiaki Wai should be included in any contract discussions or negotiations. 7. It is expected that Tiaki Wai will require support from the Shareholding Councils to support the provision of Water Services for a transitional period, including in relation to billing and collection of water services charges. Tiaki Wai will need to enter into service level agreements and transitional services arrangements with one or more of its Shareholding Councils to support the transition.

Transfer Principle 7 – The Shareholding Councils will take all necessary steps to ensure that Tiaki Wai has the benefit of any resource consents and designations that relate primarily to the Water Services for “Day 1”, including through the transfer of consent and designations under the Resource Management Act 1991

Description	1.	While the Transfer Agreements will document the transfer of statutory responsibilities, functions, duties and powers, there are specific processes involved in effective the transfer of particular statutory rights.
	2.	This includes, under the Resource Management Act 1991, provisions addressing the transfer of rights in a resource consent, permit and designation.
Context	3.	To the extent that the Shareholding Councils hold any rights under the Resource Management Act 1991, they will need to be documented in the Transfer Agreements, but a second process will be involved to complete all required statutory transfers under the Resource Management Act 1991.
	4.	The Shareholding Councils will need to work with Tiaki Wai to facilitate these transfers, or otherwise grant necessary rights to transfer the benefit of any necessary Water Service related consents and permits for Day 1.

Transfer Principle 8 – The Transfer Agreements will document and facilitate the transfer and/or sharing of Water Services related statutory functions and responsibilities, along with other shared service arrangements

Description	<ol style="list-style-type: none"> 5. The Transfer Agreements will document and facilitate the transfer and/or sharing of Water Services related statutory functions and responsibilities. This will include, along with other shared service arrangements, any shared Water Services-related statutory functions and responsibilities (eg in relation to the Building Act, land use planning and resource management, and emergency management, etc). 6. The preferred outcome is that, where possible, a consistent approach is taken to the transfer and/or sharing of Water Services related statutory functions and responsibilities by each shareholding council.
Context	<ol style="list-style-type: none"> 7. A Transfer Agreement must specify the statutory responsibilities, functions, duties, and powers concerning the provision of water services that will and will not transfer to a water organisation. A Transfer Agreement must also specify in detail the arrangements that will be put in place to ensure that matters of shared interest are managed effectively and efficiently. 8. It will be important for other arrangements to be agreed that support the transfer and/or sharing of Water Services related statutory functions and responsibilities between the Shareholding Councils and Tiaki Wai, including through service level agreements and shared service arrangements.

Transfer Principle 9 – The Shareholding Councils, Wellington Water and Tiaki Wai will adopt a no-surprises approach to information disclosure and due diligence as part of preparing the Transfer Agreements, including in relation to any financial or legal risks and other issues

Description	1.	A shared understanding of the information required to effect the intended transfer, and a no-surprises approach to due diligence and identifying areas of risk, will ensure that a uniform understanding of all Water Services assets and related issues is achieved for Day 1.
	2.	This is considered important to ensure that the Day 1 timeframe can be met, by raising issues in a timely way to ensure that appropriate advice and mitigations can be resolved in advance of execution of Transfer Agreements.
Context	3.	The Transfer Agreements will need to be in a form acceptable to both the Shareholding Councils and the Board of Tiaki Wai, who will be subject to directors duties.
	4.	As a consequence, it is important that appropriate advice can be sought prior to the preparation and documentation of what is to transfer, so that there is no disruption to the planned timeframe.
	5.	The parties will need to work on a no-surprises and collaborative basis, with a shared intention to achieve transfer of all required Water Services assets, etc.

PART THREE

VARIATIONS TO TRANSFER PRINCIPLES FOR WELLINGTON WATER'S TRANSFER AGREEMENT

Drafting note: this section only applies if a Transfer Agreement is required with Wellington Water. As of April 2026, it is not currently expected that a Transfer Agreement will be required with Wellington Water.

Variation to Transfer Principle 1

1. All of Wellington Water's assets, liabilities, right and obligations will transfer to, and be assumed by, Tiaki Wai, unless specifically identified as an excluded asset or liability.
2. Those items include:
 - (a) any assets under construction;
 - (b) all third-party contracts (subject only to a process to obtain any requisite consents).
3. Tiaki Wai will make offers of employment to all Wellington Water employees below Tier 2 senior management level, i.e., to employees in roles that are Tier 3 and below:
 - (a) for substantially the same position as the position the employee currently holds;
 - (b) for employment in substantially the same general locality; and
 - (c) on the same, or better, terms and conditions as the employee's current terms and conditions.
4. For Wellington Water employees in Tier 2 senior management level roles, Tiaki Wai will engage with them about any potential employment opportunities on an individual basis.

Variation to Transfer Principle 2

1. Any land owned by Wellington Water will transfer to Tiaki Wai unless agreed otherwise (we understand and expect there will be none).

Variation to Transfer Principle 2

2. In relation to transferring assets that are not located on land owned Wellington Water (or by a shareholding council) any existing registered or documented access and usage rights related to the land the asset is located on will also need to transfer to Tiaki Wai. To the extent that the existing rights are not sufficient or sufficiently documented, are unable to be transferred, or there are no rights currently registered or documented, new rights will need to be created (either through the exercise of statutory powers or by agreement between the Tiaki Wai and the relevant landowner).
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Variation to Transfer Principle 3

1. None.
-

Variation to Transfer Principle 4

1. The basis upon which Wellington Water's assets and liabilities transfer to Tiaki Wai should consider the different shareholding interests in Wellington Water and Tiaki Wai. In particular, the transfer should occur on a basis that recognises both the minority interest of South Wairarapa District Council in Wellington Water and the importance of compliance with the Wellington Waters' directors' duties.
 2. For completeness, depending on the nature of the transferring assets and liabilities of Wellington Water, the above comments should not preclude the transaction proceeding in a way that is cash flow neutral for Tiaki Wai, noting our understanding that Wellington Water operates on a council-funded basis (and so by implication is a loss-making entity).
-

Variations to Transfer Principle 6

1. Wellington Water will remain responsible for performing its existing Water Services and maintaining and managing its assets until Day 1. To support Principle Five, we recommend Wellington Water takes reasonable steps to preserve the status quo between Day 0 and Day 1.
-

Variations to Transfer Principle 6

2. Any new contracts or agreements (including debt and financing arrangements) entered into, or any existing contracts or agreements renewed by Wellington Water during the period between Day 0 and Day 1, will be entered into on the basis that the term does not expire before the Day 1 or extend more than [12] months past Day 1, unless otherwise agreed with Tiaki Wai. The reason for this time period is to ensure continuity of service past Day 1 and avoid Tiaki Wai having to negotiate a large number of new contracts or agreements in a compressed timeframe. Given that contracts and agreements will not transfer to Tiaki Wai by legislation, Wellington Water should negotiate appropriate assignment provisions in any new or renewed contracts and agreements entered into between Day 0 and Day 1.
 3. Similarly, there may be a range of regulatory and environmental authorisations (including resource consents) that may be required (i.e. new and/or existing applications) or renewed (i.e. existing authorisations/consents) between Day 0 and Day 1. Wellington Water should apply for and maintain all regulatory and environmental authorisations that are required for the provision of Water Services until the transfer of the Water Services assets to Tiaki Wai has taken place. During this period Wellington Water should ensure, to the extent possible, that Water Services are carried out in accordance with the conditions of the relevant environmental authorisations already held.
 4. To the extent that Tiaki Wai requires Wellington Water to support it to provide Water Services after Day 1, transitional services arrangements will be put in place.
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Tiaki Wai Net Asset Calculation Manual (NACM)

Version	Date	Status	Notes
0.1	13/1/26	1st draft	First draft for internal review
0.2	26/1/26	2 nd draft	Internal, SG, WWL and PwC feedback. SG restructure of front end.
0.3	31/1/26	3rd draft	PwC review and structural changes.
0.4	2/2/26	4 th draft	Clean version for 2nd internal & 1 st Council review
0.5	12/2/26	5 th draft	Draft version for board endorsement incorporating Council feedback.
0.6	20/2/26	6 th draft	Clean ups by PwC
0.7	24/2/26	7 th draft	Clean ups following SG final review
0.8	26/3/26	8 th draft	Incorporate additional feedback from WCC and GWRC and further review by SG
0.9	2/4/26	9 th draft	Incorporate updated WCC net debt definition and updates to DC section
1.0	13/04/26	10 th draft	Incorporating final review – all other previous changes accepted.
1.1	20/04/26	Final draft	Clean version following final Council CFO/Finance Lead review
1.2	28/04/26	Further final draft	Clean version following final Council CFO/Finance Lead review

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1. Introduction

1.1. Purpose and role

This Manual has been prepared to inform the transfer of water services assets, liabilities and debt from each of the Shareholding Councils to Tiaki Wai. It sets out the accounting principles, policies, procedures, methods, estimation techniques and classifications that will be applied when determining the total amount of each Shareholding Council's net assets (estimated and actual) transferred to Tiaki Wai.

The reason the total amount of net assets must be determined is that this will inform the share allocation of each of the Shareholding Councils in Tiaki Wai.

The role of this Manual is to guide how the necessary net asset valuation is to be calculated, and to ensure that an agreed, consistent and transparent approach is taken across all Shareholding Councils. It also addresses certain aspects of the mechanics of the transfer process itself, including revenue cut-off, assurance expectations, and the post-transfer "wash-up" share issue process following the final determination of the actual net assets of each Shareholding Council, after audit sign-off of the Shareholding Councils' 2025/26 Annual Reports, expected to be completed by all Councils by the end of October 2026. The mechanics of the transfer process are also addressed in the Transfer Principles and each Councils' Transfer Agreement, referenced below.

This Manual is to be read in conjunction with the Partners Agreement dated 22 December 2025, and each Council's Transfer Agreement and applies Public Benefit Entity Standards (PBE Standards) unless otherwise stated.

2. Legal context for the transfer process, and process for determining net asset value

2.1. Legislative, Accounting, and Policy Framework

The transfer of assets, liabilities and debt from the Shareholding Councils to Tiaki Wai is governed by the Local Government (Water Services) Act 2025 (**LG(WS)A**). The formal legal transfer is to be documented in a Transfer Agreement, which is prepared by each Shareholding Council and countersigned by Tiaki Wai, as the water organisation that will be accepting the transfer.

2.2. Transfer Agreement process steps

The LG(WS)A sets out various requirements for the Transfer Agreements that will need to be prepared and executed by the parties, but the process for preparing the Transfer Agreements is largely set out in the Partners Agreement.

At a high level, that process (which has been agreed by the Partners to Tiaki Wai) involves:

- The preparation and agreement of three initial documents, being: (1) a template Transfer Agreement, which will be used as the basis for each Council to prepare its draft Transfer

Agreement, (2) a set of transfer principles (**Transfer Principles**), which are to guide the identification and approach to transfer of assets, liabilities and debt; and (3) this Manual, which will be applied in the calculation of net asset value for each Shareholding Council.

- Once those documents have been prepared, each Council will be required to prepare a draft Transfer Agreement and circulate it to all other Shareholding Councils and Tiaki Wai for review. The draft Transfer Agreements are to be prepared using the agreed template and applying the Transfer Principles. If there is any change to the template Transfer Agreement or departure from the Transfer Principles, the relevant Council is obliged to identify and explain that departure.
- Calculation of net asset value: this will occur at two stages, an estimate by the end of May (of 30 June 2026 values), and then an actual value following Day One, which may result in a further share issue by Tiaki Wai to account for any differences to the proportionate net asset value of each Shareholding Council.

2.3. Role of this Manual

Based on the above, this Manual plays a vital role in determining the net asset value, and ultimate shareholdings in Tiaki Wai, of each Shareholding Council. It will be applied by each Shareholding Council to calculate the value of assets, liabilities and debt (**Net Assets**) each Council transfers to Tiaki Wai:

- first, in the Net Assets estimation process each Council must undertake to determine its estimated Net Assets (**Estimated Net Assets**) and shares issued to each Council on Day One); and
- second, in Councils calculating (and resolving) the value of actual Net Assets (**Actual Net Assets**) each Council has transferred (whether through a legal mechanism or by way of a transfer of equivalent economic value) to Tiaki Wai which will determine the final share allocations on the adjustment date (referred to as the **Actual Net Asset Adjustment Date**).

An important feature of each step above is that the NACM is applied to value the assets, liabilities and debt transferred¹ from each Council to Tiaki Wai under that Council's Transfer Agreement. The identification of the relevant assets, liabilities and debt for inclusion in each Transfer Agreement is guided by the Transfer Principles, which must be applied in developing each Transfer Agreement.

Wellington Water Ltd (**WWL**) will be amalgamating with Tiaki Wai on Day One and is outside the scope of this manual.

¹ When used in this Manual "transfer" refers to actual legal transfer or the effective economic transfer of relevant assets and liabilities, under mechanisms provided for in this Manual and each Council's Transfer Agreement. See section 4 below.

3. Key Principles

3.1. Auditability and Transparency

All balances must be supported by verifiable source documentation and clearly traceable through each Council's systems. The methodology must produce auditable results, supported by appropriate documentation and internal certification.

3.2. Materiality & judgement

Quantitative thresholds will be applied consistent with financial reporting policies and audit guidance. Where individual balances are immaterial, aggregation may be permitted. Reasonable professional judgement may be exercised in cases of estimation, provided it is consistently applied and clearly documented.

3.3. Equity Neutrality and Common Control Context

The transfer of assets, liabilities and debt between Shareholding Councils and Tiaki Wai is treated as a common control transaction. Accordingly, balances will be transferred on a basis that ensures economic continuity and avoids artificial gains or losses.

3.4. Measurement Basis and Cut-Off Dates

Assets and liabilities will be measured based on their economic substance as at 30 June 2026, using agreed valuation and estimation techniques set out in this Manual. The effective Day One is 1 July 2026 (referred to as **Day One**), at which point Tiaki Wai will assume ownership responsibility.

3.5. Treatment of Joint or Shared Assets

Assets used jointly across councils or shared with third parties must be allocated on a documented basis agreed by all parties. Shared infrastructure (e.g. Wastewater Treatment Plants) will follow agreed apportionment models unless otherwise specified.

4. Net Assets Calculation Definition

Net Assets was defined in the Partners Agreement as:

The total amount of a Council's net assets (based on total asset value less total liabilities and debt) that are transferred to Tiaki Wai under the Council's Transfer Agreement as calculated in accordance with the NACM.

Since the Partners Agreement was entered into, this definition has been refined to reflect that an effective economic transfer of some assets and liabilities must be achieved, rather than a legal transfer of underlying rights and obligations. The definition in the template Transfer Agreement is as follows:

Net Assets means the total amount of the Council's net assets (based on total asset value less total liabilities and debt) that are transferred to, or effectively taken or assumed by, Tiaki Wai through a relevant mechanism provided for in this agreement (including the operation of the Swap Cash Settlement Arrangements and the Transferring Debt Adjustment), as calculated in accordance with the NACM.

It is this revised definition which applies in the context of this Manual.

Reference should be made to the template Transfer Agreement for an understanding of the defined terms which underpin this definition.

The methodology for calculating the components of this definition is set out in Section 5 of this manual.

5. Assets - Methodologies for net asset calculation

The specific assets to be transferred are determined in accordance with the Transfer Principles, as documented in the relevant Transfer Agreement which defines the assets by type. The Transfer Agreements form the authoritative reference for the Net Assets being transferred to Taiki Wai.

Under the Transfer Agreements, only assets relating to the systems and structures that provide drinking water, wastewater and stormwater services (Water Services²) are transferred to Taiki Wai.

5.1. Plant and equipment (Infrastructure assets) excluding work in progress as at 31 May 2026

- 5.1.1. The relevant plant and equipment infrastructure assets will be transferred to Taiki Wai on Day One at their independent market valuation³ (valuation) as at 31 May 2026 adjusted for fair value movements and depreciation to 30 June 2026.
- 5.1.2. The valuation will value the relevant infrastructure assets using optimised depreciated replacement cost (ODRC).
- 5.1.3. For consistency and completeness, the resource consents for wastewater treatment plants should be included in the infrastructure asset valuations.
- 5.1.4. For consistency and completeness if buildings housing infrastructure assets are not already included in the valuations under 5.2 their fair value shall be determined (and included) through the most recent external valuation, adjusted for fair value movements to 30 June 2026, and included in infrastructure assets being transferred to Taiki Wai.

² When used in this Manual, "Water Services" bears the same meaning as "water services" in the LG(WS)A.

³ The Shareholding Councils have engaged valuers to complete the valuations of relevant infrastructure assets, including WSP (WCC, HCC, UHCC and PCC) and Bayleys (GWRC).

- 5.1.5. Each Shareholding Council should review impairment indicators as at 30 June 2026 to confirm that no additional impairment indicators exist outside of the valuation process.
- 5.1.6. Any substantial change in market conditions or additional impairment indicators that are identified between the valuation date and Day One must be communicated to Tiaki Wai in a timely manner.

5.1.7. **By 31 May 2026**, each Shareholding Council must provide Tiaki Wai with the estimated plant and equipment asset value based on the independent/external valuation obtained and assessing for likely movement to 30 June 2026.

Within 15 working days following the audit sign-off, each Shareholding Council must provide Tiaki Wai with the actual plant and equipment asset value and:

- A detailed infrastructure asset fixed asset register, per asset, as at 30 June 2026 containing all transferred infrastructure assets and associated information.
- Copies of all infrastructure asset valuations, clearly identifying the assumptions and judgements made and the application of ODRC.
- Reconciliation between infrastructure assets fixed asset register, valuations and the assets set out in the Transfer Agreement (with support and verification from WWL (Tiaki Wai after Day One)). All differences must be documented and traceable to asset-level variance.
- Evidence of impairment reviews carried out as at 30 June 2026.
- Sufficient information for each resource consent to allow WWL to verify linkage to treatment plants
- Sufficient information for each building valued separately to allow WWL (Tiaki Wai after Day One) to reconcile against its asset data.

5.2. Land

- 5.2.1. Land assets will be transferred to Tiaki Wai on Day One at its most recent independent market valuation, adjusted for fair value movements to 30 June 2026.
- 5.2.2. Any substantial change in market conditions or additional impairment indicators that are identified between the valuation date and Day One must be communicated to Tiaki Wai in a timely manner.
- 5.2.3. Titles and use designations will be verified by WWL through Shareholding Council fixed asset registers and legal instruments.

5.2.4. **By 31 May 2026**, each Shareholding Council must provide Tiaki Wai with the estimated land asset value based on most recent valuations, adjusted for fair value movements to 30 June 2026.

Within 15 working days following the audit sign-off, each Shareholding Council must provide Tiaki Wai with the actual land asset value and:

- A detailed land fixed asset register, per asset, as at 30 June 2026 containing all transferred land and associated information.
- Copies of all valuations relating to land assets, clearly identifying the assumptions and judgements made and the application of ODRC.
- Reconciliation between land fixed asset register, valuations and the assets set out in the Transfer Agreement. All differences must be documented and traceable to asset-level variance.
- Sufficient information for each land asset to allow WWL (Tiaki Wai after Day One) to verify titles and use designations.

5.3. Buildings

- 5.3.1. Only buildings with the primary purpose or predominant use relating to the delivery of Water Services will be transferred. Note valuation requirements for buildings housing infrastructure assets are addressed in clause 5.1.4 (and they may also already be addressed in 5.2) and this clause applies to any other buildings relating to the delivery of Water Services only.
- 5.3.2. Building assets will be transferred to Taiki Wai on the Day One at its most recent independent market valuation, adjusted for fair value movements and depreciation to 30 June 2026.
- 5.3.3. Each Shareholding Council should review impairment indicators as at 30 June 2026 to confirm that no additional impairment indicators exist outside of the valuation process. Any substantial change in market conditions or additional impairment indicators that are identified between the previous valuation date and Day One must be communicated to Tiaki Wai in a timely manner.
- 5.3.4. Titles and use designations will be verified by WWL (Tiaki Wai after Day One) through Shareholding Council fixed asset registers and legal instruments.

- 5.3.5. **By 31 May 2026**, each Shareholding Council must provide Tiaki Wai with the estimated building asset value based on most recent valuation adjusted for fair value movement and depreciation to 30 June 2026.

Within 15 working days following the audit sign-off, each Shareholding Council must provide Tiaki Wai with actual buildings asset value and:

- A detailed building fixed asset register, per asset, as at 30 June 2026 containing all transferred buildings and associated information.

- Copies of all valuations relating to building assets, clearly identifying the assumptions and judgements made and the application of ODRC.
- Reconciliation between buildings fixed asset register, valuations and the assets set out in the Transfer Agreement. All differences must be documented and traceable to asset-level variance.
- Sufficient information for each building asset to allow WWL (Tiaki Wai after Day One) to verify titles and use designations

5.4. Work-in-Progress

- 5.4.1. Assets under construction (work-in-progress, WIP) related to Water Services infrastructure transfer to Tiaki Wai at its carrying value as at 30 June 2026.
- 5.4.2. Each Council, with the assistance from WWL (Tiaki Wai from Day One), is expected to document their assessment over the carrying value of WIP addressing the following points:
- Review of project progress and completeness of costs recognised to date;
 - That capitalised costs reflect only those costs directly attributable to the asset; and
 - Any potential impairment or inefficiencies capitalised in the asset have been written off from the carrying value as at 30 June 2026.
- 5.4.3. From Day One Tiaki Wai will assume responsibility for completing all in-progress works.
- 5.4.4. During the Transfer Agreement process, it has been agreed that, in limited cases, WIP will remain with a Shareholding Council until a future date. Details of these projects are detailed in the Transfer Agreements and the value of these items will be excluded from the WIP calculation for Day One.

- 5.4.5. **By 31 May 2026** each Shareholding Council must provide Tiaki Wai with the estimated WIP value based on their review of the current level of WIP value recorded in their GL and assessing for likely movements in the infrastructure development projects to 30 June 2026.

Within 15 working days following the audit sign-off, each Shareholding Council must provide Tiaki Wai with the actual WIP value and:

- A detailed listing of all WIP as at 30 June.
- A detailed listing of all plant and equipment asset completed and capitalised during the month of June 2026 which will form part of the reconciliation required under 5.1.7 to explain the difference between the fixed asset register and assets set out in the transfer agreement.

- Assessment documentation of the appropriateness of the carrying value of WIP in line with 5.4.2 above.

5.5. Receivables

- 5.5.1. All outstanding receivables, (other than receivables in relation to development contributions, which are addressed in section 5.10 below) including any associated penalties for late payment for water rates and services billed up to 30 June 2026 will not transfer to Taiki Wai as these receivables relate to Water Services provided prior to Day One.
- 5.5.2. Any metered water usage billed for periods up to 30 June 2026 will be charged by the Shareholding Council. If practical, final meter readings should be taken by 30 June 2026. If not, an estimate will be made so that consumption up to 30 June 2026 is accounted for by the relevant Council, and consumption from 1 July 2026 onward by Tiaki Wai.

5.6. Accrued Revenue

Any unbilled revenue that relates to pre-Day One Water Services, for example, accrued water revenue for the period 1 April–30 June if on quarterly billing, will not transfer to Tiaki Wai as this relates to Water Services provided prior to Day One.

5.7. Other receivables and prepayments

- 5.7.1. Other receivables and prepayments that relate to Water Services on and from **1 July 2026** will transfer to Tiaki Wai, along with the associated service entitlement.
- 5.7.2. Any prepayments to/and from WWL by a Shareholding Council and WWL will be reconciled through the usual year-end process at 30 June 2026, undertaken in accordance with the relevant service agreement between WWL (Tiaki Wai after Day One) and the Shareholding Council, and will not form part of the Net Assets calculation.

- 5.7.3. **By 31 May 2026**, each Shareholding Council must provide Tiaki Wai with the estimated value of other receivables and prepayments based on their review of the current level other receivables and prepayments in their GL and assessing for likely movements to 30 June 2026.

Within 15 working days following the audit sign-off, each Shareholding Council must provide Tiaki Wai with the actual value of other receivables and prepayments:

- A detailed schedule of all receivables and prepayments for Water Services post Day One to enable Tiaki Wai to understand the magnitude of assets being transferred and the services to be fulfilled post Day One so that as payments are transferred by each Council, Tiaki Wai can identify and derecognise the other receivables and prepayments by allocating to the correct service account.

5.8. Inventory

- 5.8.1. Inventory related to Water Services (e.g. pipes, fittings, treatment chemicals, and spare parts) will transfer to Tiaki Wai where it is clearly identifiable and attributable to water operations as at 30 June 2026.
- 5.8.2. Councils will need to provide assurance to Tiaki Wai the quantities of each inventory transferred have been verified through stocktake as at 30 June 2026. If stocktake is performed at a different date, Councils will need to prepare a reconciliation of the quantities as at stocktake date and movements to 30 June 2026.
- 5.8.3. Inventory will be transferred at the lower of cost or net realisable value (NRV). Councils need to assess any potential obsolescence in inventory attributable to water operations and write off/provide for such obsolescence prior to the transfer of asset to Tiaki Wai.

- 5.8.4. **By 31 May 2026**, each Shareholding Council must provide Tiaki Wai with the estimated value of inventories based on review of the current value recorded in their GL and assessing for likely movements to 30 June 2026.

Within 15 working days following the audit sign-off, each Shareholding Council must provide Tiaki Wai with:

- A detailed listing of all inventory attributable to water operations, specifying the quantity and unit cost of each inventory, and the NRV for each unit of inventory if this is lower after accounting for any potential obsolescence.

5.9. Reserves

- 5.9.1. Councils may hold equity reserves related to Water Services such as ringfenced renewal reserves, surplus funds from targeted rates, self-insurance funds, or special purpose reserves established for water infrastructure. Councils may also hold funds relating to the pre-financing of water debt yet to be repaid. This represents money raised in advance to service or fund maturing Water Services-related debt obligations.
- 5.9.2. Where these reserves and funds are directly attributable to Water Services, the benefit of them will be transferred to Tiaki Wai (along with the associated responsibilities) by way of being deducted from the Council's total Water Services-related debt (for the purpose of assessing the amount of the Council's total net debt that is to be transferred to Tiaki Wai) in accordance with section 6.
- 5.9.3. Councils must prepare reconciliation of the equity balance as at 30 June 2026 to determine the appropriate amount of cash or cash equivalents to be transferred to Tiaki Wai.
- 5.9.4. This specifically excludes any reserves relating to asset revaluations on plant and equipment, land and building assets (if any). These assets will transfer at their fair value only, with no account taken of reserves.

- 5.9.5. **By 31 May 2026**, each Shareholding Council must provide Tiaki Wai with the estimated value of the reserves based on their review of the current value recorded in their GL and assessing for likely movements to 30 June 2026.
- **Within 15 working days following the audit sign-off**, each Shareholding Council must provide Tiaki Wai with the actual value of the reserves and the reconciliation of the Water Services related equity reserve at 30 June 2026.

5.10. Development Contributions

- 5.10.1. Under section 129 of the Local Government (Water Services) Act 2025, the Shareholding Councils are required to transfer to Tiaki Wai:
- any unspent development contributions (DCs) or financial contributions collected for water services infrastructure at Day One ("**Unspent Collected DCs**"); and
 - any future DCs or financial contributions for water services infrastructure collected after Day One that were assessed, or invoiced, prior to Day One, as soon as is reasonably practicable ("**Future Collected DCs**").
- 5.10.2. Currently, the Shareholding Councils apply a range of accounting treatments to DCs, including variations in when revenue is recognised, how reserves are tracked, and how projects are matched to funding. To ensure consistency, a standardised schedule will be used to identify the amount of Unspent Collected DC funds as at 30 June 2026. The approach to valuing Unspent Collected DCs is outlined in section 5.10.5. Unspent Collected DCs, if not already reflected in the debt balance calculated under section 6.1, will be deducted from Water Services-related debt in accordance with section 6.1.
- 5.10.3. Future Collected DCs, if not already reflected in the debt balance calculated under section 6.1, will be transferred in cash to Tiaki Wai within 30 days of their receipt by the relevant Shareholding Council.
- 5.10.4. For the avoidance of doubt, the future obligation to construct assets relating to Unspent Collected DCs, or to return Unspent Collected DCs if capital works are not to be completed, will transfer to Tiaki Wai. There will be no compensation for the transfer of this obligation other than the transfer of Unspent Collected DCs and Future Collected DCs as set out within this section, 5.10.

- 5.10.5. This section only applies to a Shareholding Council if their Unspent Collected DCs are not reflected in their transferring debt balance calculated under section 6.1.

By 31 May 2026, each Shareholding Council must provide Tiaki Wai with the estimated value of Unspent Collected DCs by reviewing the current level per the GL and assessing for likely movements in development projects to 30 June 2026.

Within 15 working days following the audit sign-off, each Shareholding Council must provide Tiaki Wai with actual value of Unspent Collected DCs and:

- A detailed schedule of all Unspent Collected DCs as at 30 June 2026. The detailed schedule should include the following information:
- The name, address and contact details of the original payer of the development contributions.
- Progress documentation of each project DCs have been received for. This should be reconciled with the detailed schedule above and include:
 - the total expected cost of development
 - the amount of DCs received for each project
 - how the projects have been matched to funding; and
 - the current progress of the project as at 30 June 2026 including assessment of the cost to complete.
- If the Shareholding Council does not hold information at the level described above, information should be provided on a “best endeavours” basis that reflect the level of detail currently held by Council or as set out in the DC policy.

5.10.6. This section only applies to a Shareholding Council if their Future Collected DCs are not reflected in their transferring debt balance calculated under section 6.1

Within 15 working days following the audit sign-off Shareholding Councils must provide Tiaki Wai with:

- schedule of all water services development contributions invoiced but not yet paid as at 30 June 2026, including name and address of invoice recipient, and the purpose of the DC, or part thereof and
- a summary of any development contributions received in the period between 30 June 2026 and the information disclosure date which meet the definition of Future Collected DCs.

To ensure consistency, a standardised schedule as provided by Wellington Water Limited will be used.

5.11. WWL shareholding and other investments

- 5.11.1. Councils’ shareholding in WWL will be valued based on each Council’s percentage share of WWL multiplied by the net assets held by WWL at 30 June 2026.
- 5.11.2. This calculation will be undertaken by Tiaki Wai. Councils will not be required to provide any information or inputs for this calculation.
- 5.11.3. Borrower notes associated with actual debt tranches to be novated by Councils to Tiaki Wai will also be novated to Tiaki Wai alongside the relevant debt tranches. The relevant transfer documentation will also provide for the apportionment to the

relevant Council of any interest accrued on those borrower notes up to 30 June 2026.

6. Liabilities - Methodologies for net asset calculation

The specific liabilities to be transferred are determined in accordance with the Transfer Principles, as documented in the relevant Transfer Agreement which defines the liabilities by type. The Transfer Agreements form the authoritative reference for the Net Assets being transferred to Taiki Wai.

Under the Transfer Agreements, only liabilities relating to the essential systems and structures relating to Water Services are transferred to Taiki Wai.

6.1. External Debt (“Debt”)

This section outlines the methodology for calculating the amount of debt to be transferred from each Shareholding Council to Taiki Wai. The approach is designed to be consistent, transparent, and auditable, with principles applicable across Councils while allowing for special considerations in the case of WCC.

6.1.1. Debt Transfer Methodology

The methodology for debt transfer is set out in the Transfer Principles but is summarised below for ease of reference.

The Local Government Funding Agency (LGFA) is facilitating the novation of Councils’ Water Services-related debt to Taiki Wai. Novation constitutes the legal transfer of the debt obligation from the Council to Taiki Wai and removes the Council’s obligation to LGFA from Day One.

Where practicable Councils will novate Water Service-related debt that is representative of the Council’s total debt portfolio, based on (i) the weighted average term and cost of funds, and (ii) (to the extent practicable) providing that the amount of borrower notes associated with the novated Water Services-related debt is proportionate to the amount of borrower notes associated with the Council’s total debt immediately prior to Day One. This ensures the novation can be executed on an economically neutral basis, as far as practicably feasible.

Final Water Services-related debt balances will be confirmed following audit of the 30 June 2026 financial statements. Any required wash-up will be completed in accordance with the following approach:

- Where the Council has under-represented Water Services-related debt (or otherwise transferred by novation less than the actual amount of audited Water Services-related debt), the shortfall will be addressed by way of Taiki Wai making a payment to the Council, or the Council novating an amount of commercial paper to Taiki Wai, in each case, on terms set out in the Transfer Agreement.
- Where the Council has over-represented Water Services-related debt (or otherwise transferred by novation more than the actual amount of audited Water Services-related debt), the Council will make a payment to Taiki Wai for overage.

This wash-up arrangement will also ensure that the proportion of the aggregate amount of borrower notes novated to Tiaki Wai to the Water Services-related debt novated to Tiaki Wai is equal to the proportion of the aggregate amount of borrower notes held by the Council to the Council's total debt immediately prior to completion.

6.1.2. General Methodology for debt calculation (All Shareholding Councils except WCC)

- For UHCC, HCC, PCC, and GWRC, the debt to be transferred will be calculated as follows:
- **Opening Position (30 June 2022):**
Water Services-related net debt positions as at 30 June 2022 were established using prior agreements and reporting under the former government's reform programme. These provided the starting point for attribution.

Council	\$M
Wellington Regional Council	92.63
Hutt City Council	59.24
Upper Hutt City Council	21.57
Porirua City Council	91.40
Total	264.84

- **Movements to 30 June 2026:**
Movements in Water Services-related net debt from 1 July 2022 to 30 June 2026 are based on each Council's published Funding Impact Statements (FIS). for water supply, wastewater, and stormwater.
- **Audit Validation:**
Net debt movements and closing balances will be confirmed through each Council's 2022/23 to 2025/26 audited Annual Reports.
- The net actual amount transferred will equal the final audited Water Services-related net debt balance as at 30 June 2026, as determined through the methodology above.
- Water Services-related net debt includes total Council Water Services-related debt (including debt incurred to fund subscription for borrower notes) less all water cash assets including working capital, bank term deposits, and, to the extent not incorporated in these deductions, a deduction to on account of equity reserves as provided for in section 5.9 and Unspent Collected DCs as provided for in section 5.10. It excludes equity investments and loans to related parties.
- Variances from the published FIS may be agreed between the relevant Shareholding Council and Tiaki Wai where actual Water Services-related net debt movements differ materially and are supported by appropriate justification.
- Any additional debt incurred relating to transition which is not reflected in the FIS will also be transferred to Tiaki Wai.

6.1.2.1. For HCC, UHCC, PCC, and GWRC:

By 31 May 2026, each Shareholding Council must provide Tiaki Wai with the estimated value of the Council's total net debt and Water Services-related net debt based on their review of the current value recorded in their GL and assessing for likely movements to 30 June 2026.

Within 15 working days following the audit sign-off, each Shareholding Council must provide Tiaki Wai with the actual value of the Council's total net debt and Water Services-related debt and:

- A full reconciliation of the total net debt and Water Services-related net debt as at 30 June 2026 to the audited 2025/26 Annual Report; and
- Final calculation for the total net debt and Water Services-related net debt along with the justification of material differences to the audited 2025/26 Annual Report that has been agreed between the Shareholding Council and Tiaki Wai

6.1.3. Approach for Wellington City Council

- WCC's transfer of Water Services-related debt will be calculated based on its internal approach to allocating borrowing costs across activities. Rather than directly attributing debt to water assets, WCC manages borrowing at a consolidated level and allocates interest expense to activities based on each activity's share of the total book value of property, plant, and equipment.
- The rationale for the approach is outlined in Morrison Low – WCC Equitable Debt Transfer Review (June 2025)
- As at the date of this Manual, the debt transfer approach for WCC's share of debt relating to the WCC / PCC wastewater joint venture is still being agreed. This issue will be worked through outside this Manual through the Executive Steering Group. Depending on the outcome of this issue, this may mean that the amount of debt to be transferred by WCC is greater than 33.5% of WCC's total net debt, if it is agreed that WCC's joint venture debt is to be considered as being additional to the 33.5% total net debt calculation.
- **Calculation Methodology**
- WCC will allocate 33.5% of its total net debt at 30 June 2026 to Water Services activities.
- This percentage reflects the share of the book value of Water Services assets relative to all Council assets, consistent with WCC's existing approach to allocating interest costs for funding purposes as outlined in Morrison Low – WCC Equitable Debt Transfer Review (June 2025)
- The Water Services-related net debt to be transferred to Tiaki Wai will therefore equal 33.5% of WCC's closing total net debt balance at Day One.

- Total Water Service-related net debt includes:
 - 33.5% of total WCC gross debt as at 30 June 2026, less:
 - 33.5% of cash and cash equivalents as at 30 June 2026, and
 - 33.5% of bank term deposits. For avoidance of doubt this excludes other items listed under Other Financial Assets detailed in the WCC Statement of Financial Position (i.e. loans to related parties and equity investments; and borrower notes, which are covered separately in section 5.10 of this Manual). The total to which this percentage is applied will be set after deducting the value of net funds generated from the sale of WCC ground lease portfolio assets between 1 July 2024 and 30 June 2026 that are held in cash or bank deposits as at 30 June 2026.
 - Once the transferable portion is determined based on the above, a further adjustment to the amount to be transferred is to be made for:
 - any costs incurred by WCC directly in relation to the transfer of Water Services to Tiaki Wai prior to 1 July 2026, which will be either (i) where cash or deposited funds are used to pay for the costs, deducted from the 33.5% of cash and cash equivalent amount to be netted in the calculation, or (ii) where debt is drawn down to pay for the costs, added to the 33.5% gross debt amount in the calculation.
 - any other material financial impact arising from non-budgeted Water Services expenditure that results in a drawdown of against cash reserves, in excess of an amount to be agreed by WCC and Tiaki Wai.
 - To maintain stability in the calculated transfer value, the 33.5% allocation will be applied using the 2024/25 WCC Annual Report asset values as the base, with no further adjustment for subsequent asset revaluations.

6.1.3.1. For WCC:

By 31 May 2026, WCC must provide Tiaki Wai with the estimated value of the Council's total net debt and Water Services-related net debt based on their review of the current value total net debt recorded in their GL, assessing for likely movements to 30 June 2026 and then (for the purposes of determining the estimated Water Services-related debt) applying the agreed allocation percentage of 33.5%.

Within 15 working days following the audit sign-off, WCC must provide Tiaki Wai with the actual value of the Council's total net debt and Water Services-related debt and:

- The reconciliation of WCC's total net debt and Water-Services-related net debt as at 30 June 2026.

6.1.4. Financial Instruments (Derivatives)

- There will be no novation or transfer of derivatives by Councils to Tiaki Wai for their respective interest rate risk management positions.
- Instead, Tiaki Wai (or, where relevant the Council) will cash-settle the proportionate and representative value of Council's derivative market values on transfer. For consistency, the total value of each Council's transferred Water Services-related debt relative to that Council's total net debt (pre-transfer) will provide the proportion of derivatives that Tiaki Wai will cash settle.
- Councils with in-the-money swap positions will credit Tiaki Wai the proportionate in-the-money value; conversely, out-of-the-money positions will be cash-funded to Councils by Tiaki Wai.
- Valuation of the Council swaps will be as at 30 June 2026. The base swap rate will be the mid-market rate for a NZD interest rate swap as calculated on Bloomberg page CRV function sourcing NDBB3M, NDBB6M, NDSWAP 1-10mid-market yield-to-maturity (YTM), or as agreed between parties.

6.2. Advance customer payments (Deferred revenue)

- 6.2.1. Payments made in advance for Water Services on or after Day One will be effectively transferred to Tiaki Wai (by way of being accounted for as a liability in the Net Assets calculation) and Tiaki Wai will assume responsibility of delivering services relating to payments received in advance.

- 6.2.2. **By 31 May 2026**, each Shareholding Council must provide Tiaki Wai with the estimated value of advance customer payments based on their review of the current value recorded in their GL and assessing for likely movements in any further cash receipts for services to be provided to 30 June 2026.

Within 15 working days following the audit sign-off, each Shareholding Council must provide Tiaki Wai with the actual value of advance customer payments and :

- A detailed schedule of total advance customer payments at 30 June 2026. This schedule will include information relating to the corresponding obligations to be fulfilled to enable Tiaki Wai to understand status of billing at Day One.

6.3. Employee Liabilities and Provisions

- 6.3.1. Employee entitlements, including provisions for annual leave, long service leave (LSL), and other leave-related obligations accrued up to 30 June 2026 will transfer to Tiaki Wai at their carrying value.

- 6.3.2. **By 31 May 2026**, each Shareholding Council must provide Tiaki Wai with the estimated value of employee liabilities and provisions based on their review of the

current value recorded in their GL and assessing for likely movements to 30 June 2026.

Within 15 working days following the audit sign-off, each Shareholding Council must provide Tiaki Wai with the actual value of employee liabilities and provisions and:

- A detailed schedule of total annual leave as at 30 June 2026 setting out the number of days accrued and the amount for each affected employee.
- The calculation file supporting the amount of LSL accrued for each employee detailing each input used (daily/hourly rate, number of days/hours to be awarded, LSL days to be awarded, probability of reaching the LSL thresholds and the discount rate used to recognise the liability as at 30 June 2026.
- The detailed schedule of any other employment -related obligations accrued for each affected employee and details of the obligation that resulted in the liability.

6.4. Other payables and accruals

All outstanding payables and accruals, including any associated penalties for late payment, for water rates and services billed up to 30 June 2026 will not transfer to Taiki Wai as these liabilities relate to Water Services provided prior to Day One.

6.4.1. **By 31 May 2026**, each Shareholding Council must provide Tiaki Wai with the estimated value of other payables and accruals reserves based on their review of the current value recorded in their GL and assessing for likely movements to 30 June 2026.

Within 15 working days following the audit sign-off, each Shareholding Council must provide Tiaki Wai with actual value of payables and accruals and:

- A detailed schedule of all payables and accruals recognised for pre-Day One services as at 30 June 2026. This schedule will include information relating to the corresponding obligations to enable Tiaki Wai to understand status of payments outstanding for operations pre Day One.

6.5. Other Provisions

6.5.1. Provisions (a liability of uncertain timing or amount) related to Water Services activities will transfer to Tiaki Wai.

6.5.2. Examples include:

- Environmental restoration or remediation provisions (e.g., decontamination of treatment sites)
- Landfill or sludge pond closure costs associated with wastewater treatment

- Legal obligations arising from probable settlements of water-related disputes; and
- Onerous contracts associated with long-term water service delivery

6.5.3. Provisions must reflect the best estimate of the outflow at balance date, generally on a present value basis.

6.5.4. **By 31 May 2026**, each Shareholding Council must provide Tiaki Wai with the estimated value of other provisions based on their review of the current value recorded in their GL and assessing for likely movements to 30 June 2026.

Within 15 days following the audit sign-off, each Shareholding Council must provide Tiaki Wai with the actual value of other provisions and:

- A detailed assessment of each provision that includes:
- Details of the present obligation arising (legal or constructive) as a result of a past event;
- Rationale of why it is probable that an outflow of resources (embodying economic benefits or service potential) will be required to settle the obligation; and
- Calculation estimating the said obligation that clearly shows the inputs used and assumption made on each input.

6.6. Contingent Liabilities

6.6.1. Contingent liabilities are potential obligations that are not recognised on the balance sheet but are disclosed in the notes to the financial statements.

Where such items relate to Water Services, the contingent risk should be documented and transferred to Tiaki Wai.

6.6.2. **By 31 May 2026**, each Shareholding Council must provide Tiaki Wai with their confirmation that either there is unlikely to be any contingent liability based on their knowledge as at this date, or the known details of the contingent liability and likely value of the potential obligation.

Within 15 working days following the audit sign-off, each Shareholding Council must provide Tiaki Wai with:

- The documentation of the contingent risks transferred that details the following:
 - A)** If the risk is a possible obligation that arises from past events;
- the details of future event(s) that needs to occur or not occur to confirm the existence of that obligation; and
- how those events are not wholly within the control of the entity;

B) If the risk is a present obligation (but not recognised):

- the rationale supporting why it is not probable an outflow of resources (embodying economic benefits or service potential) will be required to settle the obligation; or
- the rationale supporting why it is unable to be measured with sufficient reliability.

6.7. Unspent Grants and subsidies - obligations

- 6.7.1. Tiaki Wai will assume responsibility for carrying out the activities for grants have been received by Councils for water-related projects but remain unspent at 30 June 2026, the associated funding and obligation will transfer to Tiaki Wai on a case-by-case basis.
- 6.7.2. Where any grant funding is conditional, each Council needs to consider the terms applying to the funding and ensure the funding is able to be transferred to Tiaki Wai.
- 6.7.3. Unless restricted by the funding terms, the unspent grants and subsidies will transfer to Tiaki Wai by way of being taken into account as a liability in the Net Assets calculation.

6.7.4. **By 31 May 2026**, each Shareholding Council must provide Tiaki Wai with the estimated value of the unspent grants and subsidies based on their review of the current value recorded in their GL and assessing for likely movements to 30 June 2026.

Within 15 working days following the audit sign-off, each Shareholding Council must provide Tiaki Wai with the actual value of the unspent grants and subsidies and:

- A detailed schedule of grants and subsidies received that includes
- The payee and the purpose each grant and subsidy has been received for.
- How much has been utilised/applied for the purpose to 30 June 2026 How much has been utilised/applied for the purpose to 30 June 2026; and
- The remaining amount being transferred to Tiaki Wai
- Details of any grants and subsidiaries that are restricted from being transferred to Tiaki Wai including the obligation that needs to be fulfilled by the affected Council.

7. Revenue Recognition and Cut-Off

While not a balance sheet item in itself, revenue recognition is closely tied to the treatment of receivables and deferred revenue at transition. This section sets out the general cut-off

principles for water-related income streams to ensure a clean separation of revenue between Councils and Tiaki Wai.

In line with 5.5 Receivables, 5.6 Accrued Revenue and 5.7 Other receivables, all water rates and service charges to 30 June 2026 will remain Council revenue for collection purposes. Tiaki Wai will only assume the responsibility of charging/invoicing, and delivering the services, including for the following revenue streams from Day One.

- Fixed Water Charges
- Volumetric Water Charges
- Trade Waste Charges
- Grants and subsidies
- GWRC Operating Funding

Apportionment is expected between each Council and Tiaki Wai if the service delivery measurement spans the Day One (such as meter readings for volumetric water charges).

Any payments received by each Council on or after Day One for delivery of services post Day One will be transferred to Tiaki Wai in the form of cash or cash equivalents and Tiaki Wai will assume responsibility for delivering the associated services and recognise the liability relating to the responsibility on Day One.

Conversely, where a service has taken place prior to Day One but only billed after, the rights to the payment for the service provided prior to Day One will remain with each Council.

Final billing procedures for each Council, including meter readings and revenue reconciliation, will be developed as part of the Billing Workstream.

8. Post-Day One Wash-up process

Following the Day One transfer, a wash-up process will be undertaken by Councils and Tiaki Wai to reconcile Tiaki Wai provisional opening balance sheet with the final audited financial statements of each Shareholding Council. This process ensures that Tiaki Wai opening position reflects audited figures and that each Council's equity interest is based on final values.

This process will also enable calculation of each Shareholding Council's Actual Net Assets at Day One, for the purposes of the further share issue by Tiaki Wai on the Actual Net Asset Adjustment Date described above.

8.1. Purpose and Scope

The wash-up will adjust for differences between data (Estimated Net Assets) used for the Day One transfer (including asset valuations and debt balances) and final audited positions as at 30 June 2026. It is a mechanical true-up — not a renegotiation of the transfer — and applies only to Water Services-related items.

Areas typically subject to wash-up include:

- Final capital project expenditure and WIP balances
- Adjustments to asset valuations during audit
- Updated prepayments or provisions
- Corrections to estimates or errors identified during the audit process

8.2. Method and Materiality

Opening balances (Estimated Net Assets) and share allocations will be determined using the best available information on 31 May 2026.

Councils are required to share their calculation of Actual Net Assets (together with all supporting materials) within 15 working days following the audit sign-off on their 30 June 2026 financial statements.

Each Council's position will be compared to the Estimated Net Assets position.

8.3. Actual Net Assets Calculation

Each Shareholding Council will provide to Tiaki Wai and all other Shareholding Councils a statement of Actual Net Assets, that summarises all information required to be supplied under section 5 and 6 of this Manual.

8.4. Governance and Timing

The wash-up process will be overseen by the Council and Tiaki Wai CFOs or designated finance working group. A reconciliation process will be undertaken in November 2026 following completion of Council audits.

All adjustments will be finalised, and the Actual Net Asset Adjustment Date will occur, by the end of calendar year 2026 to enable Tiaki Wai to complete its opening financial statements and for Councils to report their equity holdings in their 2026/27 interim accounts.

9. Process and oversight of NACM

9.1. Roles and Responsibilities

- **Tiaki Wai** is responsible for preparing its opening balance sheet, applying the principles set out in this manual and its accounting policies.
- **Shareholding Councils** are responsible for their own financial reporting obligations and preparing the transferring balance sheet for water-related activities as set out in this manual.

9.2. Oversight

The transition process will be jointly overseen by the CFOs of the Shareholding Councils and Tiaki Wai. This includes coordination of timelines, resolution of technical issues, and review of working papers as required.

INSTRUMENT OF DELEGATION

Issued by: Chief Executives of Hutt City Council, Porirua City Council, Upper Hutt City Council and Wellington City Council

Date approved:

Next review date:

1. Purpose

1.1 The purpose of this Instrument of Delegation (**Instrument**) is to:

- (a) delegate authority, from Hutt City Council, Porirua City Council, Upper Hutt City Council and Wellington City Council (together 'the Councils') to Tiaki Wai Metro Water (Tiaki Wai) in relation to all functions and powers relating to the administration and enforcement of water services bylaws, as set out in clause 2 of this Instrument; and

2. Delegations

2.1 The water services bylaws (including amendments and instruments that, with or without modification, replace or correspond to those water services bylaws) to which this Instrument relates include (without limitation):

Hutt City Council:

[Hutt Valley Trade Wastes Bylaw 2016.PDF](#)

[Water Supply Bylaw 2022.PDF](#)

Porirua City Council:

[Stormwater \(Pollution Prevention\) Bylaw 2021](#)

[Trade Waste Bylaw 2021](#)

[Water Supply Bylaw 2025](#)

Upper Hutt City Council:

[Hutt Valley Trade Wastes Bylaw 2016](#)

[Water Supply Bylaw 2008](#) (Amended 2020)

Wellington City Council:

[Wellington Trade Waste Bylaw 2016](#)

[Water Services Bylaw 2024](#)

(together, the Water Services Bylaws).

2.2 The following functions and powers are delegated from the Councils to Tiaki Wai:

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- (a) Pursuant to, and to the extent permitted under, cl 32(5) of Schedule 7 of the Local Government Act 2002 (LGA) and s 262 of the LGWSA, all functions and powers of the Councils relating to administration and enforcement of the Water Services Bylaws are delegated to Tiaki Wai, including:
- (i) the power to approve or decline applications for water, wastewater or sewer connections as provided for in any of the Water Services Bylaws;
 - (ii) the power to approve or decline applications relating to consents, approvals or permits (however, defined and described) under the Water Services Bylaws;
 - (iii) the powers and functions in s 191 to s 194 of the LGWSA relating to internal reviews of any decision to decline a trade waste permit; and
 - (iv) the power to set trade waste related fees and charges, and process charges for the exercise of the above powers, and undertake any collection of such charges;
- (b) Pursuant to s 271(2) of the LGWSA, the power to authorise a compliance officer to issue infringement notices under s 271 is delegated to Tiaki Wai.
- (c) Pursuant to, and to the extent permitted under, cl 32(5) of Schedule 7 of the LGA and s 185(2) of the LGWSA, the preparation, consultation (if applicable), issue, amendment, and revocation of a trade waste discharge plan under s 185 of the LGWSA.

3. Other statutory assessments and plans activities

3.1 Without limiting any of the Councils' statutory functions, responsibilities, powers or duties under the LGWSA, the Councils each appoint, and delegate all necessary powers to, Tiaki Wai to undertake the following statutory functions or activities on behalf of the Councils:

(a) Assessment of drinking water services

In accordance with s 69 and s 70 of the LGWSA, Tiaki Wai will from 1 July 2026 conduct assessments of drinking water services within each of the Council's districts, with the first assessment by Tiaki Wai to be prepared by no later than 1 July 2029, in accordance with the statutory timeframes specified in s 69(3)(b). On completing the assessment, Tiaki Wai will comply the publication requirements in s 70.

(b) Assessment of stormwater and wastewater services

In accordance with s 71 of the LGWSA, Tiaki Wai will from 1 July 2026 conduct assessments of stormwater services and wastewater services within each of

the Council's district, with the initial assessment and all later assessments to be completed in accordance with the statutory timeframes specified in s 71(5).

4. Review of Water Service Bylaws

4.1 Tiaki Wai will provide the Councils with all reasonable assistance as requested by the Councils in connection with the initial and ongoing review of Water Services Bylaws under s 263 and s 264 of the LGWSA.

4.2 This is to include:

- (a) coordinating and then leading the review of the Water Service Bylaws under s 263 and s 264 of the LGWSA and making any recommendations on new water services bylaws or on amendments or revocations of existing Water Services Bylaws to the Councils;
- (b) undertaking consultation on behalf of the Councils in relation to any new water service bylaws or amendments or revocations to existing Water Services Bylaws, including coordinating any hearings held in relation to proposed bylaws;
- (c) in the event that any hearings are to be held, and as part of the coordination by Tiaki Wai, inviting the Councils to establish a hearings committee, on terms to be agreed between the Councils; and
- (d) following any hearing, providing the recommendations to each Council and coordinating related decision-making by the Councils, noting that all final decisions on Water Services Bylaws remain function of each Council.

5. Exclusions

5.1 To avoid doubt, the following functions and powers are retained by the Councils as territorial authorities:

- (a) the function or power to make, amend, or revoke an existing or new water services bylaw;
- (b) to delegate functions and powers under s 262 of the LGWSA.

6. Review

6.1 This Instrument of Delegation will be reviewed at five-yearly intervals, or as otherwise required by a Chief Executive of the Councils and/ or Tiaki Wai, to ensure that the delegations and responsibilities remain appropriate, effective and consistent with legislation and the parties' respective roles and responsibilities.

- 6.2** The Councils will consult with each other and with Tiaki Wai before making any amendments to, or revocation of, the delegations set out in this Instrument. Any amendments to any other clauses of this Instrument must be in writing and signed by the Councils and Tiaki Wai.