

**DRAFT**

**Constitution**  
Wellington Water Limited

***Draft for discussion: 18 June 2014***

## Table of contents

<b>1</b>	<b>Objectives and activities of the Company .....</b>	<b>1</b>
	Objectives of the Company .....	1
<b>2</b>	<b>Rights attaching to Shares.....</b>	<b>1</b>
<b>3</b>	<b>Shareholders .....</b>	<b>1</b>
<b>4</b>	<b>Other matters relating to Shares .....</b>	<b>2</b>
	Board may issue Shares .....	2
	Restriction on issue and transfer.....	2
	Consolidation and subdivision of Shares .....	2
	Share repurchases.....	2
<b>5</b>	<b>Pre-emptive rights on issue of new Shares .....</b>	<b>2</b>
	Section 45 applies.....	2
	Transfer of Shares by the Company .....	2
<b>6</b>	<b>Alteration of Shareholders' rights .....</b>	<b>3</b>
	Special Resolution required .....	3
<b>7</b>	<b>Transfer of Shares .....</b>	<b>3</b>
	Right to transfer.....	3
	Restriction on transfer.....	3
	Transferor to remain holder until registration .....	3
	Form of transfer.....	3
	Delivery to Company.....	3
	Registration of transfer.....	4
	Power of Board to refuse or delay registration .....	4
<b>8</b>	<b>Shareholder matters .....</b>	<b>5</b>
<b>9</b>	<b>Meetings of Shareholders .....</b>	<b>5</b>
	Annual meetings .....	5
	Special meetings.....	5
	Resolution in lieu of meeting .....	5
	Shareholder Representatives.....	5
	Chairperson .....	6
	Management of the Company.....	6
	Notice of meetings to Class A Shareholders.....	6
	Entitlement to notice of meetings .....	6
	Methods of holding meetings .....	7
	Quorum .....	7
	Voting.....	7
	Poll .....	8
	Minutes .....	8
	Other proceedings.....	8
<b>10</b>	<b>Shareholder proposals .....</b>	<b>8</b>
	Notice to the Board .....	8
	Written statement.....	9

	Costs.....	9
<b>11</b>	<b>Directors .....</b>	<b>9</b>
	The Board .....	9
	Minimum and maximum number .....	9
	Appointment and removal .....	9
	Skills of Directors .....	10
	Collective skills of Board .....	10
	Vacation of office.....	10
	Authorisation of payment or other benefit .....	10
<b>12</b>	<b>Directors' meetings.....</b>	<b>11</b>
	Third Schedule to the Act not to apply .....	11
	Notice of meeting .....	11
	Methods of holding meetings .....	12
	Quorum .....	12
	Chairperson .....	12
	Voting.....	12
	Minutes .....	13
	Written resolution .....	13
	Committees.....	13
	Validity of actions .....	13
	Other proceedings.....	13
<b>13</b>	<b>Powers of Directors .....</b>	<b>13</b>
	Role of Directors .....	13
	Management of Company .....	14
	Exercise of powers by Board .....	14
	Delegation of powers .....	14
<b>14</b>	<b>Interested Transactions.....</b>	<b>14</b>
	Disclosure of interests.....	14
	Company's best interests.....	14
	Use of Company information.....	14
	Procedure for disclosure and use.....	15
<b>15</b>	<b>Indemnity and insurance.....</b>	<b>15</b>
	Indemnity for Directors .....	15
	Indemnities and insurance .....	15
	Definitions .....	15
<b>16</b>	<b>Reporting.....</b>	<b>15</b>
	Half yearly report.....	15
	Annual report .....	15
	Contents of reports on operations of the Company.....	16
	Protection from disclosure of sensitive information .....	16
	Statement of Intent.....	17
<b>17</b>	<b>Auditor .....</b>	<b>17</b>
<b>18</b>	<b>Official information .....</b>	<b>17</b>
<b>19</b>	<b>Dividends.....</b>	<b>17</b>
	Power to authorise .....	17

	Deductions .....	18
	Entitlement Date.....	18
	Unclaimed dividends .....	18
<b>20</b>	<b>Method of contracting .....</b>	<b>18</b>
	Deeds.....	18
	Written contracts .....	18
	Other contracts .....	18
<b>21</b>	<b>Definitions and Interpretation .....</b>	<b>19</b>
	Definitions .....	19
	Interpretation.....	20
	Conflict between the Act and this constitution .....	20

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## 1 Objectives and activities of the Company

### Objectives of the Company

- 1.1 The Company was incorporated on 9 July 2003.
- 1.2 The principal objectives of the Company are to:
- 1.2.1 achieve the objectives of its Shareholders, both commercial and non-commercial as specified in the Statement of Intent;
  - 1.2.2 be a good employer;
  - 1.2.3 exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which the Company operates and by endeavouring to accommodate or encourage these when able to do so; and
  - 1.2.4 conduct its affairs in accordance with sound business practice.

## 2 Rights attaching to Shares

- 2.1 The Class A Shares shall confer on the holder the rights specified in section 36(1)(a) of the Act
- 2.2 The Class B Shares shall confer on the holder the rights specified in section 36(1)(b) and section 36(1)(c) of the Act.
- 2.3 The Class B Shares will be issued at a subscription price of \$2000 per share.

## 3 Shareholders

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

Name of Shareholder	Number of Class A Shares held	Number of Class B Shares held	Value of Class B Shares held (\$'000)
Wellington City Council	150	200	400
Hutt City Council	150	100	200
Upper Hutt City Council	150	40	80
Porirua City Council	150	60	120
Wellington Regional Council	150	[75]	[150]

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## 4 Other matters relating to Shares

### Board may issue Shares

4.1 Subject to the provisions of the Act and this constitution, the Board may issue, in such classes and on such terms as the Board thinks fit, any of the following:

- 4.1.1 Shares;
- 4.1.2 Securities that are convertible into or exchangeable for Shares;
- 4.1.3 Options to acquire Shares; or
- 4.1.4 Shares that are redeemable by the Shareholder;

provided that any such issue must first be approved by a Special Resolution of the holders of Class A Shares.

### Restriction on issue and transfer

4.2 No shares may be issued or transferred to any person other than a Local Authority or a Council Controlled Organisation.

### Consolidation and subdivision of Shares

4.3 The Board may do any of the following:

- 4.3.1 Consolidate and divide the Shares or the Shares of any Class in proportion to those Shares or the Shares in that Class.
- 4.3.2 Subdivide the Shares or the Shares of any Class in proportion to those Shares or the Shares in that Class.

### Share repurchases

4.4 The Company may purchase or otherwise acquire Shares issued by it from one or more Shareholders and hold its own Shares.

## 5 Pre-emptive rights on issue of new Shares

### Section 45 applies

5.1 The pre-emptive provisions of section 45 of the Act apply to a new issue of Shares, unless waived in writing by a Special Resolution.

### Transfer of Shares by the Company

5.2 Clause 5.1 applies to the transfer by the Company of Shares held by the Company in itself as if the transfer was an issue of new Shares by the Company.

## 6 Alteration of Shareholders' rights

### Special Resolution required

- 6.1 Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this constitution, the Act, or the terms on which the Shares were issued, must be approved by a Special Resolution.

## 7 Transfer of Shares

### Right to transfer

- 7.1 Subject to the restrictions contained in this constitution, a Shareholder may transfer any Share by an instrument of transfer that complies with this constitution.

### Restriction on transfer

- 7.2 A Shareholder who wishes to sell, transfer or otherwise dispose of the legal or beneficial interest in any Shares may only do so if:

7.2.1 that sale, transfer or disposal is first approved by Special Resolution; and

7.2.2 the transferee or recipient of the Shares is a Local Authority or a Council Controlled Organisation approved by all the other Shareholders.

- 7.3 A Shareholder must not do anything that has the purpose or effect of undermining or circumventing the restriction on the transfer of Shares set out in clause 7.2.

### Transferor to remain holder until registration

- 7.4 The transferor of a Share will remain the holder of the Share until the name of the transferee is entered in the Share register of the Company.

### Form of transfer

- 7.5 Every instrument of transfer of Shares must comply with all of the following provisions:

7.5.1 The form of the instrument of transfer must be any usual or common form or any other form approved by the Board.

7.5.2 The instrument of transfer must be signed or executed by or on behalf of the transferor.

7.5.3 Where the Shares being transferred are not fully paid up, the instrument of transfer must also be signed by, or on behalf of, the transferee.

### Delivery to Company

- 7.6 An instrument transferring Shares must be delivered to the Company or to the agent of the Company who maintains the Share register of the Company, together with the Share certificate (if any) relating to the Shares to be transferred. The transferee must

provide such evidence as the Board or the agent reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.

### **Registration of transfer**

- 7.7 On receipt of a form of transfer in accordance with clause 7.6, the Company must as soon as practicable enter the name of the transferee on the Share register as holder of the Shares, unless:
- 7.7.1 the Board resolves within 30 working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so;
  - 7.7.2 notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the resolution being passed by the Board; and
  - 7.7.3 the refusal or delay in the registration is permitted by clause 7.8.

### **Power of Board to refuse or delay registration**

- 7.8 Notwithstanding that a transfer of any Share may have been approved by Special Resolution, the Board may refuse or delay the registration of a transfer of any Share for any of the reasons set out below.
- 7.8.1 The Company has a lien on the Share.
  - 7.8.2 The Share is not fully paid up.
  - 7.8.3 The form of transfer in respect of the Share relates to more than one Class.
  - 7.8.4 The form of transfer is not accompanied by the certificate for the Share to which it relates (if a certificate has been issued) and such other evidence as the Directors may reasonably require of the right of the transferor to make the transfer.
  - 7.8.5 The holder of the Share has failed to comply with the terms of any contract with the Company relating to the Share.
  - 7.8.6 The Board considers that it would not be in the best interests of the Company to do so.
- 7.9 Pursuant to clause 7.2, the Board must refuse the registration of a transfer of any Share:
- 7.9.1 if the transfer has not been approved by Special Resolution of the Shareholders (excluding the transferor); or
  - 7.9.2 if the transferee is not a Local Authority or Council Controlled Organisation.



## **8 Shareholder matters**

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

## **9 Meetings of Shareholders**

### **Annual meetings**

- 9.1 An annual meeting of Shareholders is to be held not later than 6 months after the balance date of the Company, and not later than 15 months after the previous annual meeting.
- 9.2 It will not be necessary for the Company to hold an annual meeting of Shareholders under clause 9.1 if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with clause 9.4.

### **Special meetings**

- 9.3 A special meeting of Class A Shareholders entitled to vote on an issue:
- 9.3.1 may be called at any time by the Board; and
  - 9.3.2 must be called by the Board on the written request of a Class A Shareholder.

### **Resolution in lieu of meeting**

- 9.4 A resolution in writing signed by the requisite number of Class A Shareholders in accordance with section 122 of the Act is as valid as if it had been passed at a meeting of Class A Shareholders.

### **Shareholder Representatives**

- 9.5 The Chief Executive of each Class A Shareholder is the Representative to receive notices of Shareholder meetings. They may appoint by notice in writing an alternate to act as the Representative. The notice must state whether the appointment is for a particular meeting or a specified term.
- 9.6 Class A Shareholders may participate at Shareholder meetings and exercise the right to vote by a Representative.
- 9.7 The Representative for a Class A Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the Representative were the Class A Shareholder.
- 9.8 No Representative's appointment is effective in relation to a meeting unless it is produced to the Company before the start of the meeting.

**Chairperson**

- 9.9 If the chairperson of the Board is present at a meeting of Shareholders, he or she must chair the meeting.
- 9.10 If at any meeting of Shareholders, the chairperson of the Board is not present within 15 minutes of the time appointed for the meeting, or if the chairperson absences himself or herself from the meeting, the Class A Shareholders present may choose one of their number to be chairperson of the meeting.

**Management of the Company**

- 9.11 The chairperson of a meeting of Shareholders must allow a reasonable opportunity for Class A Shareholders at the meeting to question, discuss or comment on the management of the Company.
- 9.12 Class A Shareholders at a meeting of Shareholders may pass a resolution relating to the management of the Company. A resolution relating to the management of the Company passed by Class A Shareholders, other than as specifically set out in this constitution or the Shareholders' Agreement, at a meeting of Shareholders is not binding on the Board.

**Notice of meetings to Class A Shareholders**

- 9.13 An irregularity in a notice of a meeting is waived if all the Class A Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Class A Shareholders agree to the waiver.
- 9.14 Written notice of the time and place of a meeting (including an adjourned meeting) of Shareholders must be given to every Class A Shareholder entitled to receive notice of the meeting and to every Director and an auditor of the Company not less than 10 working days before the meeting (including an adjourned meeting).
- 9.15 The notice must state all of the following:
- 9.15.1 the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgement in relation to it; and
  - 9.15.2 the text of any resolution to be submitted to the meeting.
- 9.16 The failure to receive notice of a meeting by a Class A Shareholder, if correctly sent to their Representative, does not invalidate the proceedings at that meeting.

**Entitlement to notice of meetings**

- 9.17 The Shareholders who are entitled to receive notice of a meeting of Shareholders are, if the Board:
- 9.17.1 fixes a date for the purpose, those Shareholders whose names are registered in the Share register on that date; or

- 9.17.2 does not fix a date for the purpose, those Shareholders whose names are registered in the Share register at the close of business on the day immediately preceding the day on which the notice is given.

### **Methods of holding meetings**

- 9.18 A meeting of Shareholders may be held either:
- 9.18.1 by a number of Class A Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting;  
or
- 9.18.2 by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

### **Quorum**

- 9.19 No business may be transacted at a meeting of Shareholders if a quorum is not present.
- 9.20 A quorum for a meeting of Shareholders is present if Class A Shareholders or their Representatives are present who between them hold or represent a majority of the votes entitled to be cast on the business to be transacted at the Meeting.
- 9.21 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- 9.21.1 in the case of a meeting called by the Board on the written request of Class A Shareholders pursuant to section 121(b) of the Act, the meeting is dissolved; and
- 9.21.2 in the case of any other meeting, the meeting is adjourned to the same day two weeks later at the same time and place or to such other date, time and place as the Directors may appoint, provided that appropriate notice is given. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Class A Shareholders or their Representatives present are a quorum.

### **Voting**

- 9.22 In the case of a meeting of Shareholders assembled together in accordance with clause 9.18.1, unless a poll is demanded, voting by Class A Shareholders will be by whichever of the following methods is determined by the chairperson of the meeting, by:
- 9.22.1 voice; or
- 9.22.2 show of hands.
- 9.23 In the case of a meeting of Shareholders held by means of audio, or audio and visual communication, unless a poll is demanded, voting at the meeting shall be by the Class A Shareholders signifying individually their assent or dissent by voice.

- 9.24 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 9.25.

**Poll**

- 9.25 At a meeting of Shareholders a poll may be demanded by a Class A Shareholder having the right to vote at the meeting, or the chairperson of the meeting.
- 9.26 A poll may be demanded either before or after the vote is taken on a resolution.
- 9.27 If a poll is taken, votes must be counted according to the votes attached to the Class A Shares of each Class A Shareholder present in person or by Representative and voting.
- 9.28 The chairperson of a Shareholders' meeting is not entitled to a casting vote.

**Minutes**

- 9.29 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.
- 9.30 Minutes that have been signed correct by each of the Class A shareholders present at the meeting are prima facie evidence of the proceedings.

**Other proceedings**

- 9.31 Except as provided in this constitution, a meeting of Shareholders may regulate its own procedure.

**10 Shareholder proposals****Notice to the Board**

- 10.1 A Class A Shareholder may give written notice to the Board of a matter the Class A Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Class A Shareholder is entitled to vote.
- 10.2 If the notice is received by the Board not less than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Class A Shareholders entitled to receive notice of the meeting.
- 10.3 If the notice is received by the Board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Class A Shareholder, give notice of the Class A Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

- 10.4 If the notice is received by the Board less than 5 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board may, if practicable, and at the expense of the Class A Shareholder, give notice of the Class A Shareholder proposal and the text of any proposed resolution to all Class A Shareholders entitled to receive notice of the meeting.

**Written statement**

- 10.5 If the Directors intend that Class A Shareholders may vote on the proposal by Representative or by postal vote, they must give the proposing Class A Shareholder the right to include with the notice given by the Board a statement of not more than 1,000 words prepared by the proposing Class A Shareholder in support of the proposal, together with the name and address of the proposing Class A Shareholder.
- 10.6 The Board is not required to include with the notice given by the Board a statement prepared by a Class A Shareholder which the Directors consider to be defamatory, frivolous or vexatious.

**Costs**

- 10.7 Where the costs of giving notice of the Class A Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Class A Shareholder, the proposing Class A Shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

**11 Directors****The Board**

- 11.1 All Directors shall be Independent Directors.
- 11.2 Each Class A Shareholder is entitled to jointly appoint Directors, subject to the maximum number of Directors permitted under this constitution.
- 11.3 Directors shall be appointed and removed by the unanimous resolution of the Class A Shareholders.
- 11.4 An appointee must not be a person disqualified from acting as a Director under the Companies Act 1993.

**Minimum and maximum number**

- 11.5 The minimum number of Directors shall be four and the maximum number of Directors shall be eight, or such other number fixed by Special Resolution.

**Appointment and removal**

- 11.6 Subject to clause 11.5, a Director may be appointed and removed from office at any time by the Class A Shareholders by written notice to the Company.

**Skills of Directors**

- 11.7 Class A Shareholders may appoint a person to be a Director of the Company only if the person has, in the opinion of the Class A Shareholders, the skills, knowledge, or experience to:
- 11.7.1 guide the Company, given the nature and scope of its activities; and
  - 11.7.2 contribute to the achievement of the objectives of the Company.
- 11.8 All Director appointments must be made in accordance with the Shareholders' Agreement, including the Board Skills Matrix.

**Collective skills of Board**

- 11.9 The Board must collectively have relevant knowledge and experience of finance, Water Services, public bodies, the Wellington region, the environment and resource management and appropriate skills to assist the Company to contribute to relevant plans and strategies of the Shareholders in respect to the management and provision of Water Services.
- 11.10 The Board collective skills requirements are detailed in the Board Skills Matrix in the Shareholders' Agreement.

**Vacation of office**

- 11.11 A Director vacates office if that Director:
- 11.11.1 resigns by written notice of resignation to the Company. The notice is to be effective when it is received at that address or at a later time specified in the notice;
  - 11.11.2 is removed from office in accordance with clause 11.6;
  - 11.11.3 becomes disqualified from being a Director pursuant to section 151 of the Act; or
  - 11.11.4 dies.
- 11.12 Each Director can serve a maximum of 6 years after which they must either resign or be removed as Director by the Class A Shareholders, unless the Class A Shareholders agree to extend that Director's term of office.

**Authorisation of payment or other benefit**

- 11.13 The Board may only exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section with the prior written approval of the Shareholder.

## 12 Directors' meetings

### Third Schedule to the Act not to apply

12.1 The Third Schedule to the Act (relating to the proceedings of a board) does not apply to the Company except to the extent included in this constitution.

### Notice of meeting

12.2 A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with clause 12.3.

12.3 The following provisions apply in relation to meetings of the Board:

12.3.1 Not less than two working days' notice of a meeting of the Board is to be sent to each Director, unless the Director waives that right.

12.3.2 Notice to a Director of a meeting of the Board may be:

- (a) delivered to the Director;
- (b) posted to the address given by the Director to the Company for such purpose;
- (c) sent by facsimile transmission to the facsimile number given by the Director to the Company for such purpose; or
- (d) sent by electronic means in accordance with any request made by the Director from time to time for such purpose.

12.3.3 A notice of meeting shall specify the date, time and place of the meeting and, in the case of a meeting by means of audio, or audio and visual communication, the manner in which each Director may participate in the proceedings of the meeting.

12.3.4 A notice given to a Director pursuant to this clause 12.3 is deemed to be given:

- (a) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
- (b) in the case of posting, three days after it is posted;
- (c) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director; or
- (d) in the case of electronic means, at the time of transmission.

12.4 An irregularity in the notice of a meeting or a failure to give notice is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors agree to the waiver.

12.5 Notice of a meeting of the Board may be given to the public.

### **Methods of holding meetings**

12.6 A meeting of the Board may be held either:

12.6.1 by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

12.6.2 by means of audio, or audio and visual, communications by which all Directors participating and constituting a quorum can simultaneously hear each other during the meeting.

12.7 Board meetings will be open to the public to attend although the Board at its sole discretion may exclude the public if it believes that the matters under discussion should not be made public.

### **Quorum**

12.8 A quorum for a meeting of the Board, other than an adjourned meeting, is a majority of the Directors.

12.9 No business may be transacted at a meeting of the Board if a quorum is not present.

### **Chairperson**

12.10 The Directors shall elect one of the Independent Directors as chairperson of the Board to hold office until he or she resigns or dies or until the Directors elect a different Independent Director in his or her place.

12.11 If at a meeting of the Board the chairperson is not present within 10 minutes after the time appointed for the meeting, or if the chairperson absences himself or herself from the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

### **Voting**

12.12 Every Director has one vote.

12.13 The chairperson does not have a casting vote.

12.14 A resolution of the Board is passed if a majority of the votes cast on it are in favour of it.

12.15 A Director present at a meeting of the Board will be presumed to have voted in favour of a resolution of the Board unless he or she:

12.15.1 expressly abstains from voting; or



12.15.2 dissents from or votes against the resolution.

### **Minutes**

12.16 The Board must ensure that minutes are kept of all proceedings at meetings of the Board.

### **Written resolution**

12.17 A unanimous resolution in writing, signed or assented to in written form by all of the Directors, is as valid as if it had been passed at a meeting of the Board duly convened and held.

12.18 A resolution pursuant to clause 12.17 may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more Directors.

12.19 A copy of any such resolution must be entered in the minute book of Board proceedings.

### **Committees**

12.20 A committee of Directors must, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.

### **Validity of actions**

12.21 An act or decision of the Board shall not be invalid by reason only of:

12.21.1 a fault, default or irregularity in or in connection with the appointment of a Director; or

12.21.2 a vacancy in the number of Directors including a vacancy arising because of the failure to appoint a Director.

### **Other proceedings**

12.22 Except as provided in this constitution, the Board may regulate its own procedure.

## **13 Powers of Directors**

### **Role of Directors**

13.1 The role of a Director is to assist the Company to meet its objectives and any other requirements in the Company's Statement of Intent. This clause does not limit or affect the other duties that a Director has.

**Management of Company**

- 13.2 The business and affairs of the Company must be managed by, or under the direction of, the Board.
- 13.3 All decisions relating to the operation of the Company must be made by, or under the authority of, the Board in accordance with:
- 13.3.1 the Statement of Intent; and
  - 13.3.2 this constitution.

**Exercise of powers by Board**

- 13.4 The Board may exercise all the powers of the Company which are not required, either by the Act or this constitution, to be exercised by the Shareholders.

**Delegation of powers**

- 13.5 The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Act.

**14 Interested Transactions****Disclosure of interests**

- 14.1 A Director must comply with the disclosure requirements of section 140 of the Act but failure to comply with that section does not affect the validity of any contract or arrangement entered into by the Company.

**Company's best interests**

- 14.2 When exercising powers or performing duties as a Director, a Director must act in what the Director believes to be the best interests of the Company.

**Use of Company information**

- 14.3 A Director who has information in his or her capacity as a Director or employee of the Company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:
- 14.3.1 for the purposes of the Company; or
  - 14.3.2 as required by law; or
  - 14.3.3 in accordance with clause 14.4 of this constitution; or
  - 14.3.4 in complying with clause 14.1 of this constitution.

**Procedure for disclosure and use**

- 14.4 A Director may disclose, make use of or act on the information if:
- 14.4.1 particulars of the disclosure, use or act in question are entered in the interests register; and
  - 14.4.2 the Director is first authorised to do so by the Board; and
  - 14.4.3 the disclosure, use or act in question will not, or will not be likely to, prejudice the Company.

**15 Indemnity and insurance****Indemnity for Directors**

- 15.1 Every Director will be indemnified by the Company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act.

**Indemnities and insurance**

- 15.2 In addition to the indemnity set out in clause 15.1, the Company may with the prior written approval of the Board do any of the following:
- 15.2.1 Indemnify a Director or employee of the Company for any costs referred to in section 162(3) of the Act.
  - 15.2.2 Indemnify a Director or employee of the Company in respect of any liability or costs referred to in section 162(4) of the Act.
  - 15.2.3 Effect insurance for a Director or employee of the Company in respect of any liability or costs referred to in section 162(5) of the Act.

**Definitions**

- 15.3 Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 15.

**16 Reporting****Half yearly report**

- 16.1 Within 2 months after the halfway point of the Company's financial year, the Board must deliver to the Shareholders a report on the Company's operations during that half year. That report must include the information required to be included by the Company's Statement of Intent.

**Annual report**

- 16.2 Within 3 months after the end of the Company's financial year, the Board must deliver to the Shareholders, and make available to the public, a report on the Company's

operations during that year. That report must include the information required to be included by:

- 16.2.1 clause 16.3;
- 16.2.2 the Company's Statement of Intent;
- 16.2.3 the Local Government Act 2002; and
- 16.2.4 the Act.

### **Contents of reports on operations of the Company**

16.3 The annual report on the operations of the Company under clause 16.2 must:

16.3.1 contain the information that is necessary to enable an informed assessment of the operations of the Company and its subsidiaries (if any), including:

- (a) a comparison of the performance of the Company and its subsidiaries (if any) with the Statement of Intent;
- (b) an explanation of any material variances between that performance and the Statement of Intent;
- (c) state the dividend (if any) authorised to be paid or the maximum dividend proposed to be paid by the Company for its equity securities (other than fixed interest securities) for the financial year to which the report relates;

16.3.2 include audited consolidated financial statements for that financial year for that organisation and its subsidiaries;

16.3.3 include an auditor's report on:

- (a) those financial statements; and
- (b) the performance targets and other measures by which performance was judged in relation to the Company's objectives.

16.4 The audited financial statements under clause 16.3.2 must be prepared in accordance with generally accepted accounting practice.

### **Protection from disclosure of sensitive information**

16.5 Nothing in this clause 16 requires the inclusion in any Statement of Intent, annual report, financial statement, or half yearly report required to be produced under this constitution by the Company of any information that may be properly withheld if a request for that information were made under the Local Government Official Information and Meetings Act 1987.

**Statement of Intent**

- 16.6 Without limiting the obligations of the Board and the Company under the Local Government Act 2002 in respect to the Company's Statement of Intent, the Board must:
- 16.6.1 deliver to the Shareholders a draft Statement of Intent on or before 1 March each year;
  - 16.6.2 consider any comments on the draft Statement of Intent that are made to it within 2 months of 1 March by the Shareholders or by any one of them; and
  - 16.6.3 deliver the completed Statement of Intent to the Shareholders on or before 30 June each year.
- 16.7 The Shareholders must each make a decision as to whether or not to approve the Statement of Intent and to provide modifications to each Statement of Intent within the time limits prescribed by the Local Government Act 2002 (or such earlier limits agreed to) so as to enable the Company to comply with applicable time limits.

**17 Auditor**

- 17.1 So long as the Company remains a Council Controlled Organisation, the Auditor-General shall be the auditor of the Company, and of every subsidiary of the Company (if any) and shall have all of the functions, duties and powers:
- 17.1.1 of an auditor appointed under the Act; and
  - 17.1.2 that the Auditor-General has under the Public Audit Act 2001.

**18 Official information**

- 18.1 Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987 apply to the Company as if it were a local authority under that act.
- 18.2 The Ombudsman Act 1975 applies to the Company as if the Company were listed in Part 3 of the First Schedule of that act.

**19 Dividends****Power to authorise**

- 19.1 The Board may, subject to the Act and this constitution, authorise the payment of dividends by the Company at times, and of amounts, and in such form as it thinks fit and may do everything that is necessary or expedient to give effect to the payment of such dividends. Prior to authorising the payment of a dividend, the Board must be satisfied on reasonable grounds that the Company will immediately after payment of the dividend satisfy the solvency test.

**Deductions**

- 19.2 The Board may deduct from dividends payable to any Shareholder in respect of any Shares any of the following:
- 19.2.1 Unpaid calls, instalments or other amounts, and any interest payable on such amounts, relating to the specific Shares.
  - 19.2.2 Amounts the Company may be called upon to pay under any legislation in respect of the specific Shares.

**Entitlement Date**

- 19.3 Dividends and other Distributions or payments to Shareholders will be payable to the persons who are registered as Shareholders on an entitlement date fixed by the Board.

**Unclaimed dividends**

- 19.4 Dividends or other monetary Distributions unclaimed for one year after having been authorised may be used for the benefit of the Company until claimed. All dividends or other monetary Distributions unclaimed for 5 years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board may, nevertheless, agree to pay a claimant who produces evidence of entitlement.

**20 Method of contracting****Deeds**

- 20.1 A deed to be entered into by the Company may be signed on behalf of the Company by any of the following:
- 20.1.1 By 2 or more Directors of the Company.
  - 20.1.2 A Director, or other person or persons authorised to do so by the Board, whose signature or signatures must be witnessed.
  - 20.1.3 One or more attorneys appointed by the Company in accordance with section 181 of the Act.

**Written contracts**

- 20.2 An obligation or contract, which is required by law to be in writing and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the Company's express or implied authority.

**Other contracts**

- 20.3 An obligation or contract may be entered into on behalf of the Company orally by a person acting under the Company's express or implied authority.

## 21 Definitions and Interpretation

### Definitions

21.1 In this constitution the following definitions apply:

**Act** means the Companies Act 1993 as amended from time to time.

**Auditor-General** means the Controller and Auditor-General appointed under the Public Audit Act 2001.

**Board** in relation to the Company means those Directors whose number is not less than the required quorum acting together as a board of directors.

**Class** means a class of Shares having attached to them identical rights, privileges, limitations and conditions.

**Class A Shareholders** means the holders of the Class A Shares.

**Class A Shares** means Shares in the Company entitling the holder of those Shares to vote at a meeting of the Shareholders on any resolution pursuant to clause 2.1. No other rights or obligations attach to the Class A Shares.

**Class B Shareholders** means the holders of the Class B Shares.

**Class B Shares** means Shares in the Company entitling the holder to an equal share in any dividends authorised by the Board and an equal share in the Distribution of surplus assets of the Company pursuant to clause 2.2. No other rights or obligations attach to the Class B Shares.

**Company** means Wellington Water Limited

**Council Controlled Organisation** has the meaning given to that term by the Local Government Act 2002.

**Director** means a person appointed as a director of the Company in accordance with this constitution.

**Distribution** has the meaning set out in section 2(1) of the Act.

**Independent Director** means a Director appointed by the Shareholders jointly by agreement and who is neither a member (including Councillors and Mayors) of nor a person employed by any local authority (as defined under the Local Government Act 2002).

**Local Authority** has the meaning given to that term by the Local Government Act 2002.

**Representative** means a person appointed as a Shareholder's Representative under clause 9.5.

**Share** means a share issued, or to be issued, by the Company including Class A Shares and Class B Shares.

**Shareholder** means a person whose name is entered in the share register of the Company as the holder for the time being of one or more Shares.

**Shareholders' Agreement** means any Shareholders' Agreement between the Shareholders of the Company governing the conduct of the Shareholders in relation to the Company that is notified by the Shareholders to the Board, as amended from time to time.

**Special Resolution** means a resolution approved by 75% of those Class A Shareholders entitled to vote and voting on the resolution.

**Statement of Intent** means each statement of intent to be completed by the Board in terms of the Local Government Act 2002.

**Water Services** has the meaning given that term by the Local Government Act 2002.

## Interpretation

- 21.2 In this constitution, unless the context otherwise requires:
- 21.2.1 Except as specified in clause 21.1, words or expressions used in this constitution that are defined in the Act or the Local Government Act 2002 have the meaning given by the applicable act.
  - 21.2.2 A reference to writing includes facsimile and electronic communications resulting in visible reproduction.
  - 21.2.3 An expression referring to a natural person includes a company, trust, partnership, association, body corporate, Local Authority, Council Controlled Organisation or public authority.
  - 21.2.4 A reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
    - (a) that legislation or provision as from time to time amended, re-enacted or substituted; and
    - (b) any statutory instruments, regulations, rules and orders issued under that legislation or provision.
  - 21.2.5 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this constitution.
  - 21.2.6 A reference to the word 'include' or 'including' is to be construed without limitation.

## Conflict between the Act and this constitution

- 21.3 If there is any conflict between:



21.3.1 a provision in this constitution and a mandatory provision in the Act or the Local Government Act 2002; or

21.3.2 a word or expression defined or explained in the Act or the Local Government Act 2002 and a word or expression defined or explained in this constitution,

the provision, word or expression in the applicable act prevails.

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