

Commitment Agreement

PARTIES

Far North District Council

Whangārei District Council

Kaipara District Council

Notes for using this template:

- This template provides how councils will work together to develop and establish a water organisation, including to list the key activities and programme, allocation of roles and sharing of resources, accountability measures and the governance structure during the period leading up to the establishment of the water organisation.
- Have a go at preparing a first draft of the Agreement by completing Schedule 1 (Agreement Details), using the drafting notes highlighted in yellow to assist you. Please note that this Agreement will create legally binding obligations between the parties, so it is important to ensure that all parties can comply with any obligations included in the Agreement.
- This template should be promptly entered into by councils proceeding with the option of a multi-council owned water organisation to assist the councils to undertake the activities necessary to prepare the water services delivery plan by 3 September 2025 and to establish the water organisation.
- For further guidance in preparing this template, please refer to the *Guidance Material – Council Commitment Agreement Template* for more information.

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PARTIES

Far North District Council
Whangārei District Council
Kaipara District Council
together, the "**Councils**".

INTRODUCTION

- A. The Councils each voted on 31 July 2025 (Far North), 24 July 2025 (Whangarei), and 30 July 2025 (Kaipara), to proceed with the planning for a joint operating model between the Councils in respect of the Service Areas.
- B. The Councils are required to submit a Water Services Delivery Plan ("**WSDP**") to the Secretary for Local Government (Department of Internal Affairs) by 3 September 2025 on how water services will be delivered in the Council's district as required under the Local Governance (Water Services Preliminary Arrangements) Act 2024.
- C. The Councils commit to working together to:
 - (a) develop a joint operating model for the delivery of drinking water and wastewater services for each Council's district, which is included in a joint WSDP; and
 - (b) establish the Water Organisation for the joint operating model in accordance with the accepted joint WSDP.
- D. Each Council agrees to undertake the activities and responsibilities allocated to it in this agreement to achieve the Objectives.
- E. The Councils have entered into this agreement to record the terms of their commitment to achieve the joint operating model and Objectives.

SIGNATURES

SIGNED for and on behalf of

FAR NORTH DISTRICT COUNCIL

By:

Signature of Authorised Signatory

Guy Holroyd

Name of Authorised Signatory

1/09/2025

Date

Signature of Authorised Signatory

Name of Authorised Signatory

Date

WHANGAREI DISTRICT COUNCIL

By:

Signature of Authorised Signatory

Simon Weston

Name of Authorised Signatory

1/09/2025

Date

Signature of Authorised Signatory

Name of Authorised Signatory

Date

KAIPARA DISTRICT COUNCIL

By:

Signature of Authorised Signatory

Jason Marris

Name of Authorised Signatory

1/09/2025

Date

Signature of Authorised Signatory

Name of Authorised Signatory

Date

SCHEDULE 1

Agreement Details

Commencement Date <i>(Clause 6.1, Schedule 2)</i>	This agreement commences on the first date it has been signed by all Councils.
Expiry Date <i>(Clause 6.1, Schedule 2)</i>	This agreement expires on the establishment of the Northland Waters CCO in accordance with the Local Government (Water Services) Act 2025.
Service Areas <i>(Background A)</i>	The service area of the Council-Controlled Organisation shall comprise the combined districts of the Far North District Council, Whangārei District Council, and Kaipara District Council, as defined by Stats NZ and recognized under the Local Government Act 2002. This includes all land areas within the jurisdiction of each council, excluding any offshore or non-territorial zones, and shall be subject to updates in accordance with any future boundary reorganization approved by the Local Government Commission.
Elected Member Steering Group <i>Clause 4, Schedule 2)</i>	Members: The Members of the Elected Member Steering Group will be comprised of: • Two Elected Members appointed by Far North District Council and the Mayor of Far North District Council; • Two Elected Members appointed by Whangārei District Council and the Mayor of Whangārei District Council; • Two Elected Members appointed by Kaipara District Council and the Mayor of Kaipara District Council; and • An independent expert appointed by the Elected Member Steering Group who will act in an advisory capacity. The independent expert will not have voting rights. Meetings: The Elected Member Steering Group will meet as required but no less than once every two months.
Chief Executive Group <i>Clause 4, Schedule 2) (Clause 4, Schedule 2)</i>	Members: The Chief Executives of Far North District Council, Whangārei District Council and Kaipara District Council. Meetings: The Chief Executive Group will meet as required but no less than every two months.
Project Steering Group	Members: The members of the Project Steering Group are:

(Clause 4, Schedule 2)	• Far North District Council member: Group Manager of Corporate Services • Whangārei District Council member: General Manager - Water • Kaipara District Council member: General Manager of Corporate Services Meetings: The Project Steering Group will meet as required but at a minimum of once per two months. Project Budget: The Project Steering Group is required to approve any Project Budget that exceeds that authorised under the council's financial delegation policies.	
Project Team (clause 4 and 5.4, Schedule 2)	The Project Team will be the relevant staff of the participating Council's and/or contractors who will meet as required as the project progresses. It is acknowledged that different skill sets and experience may be required at different times. Each Council agrees to invest sufficient time and free up sufficient resources (including staff) to commit to the implementation of this Project as to achieve successful outcomes. If the Councils agree to formally designate specific individuals as Project Team Leads or to establish a structured Project Team, the names and roles of those individuals may be recorded below by mutual consent. Such updates may be reflected here or documented through written agreement between the Councils, without requiring a formal variation under clause 11.7. Meetings: The Project Team will meet as required, but at a minimum once every two months.	
Project Funding (clause 5.2, Schedule 2)	Each Council will contribute an initial contribution of \$500,000 (excl GST) each to provide an initial total Project Funding of \$1.5 million.	
Address for notices (clause 10, Schedule 2)	Far North District Council 5 Memorial Drive, Kaikohe Private Bag 752 Kaikohe, 0440 Email: Guy.Holroyd@fndc.govt.nz Attention: Guy Holroyd, Chief Executive	Whangārei District Council 9 Rust Avenue, Whangārei Private Bag 9023 Te Mai Whangārei 0143 Email: simon.weston@wdc.govt.nz Attention: Simon Weston, Chief Executive

Kaipara District Council	
32 Hokianga Road, Dargaville Unit 6, The Hub, 6 Molesworth Drive Private Bag 1001 Dargaville 0340 Email: jmarris@kaipara.govt.nz Attention: Jason Marris, Chief Executive	

SCHEDULE 2

Agreement Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this agreement the following definitions apply:

"Agreement Details" means Schedule 1 of this agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Representative" means, for the purposes of Clause 7, Dispute Resolution, the Chief Executive of any Council.

"Scope and Project Plan" has the meaning given to that term in clause 4.7(a).

"Water Organisation" has the same meaning as defined in the Local Government (Water Services) Act 2025 and which is to be established by the parties to this agreement.

"WSDP" has the meaning given to that term in paragraph B of the Introduction section of this agreement.

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

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) reference to a party, person or entity includes:
 - (i) an individual, firm, company, trust, partnership, joint venture, association, corporation, body corporate, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
 - (ii) an employee, agent, successor, permitted assign, executor, administrator or other representative of such party, person or entity.
- (e) a reference to dollars or \$ is to New Zealand currency and excludes every tax and duty;
- (f) a reference to a clause or schedule is to a clause or schedule of this agreement;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) references to the word 'include' or 'including' are to be construed without limitation;
- (i) references to any form of law is to New Zealand law, including as amended or re-enacted;

- (j) a reference to a document or instrument includes reference to that document or instrument as novated, altered, supplemented, or replaced from time to time;
- (k) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (l) any obligation falling due for performance on or by a day other than a Business Day shall be performed on or by the Business Day immediately following that day; and
- (m) an obligation not to do something includes an obligation not to allow or cause that thing to be done.

2. PROJECT OVERVIEW

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

- (a) for the Councils to continue to work closely, collaboratively and successfully to prepare and adopt a joint WSDP that meets each Council's needs and objectives for their respective communities;
- (b) to facilitate the Councils' making decisions in a timely manner to ensure the joint operating model can progress in a timely way to meet the requirements for submission of the joint WSDP and other requirements under the Local Government (Water Services Preliminary Arrangements) Act 2024 and the Local Government (Water Services) Act 2025;
- (c) to enable the Councils to consider how they would operate together in a way that facilitates an effective and efficient use of the Councils' resources, providing optimum benefit to the parties' ratepayers;
- (d) to effectively establish the Water Organisation for the joint operating model in accordance with the accepted WSDP; and
- (e) to promote transparency, public accountability, and community engagement throughout the development and implementation of the joint operating model.

2.2 **Relationship principles:** The Councils will:

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

- (f) as a courtesy and in the interest of clear and consistent communication, consult with the other Councils before commenting publicly on the joint operating model, in the interest of clear and consistent communication;
- (g) uphold principles of good governance, including clarity of purpose, effective structures, stewardship, and accountability, as outlined by the Office of the Auditor-General; and
- (h) Respects each Council's obligations relating to relationships with their communities including iwi and hapū.

3. KEY ACTIVITIES

3.1 Council responsibilities: Each Council will:

- (a) work with the other Councils to:
 - (i) develop and document the Council's financial, technical, operational, legal and other requirements for the joint operating model ("**Requirements**") and to agree reasonable and realistic timeframes for delivery of the joint operating model;
 - (ii) plan and design the joint operating model to meet the Requirements, including at such time(s) required by the other Councils; and
 - (iii) ensure timely and co-ordinated decision-making in relation to the WSDP, so that each Council meets the requirement to submit the WSDP to the Secretary of Local Government by 3 September 2025;
- (b) make decisions in relation to matters for the Project, within the indicative timeframes listed in the Scope and Project Plan;
- (c) provide subject matter experts where relevant to assist with the development and design of the joint operating model;
- (d) provide a dedicated single point of contact for that Council for the management of the project delivery (ideally a project manager, who will also be the person authorised to make decisions (for example, approvals of proposed public comments on the project) on behalf of that Council);
- (e) provide a dedicated and senior level 'sponsor' for the project;
- (f) attend those meetings agreed by the Councils as appropriate or necessary for the effective governance of and/or the delivery of the joint operating model;
- (g) where there are any changes in Government policy or direction, which affects the purposes and activities of this agreement, inform the other Councils of those changes at the earliest possible opportunity thereafter, and the Councils agree to renegotiate, where necessary, any aspects of this agreement that has been or will be affected by this policy change.
- (h) fund and provide resources to undertake the project under this Agreement; and

- (i) be responsible for complying with any requirements to undertake consultation or reporting in respect of its own council and local government processes.

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

3.3 **Lead council responsibilities:**

- (a) The Councils unanimously agree that the Whangārei District Council will be the project lead ("**Lead Council**") with the following responsibilities:
 - (i) managing project expenditure and tracking against the Project Budget;
 - (ii) preparing agendas and scheduling governance meetings for the project;
 - (iii) preparing reporting for governance meetings for the project; and
 - (iv) entering into agreements for the benefit of the Project, with the prior approval of the Project Steering Group, on the basis that all costs incurred by Whangārei District Council under such agreements will be treated as Project costs.
- (b) The Project Steering Group ("**PSG**") may, from time to time, agree to replace the Lead Council, after which time, the relevant Council will assume the responsibilities of the Lead Council under this Agreement.

3.4 **Development expectations and timelines:**

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

3.5 **Project communications:** The Councils agree that media releases, public announcements and public disclosures by any Council relating to this agreement or its subject matter (including informational or promotional, but not including any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory

requirements beyond the reasonable control of such Council) shall be co-ordinated with, and approved by, all Councils, provided that this does not apply to any media release, public announcement or public disclosure made by a Council (the "**Announcing Council**");

- (a) which does not identify any other Council to this agreement; or
- (b) about the Announcing Council's business and operations or the Announcing Council's Confidential Information, excluding anything about or in connection with this agreement.

3.6 **Government communications:** The Councils agree that no Council may communicate directly with the Department of Internal Affairs in relation to the content of the joint WSDP without the agreement of the other Councils.

3.9 **Statement of Expectations:** The Councils acknowledge that a Statement of Expectations will be jointly prepared and agreed after the Water Organisation has been established but before it commences operations, in accordance with the Local Government (Water Services) Act 2024 and the Shareholders' Agreement. The Statement of Expectations will reflect the principles agreed by the Shareholders including but not limited to good governance and community accountability.

4. **PROJECT GOVERNANCE**

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

- (a) Elected Member Steering Group ("EMSG")
- (b) Chief Executive Group ("**CEG**");
- (c) Project Steering Group ("**PSG**"); and
- (d) Project Team.

4.2 **Decisions made by the governance groups:**

- (a) Each Council will be responsible for their own decision-making using the Project Team's advice and assistance.
- (b) The EMSG, CEG, PSG, and Project Team will make decisions on a consensus basis.
- (c) Where consensus is not possible, decisions will be escalated to the next governance level, with final decisions to be made by the Council members of the EMSG by majority.
- (d) For decisions that materially affect the scope, budget, or governance structure of the joint operating model, a supermajority (at least 75% of the EMSG to this agreement) is required.
- (e) Any Council may also request a review at any time if there is a material change in law, policy, or project direction.

- 4.3 **Meeting administration:** Each of the governance meetings will be scheduled by the Lead Council, who will circulate agenda items and decisions to be discussed ahead of the meeting date.
- 4.4 **Elected Member Steering Group:** The Elected Member Steering Group shall be responsible for:
- (a) Providing strategic oversight and regional leadership for the Project;
 - (b) Supporting collaboration and coordination across participating Council's, offering suggestions and direction on the overall approach and progress of the Project; and
 - (c) Monitoring key developments and risks and contributing to the governance of the Project through high-level engagement and leadership.
- 4.5 **Chief Executive Group:** The CEG shall be responsible for:
- (a) overseeing the executive direction and expenditure on the Project;
 - (b) addressing issues that have been escalated to it by the PSG; and
 - (c) keeping informed on the project by information provided from the Project Team; and;
 - (d) appointing an Implementation Programme Director to provide independent advisory services to the Project.
- 4.6 **Project Steering Group:** The PSG shall be responsible for:
- (a) providing strategic directions and decisions on the Project;
 - (b) addressing issues that have been escalated to it by the Project Team;
 - (c) reviewing and approving any proposed changes the direction of the Project;
 - (d) appointing members to the Project Team;
 - (e) ensuring the strategic direction of the Project continues to align with the Objectives and each Council's obligations under this agreement; and
 - (f) approving the Project Budget.
- 4.7 **Project Team:** The Project Team shall be responsible for:
- (a) preparing a detailed scope of work and project plan (including project milestones) to deliver on the Objectives ("**Scope and Project Plan**"). The Scope and Project plan may take the form set out in Schedule 3. The project plan and progress against the Scope and Project plan will be reported to the PSG and CEG on a monthly basis;
 - (b) developing and maintaining a Project Budget;
 - (c) engaging external expertise as required;

- (d) preparing stakeholder/engagement framework ensuring all appropriate parties are included on an ongoing basis;
- (e) preparing and attending workshops with the Councils' elected members as required to achieve the project and Objectives;
- (f) preparing consultation packs in collaboration with individual Councils to support each Council's required consultation processes;
- (g) running and/or supporting consultation processes as required;
- (h) developing a joint WSDP in accordance with legislative requirements and each Council's requirements;
- (i) approving the Project Budget in respect of costs that are up to [insert]the amount specified in the Agreement Details; and
- (j) any of matters required under a terms of reference agreed for the Project Team.

4.8 If the Councils agree to formally designate specific individuals as Project Team Leads or to establish a structured Project Team, the names and roles of those individuals may be recorded below by mutual consent. Such updates may be reflected here or documented through written agreement between the Councils, without requiring a formal variation under clause 11.7.

5. COST SHARING

5.1 **Cost sharing principles:** The Councils agree that costs covered by the Project Budget in clause 5.2 will be shared equally between the Councils.

5.2 **Project funding:** By no later than 20 Business Days after the date of this agreement, the Councils will (through the Project Team) prepare a project funding budget for approval by the PSG, that covers:

- (a) the initial contribution for the activities under this agreement;
- (b) the ongoing contribution by the Councils for the ongoing costs of the Project; and
- (c) costs for the Lead Council to provide a project lead for the duration of the Project; and
- (d) costs for any internal and external consultants (pre-approved by the PSG in each instance),

(together, the "**Project Budget**").

5.3 **Project Budget:** The Councils agree that the Project Team will record the Project Budget in the form set out in Schedule 4, or such other form as the Project Team determines.

5.4 **Project Team delegation:** The Project Team will have delegated authority to spend up to the approved Project Budget. Costs that exceed the approved Project Budget will require approval by the PSG.

- 5.5 **Council Exit:** If a Council exits this agreement, that Council remains responsible for:
- a. Its share of all costs incurred up to the date of exit, including any committed costs which cannot be mitigated by the remaining participating Councils;
 - b. Any costs associated with demobilisation of resources or transition activities directly resulting from Council's exist;
 - c. Any costs incurred by the remaining Councils to reconfigure the joint operating model or project scope due to the exit, where such costs are reasonably attributable to the exiting Council's withdrawal;
 - d. any shared intellectual property or deliverables developed under this agreement prior to exit shall remain jointly owned, and the exiting Council shall not use such materials for any competing or conflicting purpose without the written consent of the remaining Councils.
6. **TERM**
- 6.1 **Term:** This agreement commences on the Commencement Date and continues until the Expiry Date, unless terminated earlier by all Councils in accordance with clause 6.2.
- 6.2 **Termination by agreement:** This agreement may be terminated at any time with immediate effect by agreement of all current Councils to this agreement for any reason, including if there is a material change of law or policy direction that affects the Councils' obligations under the Local Government(Water Services Preliminary Arrangements) Act 2024 and Local Government (Water Services) Act 2025.
- 6.3 **Council withdrawal:**
- (a) Subject to clauses 5.5 and 6.3(b), any Council may withdraw its participation in this agreement at any time immediately by giving written notice to the other Councils.
 - (b) Before a Council exercises its withdrawal right under subclause (a), that Council must use reasonable endeavours to:
 - (i) provide as early as possible notification to the other Councils that the Council is considering, or intending to withdraw from the Project, including to provide the other Council(s) with sufficient time to respond to and agree on any public releases in accordance with clause 3.5; and
 - (ii) provide the other Council(s) an explanation for the withdrawing Council's reason(s) for the withdrawal.
 - (c) Where any Council breaches a material obligation, or persistently does not perform its obligations, under this agreement, then the other Council(s) may request that such Council withdraws its participation from this agreement, in which case the parties will promptly discuss the next steps following such request.
- 6.4 **Effect of termination:** In addition to any other rights, powers or remedies a Council may have under this agreement or at law:
- (a) if this agreement ends or is terminated, the following will apply:

- (i) each Council is released from its obligations under this agreement, except clauses 5.5 (Council Exit), 6.4 (Effect of Termination), 7 (Dispute Resolution), 8 (Confidentiality and Information Disclosure), 9 (Intellectual Property Rights), 10 (Notices), and 11.11 (Governing Law), that shall survive expiry or termination of this agreement;
 - (ii) each Council retains the rights and obligations it has accrued under this agreement as at the date of expiry or termination; and
 - (iii) each Council must return any Confidential Information of another Council in its possession to that other Council or, if requested by the other Council, destroy the Confidential Information, except to the extent that it is required to retain the Confidential Information in order to meet its legal, contractual and governance obligations.
 - (b) if a Council withdraws its participation in this agreement:
 - (i) clause 6.4(a) will apply only in respect of that Council; and
 - (ii) this agreement continues in force as between the remaining Councils.
- 6.5 The Councils will review the effectiveness and relevance of this agreement annually, or at key project milestones, to ensure alignment with legislative changes, community needs, and partnership commitments. Any amendments will be made in accordance with clause 11.7.
- 6.6 **Transition to Shareholders' Agreement:** The Councils agree that once the Water Organisation has been established, they will jointly prepare a Shareholders' Agreement to govern their respective rights and obligations as shareholders. The Shareholders' Agreement will include provisions for governance, decision-making, director appointments, and operational oversight consistent with the principles and objectives of this Commitment Agreement.

7. DISPUTE RESOLUTION

- 7.1 **Notice in writing:** If a Council claims that a dispute has arisen, that Council must give written notice to the other Council(s). The written notice must specify the nature of the dispute.
- 7.2 **Negotiation:**
- (a) On receipt of a notice delivered in accordance with clause 7.1 and before any Council may refer a dispute to mediation, the Representatives must, in good faith and acting reasonably, do their best to resolve the dispute quickly and efficiently through negotiation.
 - (b) If any Representative considers that the dispute is not being resolved in a timely manner, such Representative may serve written notice on the other parties' Representatives to escalate the dispute to the Chief Executives or equivalent (where the Representatives are not the Chief Executive or equivalent) of the applicable Councils for resolution.

- (c) If the dispute has not been resolved within 20 Business Days (or within such other period as agreed by the Councils) of the date of the notice referred to in clause 7.2, any Council may submit the dispute to mediation.

7.3 Mediation:

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

7.4 Arbitration

- (a) If the dispute has not been resolved within 40 Business Days (or within such other period as agreed by the parties) of the dispute being referred to mediation, any Council (the "**Initiating Council**") may refer such dispute to binding arbitration by issuing a written notice ("**Arbitration Notice**") to the other Council(s) (together with the Initiating Council, the "**Disputing Council(s)**") for final resolution in accordance with the provisions of this clause 7.4 and in accordance with the provisions of the Rules of Arbitration of the New Zealand Dispute Resolution Centre, as amended or modified from time to time ("**NZDRC Rules**").
- (b) The arbitral panel shall consist of one arbitrator. The arbitrator will be appointed by the agreement of the Disputing Council(s) 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 a location mutually agreed by the Disputing Parties at one of the participating Councils and the arbitration shall be conducted in one of the official languages of New Zealand, with interpretation services if required.
- (d) The award of the arbitration shall be in writing and must include reasons for the decision.
- (e) The award of the arbitration shall be final and binding on the Councils. No Council may appeal to the High Court under Clause 5 of the Second Schedule of the Arbitration Act 1996 on any question of law arising out of an award.
- (f) The award shall allocate or apportion the costs of the arbitration as the arbitrator deems fair.

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

7.5 **Implementation of agreement:** The Councils must do whatever is reasonably necessary to put into effect any negotiated or mediated agreement, arbitral award, or other resolution. This includes exercising voting rights and other powers as required.

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

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

8. CONFIDENTIALITY AND INFORMATION DISCLOSURE

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

- (a) to the extent that use or disclosure is necessary for the purposes of giving effect to or exercising the rights and benefits of this agreement (which for the purpose of each Council, may involve disclosure to that council's elected members and staff);
- (b) if the discloser of the information has obtained the prior written approval of the providing Council to the use or disclosure;
- (c) if the use or disclosure is required by law including under the Local Government Official Information and Meetings Act 1987 ("**LGOIMA**"), or the Local Government Act 2002, provided that prior to that Council making a disclosure, that Council will use reasonable endeavours to promptly consult in good faith with the other Councils:
 - (i) regarding the requirement under which that Council is required to disclose the Confidential Information; and
 - (ii) so that the other Councils are informed to arrive at a view on whether those Councils would also be required to make such disclosure if a request is made of them; or
- (d) in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Councils.

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

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 **Existing Intellectual Property Rights:** Notwithstanding any of the provisions of this agreement, each Council or its licensors retain ownership of all Intellectual Property Rights, including in Existing Material belonging to that Council or its licensors at the Commencement Date ("**Existing Intellectual Property Rights**").
- 9.2 **New Intellectual Property Rights:** Any new Intellectual Property Rights which are created as a result of, or in connection with, the provision of the Services or Deliverables, or otherwise in connection with this agreement, shall be jointly owned by the Councils, unless otherwise agreed by the parties.
- 9.3 **Licence:** If any Council's Existing Intellectual Property Rights is included in any new Intellectual Property Rights, then that Council grants to the other Council(s) and the other Councils accept, a worldwide, perpetual, non-exclusive, transferable, sub-licensable licence during the term of this agreement to use the Council's Existing Material for the purposes relating to giving effect to and performing its obligations under this agreement. That licence will expire immediately on expiry or termination of this agreement.

10. NOTICES

- 10.1 **Giving notices:** Any notice or communication given to a Council under this agreement is only given if it is in writing and sent in one of the following ways:
- (a) Delivered or posted to that Council at its address and marked for the attention of the relevant department or officer (if any) set out in Schedule 1.
 - (b) Emailed to that Council at its email address and marked for the attention of the representative set out in Schedule 1.
- 10.2 **Change of details:** If a Council gives the other Council three Business Days' notice of a change of its postal address or email address, any notice or communication is only given by that other Council if it is delivered, posted or emailed to the latest postal address or email address.
- 10.3 **Time notice is given:** Any notice or communication is to be treated as given at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, five Business Days after it is posted.
 - (c) If it is sent by email, when it is received in readable form addressed in the manner specified above.

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

11. GENERAL

- 11.1 **No partnership, joint venture:** Nothing in this agreement shall create or evidence any partnership, joint venture, agency, trust or employer/employee relationship between any of the Councils, and a Council may not make, or allow to be made, any representation that any

such relationship exists between any of the Councils. A Council shall not have authority to act for, or to incur any obligation on behalf of, any other Shareholder, except as expressly provided for in this agreement.

- 11.2 **No privity:** Other than as expressly provided for in this agreement, this agreement is not intended to confer a benefit on any person or class of persons who is not a party to it.
- 11.3 **Counterparts:** This agreement is deemed to be signed by a Council if that Council has signed or attached that Council's signature to any of the following formats of this agreement:
- (a) an original;
 - (b) a photocopy; or
 - (c) an electronic copy,
- and if every Council has signed or attached that Council's signature to any such format and delivered it to the other Council(s), the executed formats shall together constitute a single binding agreement between the Councils.
- 11.4 **Entire agreement:** This agreement contains everything the parties have agreed in relation to the subject matter it deals with. No Council can rely on an earlier written agreement or anything said or done by or on behalf of another Council before this agreement was executed.
- 11.5 **Severance:** If any provision of this agreement is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this agreement without affecting the validity of the remainder of this agreement and shall not affect the enforceability, legality, validity or application of any other provision of this agreement.
- 11.6 **Further assurance:** Each Council shall make all applications, execute all documents and do or procure all other acts and things reasonably required to implement and to carry out its obligations under, and the intention of, this agreement.
- 11.7 **Variation:** No variation of this agreement will be of any force or effect unless it is in writing and signed by each Council to this agreement.
- 11.8 **Assignments and transfer:** A Council must not assign or transfer any of its rights or obligations under this agreement without the prior written consent of the other Council(s).
- 11.9 **Costs:** Except as otherwise set out in this agreement, each Council must pay its own costs and expenses, including legal costs and expenses, in relation to preparing, negotiating, executing and completing this agreement and any document related to this agreement.
- 11.10 **Waivers:**
- (a) A waiver of any right, power or remedy under this agreement must be in writing signed by the Council granting it. A waiver only affects the particular right, obligation or breach for which it is given. It is not an implied waiver of any other right, obligation or breach or an implied waiver of that right, obligation or breach on any other occasion.

- (b) The fact that a Council fails to do, or delays in doing, something the Council is entitled to do under this agreement does not amount to a waiver.

11.11 **Governing law:** This agreement is governed by the laws of New Zealand and the Councils submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this agreement.

SCHEDULE 3

Scope and Project Plan

Activities and Decisions	Indicative Timeframes
<u>Design phase</u> • Agree project approach • Agree preferred service delivery model • Agree financial projections and approach to funding • Agree approach to public consultation	[Before second quarter of 2025]
<u>Planning phase</u> • Prepare joint WSDP • Plan arrangements for the Water Organisation, including governance structures and financial arrangements • Each Council ensures its governing body or a relevant committee adopts the joint WSDP. • Each Council ensures its chief executive certifies the joint WSDP for compliance with the Act and accuracy.	[Before 3 September 2025]
Submit the joint WSDP to the Secretary for Local Government for acceptance. The WSDP may require amendments and resubmission for acceptance.	3 September 2025
<u>Implementation phase</u> • Publish the accepted WSDP • Execute the corporate documents required to establish the Water Organisation • Establish the Water Organisation • Set up operational arrangements for the Water Organisation	[After acceptance of the WSDP under the LG(WSPA) Act]

SCHEDULE 4

Funding Commitment Plan

Funding commitment	Payment Date	Payment Amount (share for each Council)