

Constitution of IAWAI – Flowing Waters Limited



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CONSTITUTION OF IAWAI – FLOWING WATERS LIMITED

INTERPRETATION

1 Interpretation

In this Constitution:

- 1.1 Unless the context otherwise requires, the following expressions have the following meanings:

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

the Board means Directors who number not less than the required quorum acting together as the board of directors of the Company or, if the Company only has one Director, that Director;

CEO means the Chief Executive Officer of the Company;

the Companies Act means the Companies Act 1993;

the Company means IAWAI – Flowing Waters Limited;

this Constitution means this Constitution as it may be altered from time to time in accordance with the Companies Act;

Director means a person appointed as a director of the Company in accordance with this Constitution;

IAWAI – Flowing Waters Forum has the meaning given to that term in the Shareholders’ Agreement;

Independent Director means a Director appointed by the IAWAI – Flowing Waters Forum and who is not:

- (a) an elected member or representative of; or
- (b) a person employed by,

any Local Authority;

LGA means the Local Government Act 2002;

LG(WSPA)A means the Local Government (Water Services Preliminary Arrangements) Act 2024;

LG(WS)A means the Local Government (Water Services) Act 2024;

Local Authority has the meaning given to that term under the LGA;

Reserved Matter means the matters to be approved by the Shareholders set out in the Shareholders’ Agreement;



Service Area has the meaning given to it in the LG(WS)A and, in the context of this Constitution, shall be the Service Areas within Hamilton City and Waikato District;

Share means a share in the Company;

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 the shareholders' agreement dated on or around 30 June 2025 between the Shareholders of the Company, as amended from time to time;

Statement of Expectations means the statement of expectations prepared by the IAWAI – Flowing Waters Forum from time to time in accordance with the LG(WS)A;

Terms of Reference has the meaning given to that term in the Shareholders' Agreement;

Wastewater Network has the meaning set out in the LG(WS)A;

Water Organisation has the meaning set out in the LG(WS)A;

Water Services has the meaning given to that term under the LG(WS)A, which shall be the water services provided by the Company throughout the Service Areas of Hamilton City and Waikato District;

Water Services Annual Budget means the water services annual budget prepared and adopted by the Board in accordance with this Constitution and the LG(WS)A;

Water Services Infrastructure means the collective infrastructure, and related resource consents, water allocations, land, designations, and rights comprised of:

- (a) the Water Supply Network and Wastewater Network located within the Service Area of Hamilton City; and
- (b) the Water Supply Network and Wastewater Network located within the Service Area of Waikato District,

Water Services Strategy means the water services strategy prepared and adopted by the Board in accordance with this Constitution and the LG(WS)A;

Water Supply Network has the meaning set out in the LG(WS)A;

written or in writing in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and visible form.

- 1.2 Subject to clause 1.1, expressions which are defined in the Companies Act, the LGA or the LG(WS)A (whether generally, or for the purposes of one or more provisions) have the meanings given to them by the relevant enactment. Where an expression is defined in the relevant enactment more than once and in different contexts, its meaning will be governed by the context in which it appears in this Constitution.



- 1.3 Headings appear as a matter of convenience and do not affect the interpretation of this Constitution.
- 1.4 The singular includes the plural and vice versa, and words importing one gender include the other genders.
- 1.5 A reference to any document, including this Constitution, includes a reference to that document as amended or replaced from time to time.
- 1.6 A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.
- 1.7 The Schedules form part of this Constitution.

2 **Relationship between this Constitution and the Companies Act, the LG(WSPA)A, the LG(WS)A and the LGA**

- 2.1 If there is any conflict between:
 - (a) a provision in this Constitution and a provision in the Companies Act which is expressly permitted to be altered by this Constitution; or
 - (b) a word or expression defined or explained in the Companies Act, the LG(WSPA)A, the LG(WS)A, the LGA or other legislation applicable to the Company and a word or expression defined or explained in this Constitution,the provision, word or expression in this Constitution prevails.
- 2.2 If there is any conflict between the Shareholders' Agreement and this Constitution, the Shareholders' Agreement shall, to the extent permitted by the Companies Act or the LGA, prevail to the extent of such conflict.
- 2.3 This Constitution has no effect to the extent that it contravenes, or is inconsistent with, any mandatory provisions in the Companies Act, the LGA or the LGA(WS)A.
- 2.4 If, as a result of any amendments to the Local Government (Water Services) Bill prior to its enactment as the LG(WS)A, any clauses of this Constitution require revision or amendment and/or new clauses are required, this Constitution shall be updated and amended in accordance with the Shareholders' Agreement.

OBJECTIVES AND ACTIVITIES OF THE COMPANY

3 **Objectives and values of the Company**

- 3.1 The Company is a Water Organisation.
- 3.2 The Company must not carry on any business other than the provision of Water Services and activities that are related to, or necessary for, the provision of Water Services, in order to meet the objectives and values set out in this clause 3 and section 15 of the LG(WS)A.
- 3.3 The principal objectives of the Company are the objectives of a Water Organisation set out in the LG(WS)A.



- 3.4 In carrying out its objectives, the Company is expected to support the commitments made by the Shareholders arising from the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Kiingitanga Accord signed between the Crown and Waikato-Tainui on 22 August 2008 (as amended from time to time), including:
- (a) maintaining effective relationships with iwi and hapū to support the effective design, delivery and operation of the Water Infrastructure; and
 - (b) supporting the joint management agreements entered into by the Shareholders with Waikato-Tainui to protect the Waikato River.

WATER ORGANISATION REQUIREMENTS

4 Statement of Expectations

The Company must give effect to, and carry out its objectives in a manner which is consistent with, the Statement of Expectations.

5 Water Services Strategy

5.1 The Board must ensure that the Company prepares and adopts a Water Services Strategy in accordance with the LG(WS)A.

5.2 Prior to finalising the Water Services Strategy:

- (a) the Shareholders, through the IAWAI – Flowing Waters Forum:
 - (i) must be given the opportunity to provide comments and direction on the draft Water Services Strategy; and
 - (ii) may require the Board to consult on any proposals contained in the draft Water Services Strategy with communities or consumers in accordance with section 83 of the LGA;
- (b) the Board must:
 - (i) provide a draft of the Water Services Strategy to the IAWAI – Flowing Waters Forum no later than 1 March in the financial year before the financial year to which the draft strategy relates, or another date agreed with the Shareholders from time to time;
 - (ii) consider any comments and direction the IAWAI – Flowing Waters Forum provides on the draft Water Services Strategy;
 - (iii) if required by the IAWAI – Flowing Waters Forum, consult on any proposals contained in the draft Water Services Strategy with communities or consumers in accordance with section 83 of the LGA;
 - (iv) adopt the final Water Services Strategy; and
 - (v) provide the final Water Services Strategy to the IAWAI – Flowing Waters Forum before the start of the financial year to which the strategy relates.

6 Water Services Annual Budget

6.1 The Board must ensure that the Company prepares and adopts a Water Services Annual Budget in accordance with the LG(WS)A.



6.2 Prior to adopting a Water Services Annual Budget:

- (a) the Shareholders, through the IAWAI – Flowing Waters Forum, must be given the opportunity to provide comments and direction on the draft Water Services Annual Budget; and
- (b) the Board must ensure that the Company:
 - (i) provides a draft of the Water Services Annual Budget to the Shareholders no later than 1 March before the financial year to which the draft relates; and
 - (ii) considers any comments or directions the IAWAI – Flowing Waters Forum provides on the draft Water Services Annual Budget.

7 **Half-yearly and annual reports**

7.1 The Board must ensure that the Company completes and delivers to the IAWAI – Flowing Waters Forum:

- (a) within eight months after the start of the financial year, a water services half-yearly report on the Company's operations during that half-year;
- (b) within three months after the end of each financial year, a water services annual report on the Company's operations during that year; and
- (c) any additional plans or reports required by the IAWAI – Flowing Waters Forum by notice in writing to the Company (such notice to be given in accordance with section 209(4) of the LG(WS)A), in accordance with the requirements specified in that notice;

each, in accordance with the LG(WS)A.

8 **Protection from disclosure of sensitive information**

Nothing in this Constitution requires the inclusion in any annual report, half-yearly report or financial statement required under this Constitution 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.

9 **Provision of security and guarantees**

The Company must not use assets of its water services as security for any purpose.

SHARES

10 **Board may issue Shares only in accordance with the Shareholders' Agreement and relevant legislation**

10.1 Section 45 of the Companies Act does not apply to the Company. The Board may only issue Shares with the prior unanimous approval of the Shareholders and in accordance with the Shareholders' Agreement, this Constitution and the LG(WS)A.

10.2 Subject to this Constitution, the Shareholders' Agreement and the LG(WS)A, Shares may rank as to voting or distribution rights, or both, equally with or prior to any



existing Shares, and any such issue will not be treated as an action affecting the rights attached to existing Shares.

11 Restriction on issue and transfers of Shares

No shares may be issued or transferred to any person other than in accordance with the Shareholders' Agreement and the LG(WS)A.

12 Purchase by the Company of its own shares

12.1 The Company may purchase or otherwise acquire its own Shares only to the extent permitted by the Companies Act, the Shareholders' Agreement and the LG(WS)A.

12.2 Any Shares purchased or otherwise acquired by the Company shall be deemed to be cancelled on acquisition.

13 Board may refuse or delay a Share transfer in certain cases

The Board may in its absolute discretion refuse or delay the registration of any transfer of Shares if:

13.1 permitted to do so by law;

13.2 the holder of the Shares has failed to pay the Company an amount due in respect of those Shares, whether by way of consideration for the issue of the Shares or in respect of sums payable by the holder of the Shares in accordance with this Constitution;

13.3 registration would impose a liability to the Company on the transferee and the transferee has not signed the transfer form;

13.4 the transfer is for more than one class of Shares; or

13.5 the transfer is not accompanied by such evidence as the Board may reasonably require to establish the right of the transferor to make the transfer.

14 Board must refuse a Share transfer in certain cases

The Board must refuse the registration of any transfer of Shares if:

14.1 it is required to do so by law; or

14.2 the transfer is not permitted by this Constitution, the Shareholders' Agreement or the LG(WS)A.

DISTRIBUTIONS

15 Board may not authorise

Without limiting the ability of the Company to purchase or otherwise acquire its own Shares in accordance with clause 12, the Board may not authorise the payment of any dividends by the Company.

16 Shares in lieu of dividends

The Board may not exercise the powers under section 54 of the Companies Act except in accordance with a written authority to do so signed by the Shareholders.



MEETINGS OF SHAREHOLDERS

17 **Written Shareholders' resolution instead of holding a meeting**

A Shareholders' resolution in writing, which complies with the requirements of the Companies Act, is as valid as if it had been passed at a meeting of Shareholders.

18 **Proceedings at meetings of Shareholders**

Except where the Shareholders' Agreement provides otherwise (in which case the Shareholders' Agreement will apply), the First Schedule to the Companies Act governs the proceedings at meetings of Shareholders.

ROLE OF THE BOARD

19 **Role of Directors**

19.1 All Directors shall be Independent Directors.

19.2 Without limiting or affecting the other duties of Directors, the role of a Director is to assist the Company to meet the objectives and values set out in clause 3 and any other requirements set out in the LG(WS)A, the Statement of Expectations, or its Water Services Strategy.

20 **Management of Company**

20.1 The business and affairs of the Company must be managed by, or under the direction of, the Board.

20.2 All decisions relating to the operation of the Company must be made by, or under the authority of, the Board in accordance with any applicable requirements under legislation and:

- (a) this Constitution;
- (b) the Shareholders' Agreement; and
- (c) the Water Services Strategy.

20.3 The Board must collectively have competencies and skills relevant to a substantial water related infrastructure business, including:

- (a) Te Tiriti o Waitangi and Te Ture Whaimana;
- (b) working with iwi and hapuu;
- (c) civil engineering, accounting, law, customer service, financing, staff selection and monitoring, planning, information technology, public health, health and safety, commercial contracts, probity and procurement;
- (d) understanding of local government;
- (e) experience of dealing constructively with community matters and concerns; and
- (f) any other relevant competencies and skills.



20.4 Before the Board makes a decision that may significantly affect land or a body of water, it must take into account the relationship of Maaori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.

21 Reserved Matters

Notwithstanding any other provision of this Constitution, the Board shall not authorise or permit the Company to take any action that constitutes a Reserved Matter unless that action has been approved to the extent required under the Shareholders' Agreement.

22 Delegation of powers by Board

22.1 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 matter that is a Reserved Matter or a power set out in the Second Schedule to the Companies Act.

22.2 In exercising the Board's delegated powers, any committee of Directors, Director, employee or employees of the Company or any other person must comply with any regulations that the Board may impose.

23 Best interests of the Company

Subject to clause 19, 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.

24 Directors may act in interests of a shareholder

A Director may, when exercising powers or performing duties as a Director, act in a manner which he or she believes is in the best interests of the Shareholders even though it may not be in the best interests of the Company.

APPOINTMENT AND REMOVAL OF DIRECTORS

25 Number of Directors

The minimum and maximum number of Directors will be as set out in the Shareholders' Agreement.

26 IAWAI – Flowing Waters Forum may appoint and remove Directors

Directors shall be appointed and removed by the IAWAI – Flowing Waters Forum by giving notice in writing to the Company signed by authorised representatives of the IAWAI – Flowing Waters Forum, in accordance with this Constitution, the Terms of Reference and the Shareholders' Agreement.

27 Removal of Directors

A Director shall cease to hold office as a Director if he or she:

- (a) is removed from office by the IAWAI – Flowing Waters Forum in accordance with the Terms of Reference; or
- (b) vacates office in accordance with section 157 of the Companies Act.

28 Initial Board

As at the date of adoption of this Constitution, the persons appointed as Directors as set out in the Shareholders' Agreement are deemed to be Directors appointed by the Shareholders.



29 **Term of Directors**

Other than the initial Directors appointed in accordance with clause 28 whose initial terms are set out in the Shareholders' Agreement, each Director will be appointed for a term of one, two or three years as determined by the IAWAI – Flowing Waters Forum. Following expiry of his or her term, a Director may be reappointed by the IAWAI – Flowing Waters Forum for a further term or terms, provided that no Director may be appointed for more than three consecutive terms.

30 **Chairperson**

30.1 One of the Directors shall be appointed as chairperson of the Board as set out in the Shareholders' Agreement.

30.2 The chairperson of the Board holds that office pursuant to any terms of appointment set out in the written notice of appointment of that chairperson and until:

(a) he or she vacates office; or

(b) the IAWAI – Flowing Waters Forum appoints a chairperson in his or her place.

31 **Notices of appointment or removal of Directors**

Any notice of appointment or removal of a Director or the chairperson of the Board may be comprised in one or more written notices. The notice takes effect from the time it is served on the Company in accordance with the Companies Act, or from such later time as the notice states that it is to take effect.

PROCEEDINGS OF THE BOARD

32 **Meetings of the Board**

The First Schedule of this Constitution governs the proceedings at meetings of the Board, except where otherwise agreed by all Directors in relation to a particular meeting or meetings. The Third Schedule to the Companies Act does not apply to proceedings of the Board.

33 **Compliance with the Shareholders' Agreement**

Notwithstanding any other provision of this Constitution, the Board shall not authorise or permit the Company to take any action that is contrary to the Shareholders' Agreement.

34 **Committee proceedings**

The provisions of this Constitution relating to proceedings of the Board also apply to proceedings of any committee of Directors, except to the extent the Board determines otherwise.

REMUNERATION AND OTHER BENEFITS OF DIRECTORS

35 **Board's power to authorise remuneration and other benefits is limited**

The Board shall only make payments for the remuneration of Directors in accordance with the remuneration for Directors agreed to by the IAWAI – Flowing Waters Forum. The Board shall not authorise the payment of any compensation or other payment or benefit to a Director for loss of office as a Director.



36 **Expenses**

A Director may be reimbursed for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as a Director of the Company, without requiring the prior authorisation of the IAWAI – Flowing Waters Forum.

INDEMNITY AND INSURANCE

37 **Company indemnification of directors and employees for certain liabilities**

The Company may indemnify a director or an employee of the Company or a related company for any liability or costs for which a director or employee may be indemnified under the Companies Act. Subject to the Shareholders' Agreement, the Board may determine the terms and conditions of any such indemnity.

38 **Company may effect insurance for directors and employees**

The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company for any liability or costs for which a company may effect insurance for a director or employee under the Companies Act. Subject to the Shareholders' Agreement and the prior agreement of the IAWAI – Flowing Waters Forum, the Board may determine the amounts and the terms and conditions of any such insurance.

METHOD OF CONTRACTING

39 **Manner of execution of deeds**

An obligation which, if entered into by a natural person, is, by law, required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:

- (a) two or more Directors; or
- (b) a Director, or any other person authorised by the Board for that purpose, whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Company in accordance with the Companies Act.

AUDITOR

40 **Auditor**

The Auditor-General shall be the auditor of the Company and any subsidiary of the Company in accordance with the Public Audit Act 2001.

INFORMATION

41 **Official information**

- 41.1 Parts 1 to 7 of the Local Government Official Information and Meetings Act 1987 apply to the Company as if it were a Local Authority under that enactment.
- 41.2 The Ombudsman Act 1975 applies to the Company as if the Company were listed in Part 3 of the First Schedule of that enactment.



LIQUIDATION

42 Distribution of surplus assets in kind

If the Company is liquidated the liquidator shall, at the direction of Shareholders in accordance with the Shareholders' Agreement, but subject to any other sanction or approval required by the Companies Act or the LG(WS)A:

- (a) divide among the Shareholders in kind the whole or any part of the surplus assets of the Company and for that purpose the liquidator may:
 - (i) fix such values for surplus assets as the liquidator considers to be appropriate, and
 - (ii) determine how the division will be carried out as between Shareholders or different classes of Shareholders; and
- (b) vest the whole or any part of any such surplus assets in trustees upon such trusts for the benefit of such of those Shareholders as the liquidator thinks fit,

but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.



FIRST SCHEDULE: PROCEEDINGS OF THE BOARD

1 Director's power to convene meetings

A Director, or any other person at the request of a Director, may convene a meeting of the Board by giving notice in accordance with this Schedule and the Shareholders' Agreement.

2 Notice to contain certain details

The notice of meeting must include the date, time and place of the meeting and an indication of the matters to be discussed in sufficient detail to enable a reasonable Director to appreciate the general import of the matters, together with any papers reasonably required to assist the Directors to assess the matters due for consideration at the meeting.

3 Period of notice required to be given to Directors

At least ten working days' notice of a meeting of the Board must be given unless the chairperson (or, in the chairperson's absence from New Zealand, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least one working day's notice is given.

4 Notice to be sent to Director's address

The notice of meeting must be a written notice delivered to the Director, or sent to the postal or email address which the Director provides to the Company for that purpose, or if a postal or email address is not provided, then a written notice to his or her last place of residence known to the Company.

5 Absent directors

If a Director is absent from New Zealand or another usual country of residence, but supplies the Company with an email address to which notices are to be sent during his or her absence, then notice must be given to that Director. Otherwise, notice need not be given to any Director who is absent from New Zealand or another usual country of residence.

6 Directors may waive irregularities in notice

Any irregularity in the notice of a meeting or failure to comply with clauses 1 to 5 of this First Schedule is waived if:

6.1 all Directors entitled to attend the meeting do so without protest as to the irregularity or failure; or

6.2 all Directors entitled to receive notice of the meeting agree to the waiver.

7 Methods of holding meetings

A meeting of the Board may be held either:

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

7.2 by means of audio, or audio and visual, communication by which a quorum of Directors participating can simultaneously hear each other throughout the meeting; or



- 7.3 by a combination of those methods.
- 8 **Quorum for Board meeting**
The quorum necessary for the transaction of business at a meeting of the Board is at least three Directors, except where the Board comprises more than three Directors in which case the quorum necessary is at least a majority of the Directors. No business may be transacted at a meeting of the Board unless a quorum is present.
- 9 **Meeting adjourned if no quorum**
If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the meeting will be adjourned automatically until the same day in the following week at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Directors present will constitute a quorum.
- 10 **Chairperson to chair meetings**
The chairperson of the Board will chair all meetings of the Board at which he or she is present. If there is no chairperson or if at a meeting of the Board the chairperson is not present within 5 minutes from the time appointed for the meeting, then the Directors present may elect one of their number to chair the meeting.
- 11 **Voting on resolutions**
11.1 Each Director has one vote.
11.2 Subject to the Shareholders' Agreement, a resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it. A Director present at a meeting of the Board may abstain from voting on a resolution, and any Director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Companies Act.
- 12 **Chairperson does not have a casting vote**
In the case of an equality of votes, the chairperson of the Board does not have a casting vote.
- 13 **Written resolutions of Board permitted**
13.1 A written resolution signed or assented to by all Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
13.2 Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the Directors.
- 14 **Board must keep minutes of proceedings**
The Board must ensure that minutes are kept of proceedings at meetings of the Board. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.
- 15 **Board may regulate other proceedings**
Except as set out in this First Schedule or the Shareholders' Agreement, the Board may regulate its own procedure.