

# Heads of Agreement

---

## **PARTIES**

Buller District Council

Grey District Council

Westland District Council

## CONTENTS

SCHEDULE 1.....	0
Agreement Details.....	0
SCHEDULE 2.....	0
Agreement Terms and Conditions .....	0
1.    DEFINITIONS AND INTERPRETATION .....	0
2.    PROJECT OVERVIEW .....	2
3.    KEY ACTIVITIES.....	3
4.    PROJECT GOVERNANCE .....	5
5.    COST SHARING.....	6
6.    TERM.....	7
7.    DISPUTE RESOLUTION .....	8
8.    CONFIDENTIALITY AND INFORMATION DISCLOSURE .....	9
9.    INTELLECTUAL PROPERTY RIGHTS .....	10
10.   NOTICES .....	10
11.   GENERAL .....	11
SCHEDULE 3.....	0
Commercial Terms Sheet .....	0

## PARTIES

Buller District Council  
Grey District Council  
Westland District Council  
(together, the "**Councils**").

## INTRODUCTION

- A. In accordance with the Local Government (Water Services Preliminary Arrangements) Act 2024 (**LG(WSPA) Act**), all territorial authorities (including the Councils) were required to consult and make decisions in relation to their proposed model or arrangement for delivering water services.
- B. The Councils all consulted through May to June 2025 on two options, and made decisions to proceed with the establishment of a joint water services delivery model, in the form of a multi-council owned Water Services Council-controlled Organisation (**Regional WSCCO**). The Councils made these decisions on the following dates:
  - a. Buller District Council, 30 June 2025;
  - b. Grey District Council, 3 July 2025; and
  - c. Westland District Council, 24 July 2025.
- B. The next requirement under the LG(WSPA) Act is for the Councils to submit a joint Water Services Delivery Plan ("**WSDP**") to the Secretary for Local Government (Department of Internal Affairs) by 3 September 2025. In doing so, the WSDP must satisfy the content requirements in sections 13 and 14 of the LG(WSPA) Act, which involves providing information about the proposed future model for delivering water services.
- C. Having decided to establish a Regional WSCCO, the Councils have reached an agreement to work together to:
  - (a) develop the Joint Operating Model for the delivery of water services for each Council's community, which will be documented in the joint WSDP; and
  - (b) establish the Regional WSCCO for that delivery model in accordance with the accepted WSDP.
- D. The Councils have entered into this agreement to record the terms of their commitment to establish and implement the Regional WSCCO in accordance with the Objectives, and each Council agrees to undertake the activities and responsibilities allocated to it in this agreement to achieve the Objectives.
- E. This agreement outlines the process, governance arrangements and initial terms on which the Councils have agreed to work together to establish the Regional WSCCO, as contemplated by the WSDP. This includes appointing an independent board of directors and agreeing key foundational governance documents. The joint intention of the Councils is to enable delivery of water services in a

manner that cost-effective, locally responsive, and financially sustainable, while ensuring each Council retains strategic oversight of the Regional WSCCO through their shareholding.

## **SIGNATURES**

**SIGNED** for and on behalf of

### **BULLER DISTRICT COUNCIL**

By:

---

Signature of Authorised Signatory

---

Signature of Authorised Signatory

---

Name of Authorised Signatory

---

Name of Authorised Signatory

---

Date

---

Date

### **GREY DISTRICT COUNCIL**

By:

---

Signature of Authorised Signatory

---

Signature of Authorised Signatory

---

Name of Authorised Signatory

---

Name of Authorised Signatory

---

Date

---

Date

### **WESTLAND DISTRICT COUNCIL**

By:

---

Signature of Authorised Signatory

---

Signature of Authorised Signatory

---

Name of Authorised Signatory

---

Name of Authorised Signatory

---

Date

---

Date

## SCHEDULE 1

### Agreement Details

<b>Commencement Date</b> <i>(Clause 6.1, Schedule 2)</i>	This agreement commences on the date it is last signed by all Councils.	
<b>Expiry Date</b> <i>(Clause 6.1, Schedule 2)</i>	This agreement expires on the establishment of the joint WSCCO in accordance with the LG(WS) Act.	
<b>Project Steering Group</b> <i>(Clause 4, Schedule 2)</i>	<p><b>Members:</b> The members of the Project Steering Group are:</p> <ul style="list-style-type: none"> <li>• Buller District Council: Chief Executive (or nominee)</li> <li>• Grey District Council Chief Executive (or nominee)</li> <li>• Westland District Council: Chief Executive (or nominee)</li> </ul> <p><b>Meetings:</b> The Project Steering Group will meet fortnightly or at such other times or frequency as they determine.</p>	
<b>Project Team</b> <i>(clause 4 and 5.4, Schedule 2)</i>	<p><b>Members:</b> The members of the Project Team will be as determined by the Project Steering Group from time to time. The Project Team can involve officers of the Councils or external appointees from each of the Councils.</p> <p><b>Meetings:</b> The Project Team will meet weekly, or at such times or frequency as they determine necessary.</p>	
<b>Address for notices</b> <i>(clause 10, Schedule 2)</i>	Buller District Council	Grey District Council
	6-8 Brougham Street Westport 7866 New Zealand  Email: [Simon.Pickford@bdc.govt.nz] Attention: [Simon Pickford]	105 Tainui Street Greymouth 7805 New Zealand  Email: [Joanne.soderlund@greydc.govt.nz] Attention: [Joanne Soderlund]

Westland District Council	
36 Weld Street Hokitika 7810 New Zealand  Email: [Barbara.Phillips@westlanddc.govt.nz]  Attention: [Barbara Phillips]	

## 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.

**"Joint Operating Model"** means the way in which the joint WSCCO will be established and will operate, with the Councils as shareholders.

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

**"LG(WS) Act"** means the Local Government (Water Services) Bill, as enacted.

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

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

**"Project"** means taking the steps to establish the WSCCO as contemplated by with this agreement.

**"Project Plan"** has the meaning given to that term in clause 4.5(a).

**"WSCCO"** means the jointly owned regional water services council-controlled organisation (as defined in the LG(WS) Act) to be established by the Councils, with each Council being a shareholder.

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

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

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

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

## 2. PROJECT OVERVIEW

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

- (a) for the Councils to continue to work closely, collaboratively and successfully to develop 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 (WSSSO) can progress to implementation in a timely way to meet the requirements of the LG(WSPA) Act and the LG(WS) Act;
- (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; and
- (d) to effectively establish the joint WSCCO for the Joint Operating Model in accordance with the joint WSDP (once accepted).

### 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; and
- (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 or this agreement.

### 2.3 Establishment Principles: In establishing the joint WSCCO, the Councils will seek to:

- (a) **Deliver quality services:** Establish a model that will deliver reliable, affordable and high quality water services to all three West Coast Districts, while staying financially sustainable and ensuring preparedness and resilience to natural hazards and climate change.

- (b) **Meet the rules:** satisfy all regulatory requirements, by meeting regulatory compliance expectations set by Taumata Arowai, the Commerce Commission and the West Coast Regional Council, and proactively informing the development of any new rules, standards or regulations that will apply to the service area.
- (c) **Smooth transition:**
  - (i) minimise the impact of transition on the Councils, existing staff, contractors and communities, by seeking to ensure continuity of capital work programmes, novating existing contracts and (where possible) applying a “lift and shift” approach to existing strategic planning, operational delivery and contracts; and
  - (ii) protecting staff, honouring existing contracts, and ensuring that no interim decisions are made by Councils that could negatively impact on the WSCCO.
- (d) **Efficient costs:** minimise cost impacts to the Councils and the joint WSCCO, by considering the potential for shared service arrangements, and cost sharing, and finding ways to reduce any unnecessary duplication / overlap of work by Councils when preparing for transition.
- (e) **Clear roles:** achieving clarity of Governance, steering group and delivery team roles and responsibilities to ensure everyone is comfortable with who does what, and that there are appropriate delegations in place to allow each party to achieve streamlined transition.
- (f) **Flexibility:** allowing room to adapt if changes are available that better support agreed objectives, including in relation to the joint WSCCO structure and approach to transition.
- (g) **Simple and transparent:** making the transition easy to understand for Councils, communities, mana whenua and staff with regular, effective and transparent communications.

### 3. KEY ACTIVITIES

#### 3.1 Council responsibilities: Each Council will:

- (a) work with the other Councils to:
  - (i) develop and document the Council's technical, operational, legal and other requirements for the Joint Operating Model ("**Requirements**") and to agree reasonable and realistic timeframes for delivery of the Joint Operating Model; and
  - (ii) plan and design the Joint Operating Model to meet the Requirements, including at such time(s) required by the other Councils;
- (b) make decisions in relation to all matters required 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 set out in 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 **Administrative matters:**

- (a) The Councils unanimously agree that Buller District Council will carry out the following responsibilities:
  - (i) managing Project expenditure and tracking against the Project Budget;
  - (ii) preparing agendas in conjunction with the Project Team and scheduling governance meetings for the Project, created by agreement by the Project Team;
  - (iii) entering into legal agreements necessary for the benefit of the Project, after consultation and agreement with the Steering Group; and
  - (iv) preparing reporting for governance meetings for the Project.
- (b) The Shareholders Representative Forum may, from time to time, agree to replace the Council appointed under clause 3.3(a), after which time, the replacement Council will assume the responsibilities set out in clause 3.3(a).

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

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 acknowledge that any communication with the Department of Internal Affairs regarding the content of the joint WSDP should be coordinated collectively, provided that where any issue pertains solely to one Council, that Council may engage directly with the Department in relation to that issue with prior notice to the other Councils.

#### 4. **PROJECT OVERSIGHT**

4.1 **Structure:** The oversight model for the Project comprises the following:

- (a) Project Steering Group ("**PSG**"); and
- (b) Project Team.

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

- (a) Each Council will be responsible for their own decision-making using the Project Team's advice, assistance and where possible template reporting and decision-making documents.
- (b) The PSG, and Project Team will make decisions on a consensus basis.
- (c) Where consensus is not possible, decisions will be made by simple majority, or escalated to the Shareholders Representative Forum.

4.3 **Meeting administration:** Each of the governance meetings will be scheduled by the Council appointed under clause 3.3(a), who will circulate agenda items and decisions to be discussed ahead of the meeting date.

- 4.4 **Project Steering Group:** The PSG shall be responsible for:
- (a) Overseeing, and providing strategic direction for the Project, in a manner that accords with their delegated authority and direction from the Shareholders Representative Forum
  - (b) addressing issues that have been escalated to it by the Project Team;
  - (c) reviewing and approving any proposed changes to 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.
- 4.5 **Project Team:** The Project Team shall be responsible for:
- (a) preparing the detailed scope of work and Project Plan (including Project milestones) to deliver on the Objectives ("**Project Plan**"). The Project Plan and scope against the Project Plan will be confirmed by, and report to, the PSG on a monthly basis;
  - (b) developing and maintaining a Project Budget;
  - (c) engaging external expertise as required;
  - (d) preparing a 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 ensure alignment between the Project Plan and Objectives, and each Councils strategic intentions;
  - (f) preparing consultation packs in collaboration with individual Councils to support each Council's required consultation processes (where necessary), and running and/or supporting any consultation (if required);
  - (g) developing a joint WSDP in accordance with legislative requirements and each Council's requirements; and
  - (h) any other matters required under a terms of reference agreed for the Project Team.
- 4.6 **Commercial Terms Sheet:** The parties will negotiate and agree the establishment documents for the WSCCO, with reference to the key terms set out in Schedule 3, noting that these terms are not binding on the parties.

## 5. **COST SHARING**

- 5.1 **Cost sharing principles:** The Councils agree to fund the costs of the Project in equal proportions, with each Council contributing one-third (33.3%) of the total costs, in accordance with the Project Budget.

- 5.2 **Project funding:** The Councils will (through the Project Team) prepare a Project funding budget for approval by the PSG, that covers:
- (a) the costs of the Project; and
  - (b) the costs for any internal and external consultants (preapproved 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 such 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 ("**Exiting Council**"), the Exiting Council remains responsible for their share of all costs incurred up to that date, including any committed costs which cannot be mitigated by the remaining participating Councils.
- 6. TERM**
- 6.1 **Term:** This agreement commences on the Commencement Date and continues until the Expiry Date, unless terminated earlier by all Councils in accordance with clause 6.2.
- 6.2 **Termination by agreement:** This agreement may be terminated at any time with immediate effect by agreement of all current Councils to this agreement for any reason, including if there is a material change of law or policy direction that affects the Councils' obligations under the LG(WSPA) Act and LG(WA) ACT.
- 6.3 **Council withdrawal:**
- (a) Subject to clauses 5 and 6.3(b), any Council may withdraw its participation in this agreement by giving written notice to the other Councils.
  - (b) Before a Council exercises its withdrawal right under subclause (a), that Council must:
    - (i) provide as early as possible notification (but no less than 6 months) 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 seek to resolve any points of disagreement, and otherwise respond to and agree on any public releases in accordance with clause 3.5; and
    - (ii) when providing notice, provide the other Council(s) with an explanation for the intention to withdraw from the agreement.
  - (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, 7, 8 and 9 that shall survive expiry or termination of this agreement;
  - (ii) each Council retains the rights and obligations it has accrued under this agreement as at the date of expiry or termination; and
  - (iii) each Council must return any Confidential Information of another Council in its possession to that other Council or, if requested by the other Council, destroy the Confidential Information, except to the extent that it is required to retain the Confidential Information in order to meet its legal, contractual and governance obligations.
- (b) if a Council withdraws its participation in this agreement:
  - (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.

## 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 Councils(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

- (c) 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.
- (d) 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).
- (e) Any mediation conducted under this agreement shall be without prejudice and shall not be referred to or relied upon in any subsequent proceedings. Furthermore, the mediator shall not be called as a witness in any such proceedings.

### 7.4 **Arbitration**

- (a) If the dispute has not been resolved within 40 Business Days (or such other period as agreed by the parties) from the date it was referred to mediation, any Council (the "**Initiating Council**") may refer the dispute to 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 this clause and the Arbitration Act 1996, or any Act in amendment or substitution thereof, excluding Articles 3(1)(a) and 3(1)(b) of the Second Schedule of the Arbitration Act 1996.
- (b) The arbitration shall be conducted in accordance with the Rules of the Arbitrators' and Mediators' Institute of New Zealand Incorporated ("**AMINZ**") as amended or modified from time to time.
- (c) The arbitral tribunal shall consist of one arbitrator, appointed by agreement of the Disputing Council(s), or failing agreement within 10 Business Days of the Arbitration Notice, by AMINZ in accordance with its rules.
- (d) The seat of arbitration shall be Wellington, New Zealand, and the arbitration shall be conducted in the English language.
- (e) The award shall be in writing and include reasons for the decision. The award shall be binding on the Councils, subject to the limited right of appeal to the High Court on a question of law under Clause 5 of the Second Schedule of the Arbitration Act 1996.

- (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

#### Commercial Terms Sheet

Term	Proposed Approach
<b>Constitution</b>	
<b>Name of the WSCCO.</b>	[Councils to confirm]
<b>Minimum and maximum number of directors.</b>	Up to 5 Directors, including the Chair.
<b>Director appointment, removal/replacement and performance monitoring.</b>	<p>The Chair of the Board shall be appointed by the Shareholders' Representative Forum, while the Deputy Chair will be appointed by the Board of Directors.</p> <p>Directors cannot be existing Elected Members, and must be independent with expert capability.</p> <p>An initial review of the Board's composition and performance will be conducted after 12 months, followed by periodic reviews after that.</p>
<b>Skills/experience directors are required to have (to be captured in a skills matrix).</b>	<p>Skills matrix to include:</p> <ul style="list-style-type: none"> <li>• at least one (1) director with detailed knowledge of the West Coast region, including rural areas/ communities;</li> <li>• water sector expertise, including technical, regulatory, risk and environmental, commercial and financial acumen;</li> <li>• experience with Maori/ iwi engagement and understanding of Te Tiriti o Waitangi principles;</li> <li>• experience with community and stakeholder engagement; and</li> <li>• infrastructure and asset management.</li> </ul>
<b>Directors' term of appointment and maximum number of terms a director can be appointed for.</b>	3-year term, with a maximum of 3 terms (initial appointments to be staggered to enable rotation of directors).
<b>Quorum for board meetings.</b>	A majority of directors members.

Term	Proposed Approach
<b>Shareholders' Agreement</b>	
<b>Initial percentage shareholdings</b>	The initial shareholdings will be calculated based on net asset value, proportional to the net assets each Council contributes prior to the transfer. The initial shareholdings and associated calculations will be recorded in the Shareholder's Agreement.
<b>Adjustments to shareholdings</b>	Following the transfer occurring, the initial shareholding percentages may be further adjusted by considering qualitative factors such as population size and number of water connections. This requires unanimous approval by all three Councils.
<b>Shareholder decision-making</b>	<p>All decisions by shareholders will be made through the Shareholders Representative Forum, which will require delegations from each Council for that purpose. These decisions will be classified into two categories: Unanimous Decisions and Majority Decisions.</p> <p><b>Unanimous Decisions</b> require the agreement of all three Councils. These include:</p> <ul style="list-style-type: none"> <li>• any action that would result in a material change to the business of the WSCCO;</li> <li>• the addition of a new Council to WSCCO; and</li> <li>• any matter requiring a special resolution under the Companies Act 1993.</li> </ul> <p><b>Majority Decisions</b> encompass all other decisions not classified as unanimous. These require the support of at least two out of the three Councils.</p>

Term		Proposed Approach
<b>Shareholders Representative Forum</b>	Terms of reference	<p>Role of the SRF to include:</p> <ul style="list-style-type: none"> <li>• agreeing the form and content of the joint Statement of Expectations;</li> <li>• appointing WSCCO directors (including interim directors), and reviewing their performance;</li> <li>• reviewing reporting provided by the WSCCO (in the initial 12 month period the WSCCO will report to the Shareholders Representative Forum quarterly); and</li> <li>• reporting to the shareholder Councils.</li> </ul>
	Membership	<p>11 members in total, comprising:</p> <ul style="list-style-type: none"> <li>- The Mayor of each Council, and two other elected representatives (appointed by each Council); and</li> <li>- one representative each from Te Runanga o Ngāti Waewae and Te Runanga o Makaawhio (to be appointed by those entities).</li> </ul>
	Co-opted Members	The SRF may co-opt members for expert advice. These members will not have a vote.
	Voting	Each member will have 1 vote, provided that representatives of each council will be entitled to a total of three votes at each meeting, notwithstanding the number of representatives attending.
	Quorum	Majority of members and at least one representative from each of the Grey, Buller and Westland districts.
<b>Matters to be included in the Statement of Expectations.</b>		<p>To include all mandatory content prescribed in Bill #3 (once enacted).</p> <p>SRF to develop template SoE, with support from Project Team and PSG.</p>

Term	Proposed Approach
<p><b>Ability of a Council to exit.</b></p>	<p>A Council can exit at any time, subject to providing reasonable, but not less than 6 months, notice to all other Councils which leaves time for discussions in relation to the potential impact on the WSCCO's operating model.</p> <p>Any exit is subject to the calculation of the value of that Council's assets and debt that will be transferred to that Council as per shareholding and/or connections at the time of transfer, and the calculation of the costs of any changes that need to be implemented by the WSCCO in relation to that exit, which costs will be borne by the exiting Council.</p> <p>To build dispute resolution process into the Shareholders Agreement, which may be applied before any exit is confirmed by Shareholders.</p>
<p><b>Process for admitting a new Council.</b></p>	<p>A new Council may be admitted to the WSCCO as a shareholder with approval of each of the existing shareholder Councils, subject to a business case being completed which deals with such matters as proposed transition timing, financial modelling and asset condition assessment.</p> <p>Admission process to be fully documented in Shareholders' Agreement.</p>

Term	Proposed Approach
<b>Transfer Agreement</b>	
<p>The Project Team will develop a template form of Transfer Agreement that will set out the terms on which a Council will transfer its assets and obligations in relation to the transferring water services. This will deal with the following:</p> <ul style="list-style-type: none"> <li>• Transfer principles: <ul style="list-style-type: none"> <li>○ Responsibilities to be transferred to the WSCCO and responsibilities that won't transfer</li> <li>○ Assets to be transferred to the WSCCO; Assets that won't transfer</li> <li>○ Properties/property rights to be transferred to the WSCCO, or licensed or leased to the WSCCO, including any post-transfer obligations</li> <li>○ Employees and Contractors to be transferred to the WSCCO</li> <li>○ Contracts that will / will not be assigned or novated to the WSCCO</li> <li>○ Matters of Shared Interest which Council and the WSCCO will work together on</li> <li>○ Ad hoc services to be provided by Council to WSCCO</li> <li>○ Ad hoc services to be provided by WSCCO to Council</li> </ul> </li> <li>• Purchase price and how this will be satisfied (combination of acknowledgment of debt/cash payment/issue of additional shares to the Council)</li> <li>• Party (as between the Council and the WSCCO) who will collect the water charges</li> <li>• The basis on which the interim period funding will be paid for by the Councils (i.e a cashflow issue) in the period prior to those debts/loans being transferred to the WSCCO.</li> <li>• The debt funding model for the WSCCO, including whether this would be supported by guarantees or uncalled capital from the shareholding Councils.</li> </ul>	
<b>Transitional Services Agreement(s)</b>	
<p>The Project Team will develop a template form of Transitional Services Agreement that will set out the services (if any) each Council will provide to the WSCCO on a transitional basis following the Effective Date. This may include:</p> <ul style="list-style-type: none"> <li>• Charging and collection services</li> <li>• Back-office services</li> <li>• Secondment arrangements</li> </ul>	
<b>Shared Services Agreement(s)</b>	
<p>The Project Team will develop a template form of Shared Services Agreement that will set out the services each Council will need to align with the WSCCO in order to provide that service (and vice versa) (ie shared interest matters).</p>	
<b>Services Agreement(s)</b>	
<p>The Project Team will develop a template form of Services Agreement that will set out the services (if any) the WSCCO will provide to each Council on an ongoing basis (eg maintenance of stormwater assets retained by that Council).</p>	