

23 September 2024



Kia ora 

Official information Request: Performance reporting and asset management

I am writing to you in response to your request received 28 August for information.

We have assessed your request under the Local Government Official Information and Meetings Act 1987 (LGOIMA). I have received information to provide the following response:

1. **If and when the serious matters to do with the management of Wellington Water raised at the 26th July 2024 meeting of the Wellington Water Committee will be reported formally to the SWDC Council or any of its Committees?**

This is publicly available meeting information for the Strategy Working Committee, 31 July 2024 – please refer to item C3 in the agenda and minutes on the SWDC website:
<https://swdc.govt.nz/meeting/strategy-working-committee-31-july-2024/>

Furthermore, Councillors met with the Wellington Water Board Chair on 14 August 2024 to discuss next steps. This meeting was closed to the public.

2. **Who is actually responsible for the management of the water assets owned by the SWDC? For the avoidance of doubt what I mean by asset management is the activities in an asset lifecycle process like Identification of Requirements, Planning Acquisition or Design and Build, Execution of Acquisition or Design and Build, Testing, Acceptance and Handover, Maintenance & Operations, and Disposal. In each of these stages there is performance management, reporting and accountability.**

Wellington Water are responsible for the assets. They report to Committees/Council on a regular basis, and provide information to the Group Manager Infrastructure & Community Operations to update elected members on a quarterly basis. The assets sit on the SWDC balance sheet.

Additionally can I please have:

1. **Copies of the pertinent contracts or management plans for three of the SWDC water assets and any related documents or information that will give me a picture of how those assets are (or are not) managed to explicit standards of timeliness cost and quality and**

how performance against those plans or agreements is reported to the SWDC or any of its Committees.

Please refer to the attached documentation for the contract with Wellington Water, the deed of accession and the latest variation signed on 1 July 2024.

- 2. A copy of or be directed to the papers that show how the SWDC agreed to become a member of the 'Wellington Water Committee' and what if any MOU's or other agreements with the Wellington Water Committee have been signed to by the Council – particularly how it reached the conclusion that a two tiered governance system was necessary.**

Please refer to the following meeting where information was presented to Council on the matter of becoming a member of Wellington Water: <https://swdc.govt.nz/meeting/council-meeting-17-april-2019/>

Furthermore, please refer to the news release from 17 April 2029: <https://swdc.govt.nz/news/announcement-south-wairarapa-district-council-joins-wellington-water/>

For information about Wellington Water – governance, reports and documentation publicly available on the Wellington Water Committee website, please use the following links:

<https://www.wellingtonwater.co.nz/assets/Reports-and-Publications/Induction-pack-for-councils-Wellington-Water-at-a-glance-FINAL.pdf>

<https://www.wellingtonwater.co.nz/resources/documents/document-library>

- 3. Related to 2. any information that will show me how the SWDC arrived at the conclusion that it was and is in the interests of its ratepayers to continue its arrangements with Wellington Water, given the abilities, experience and qualifications of its directors and senior managers and their reported performance to date, to deliver the water services required by the SWDC ratepayers?**

Currently legislation requires Councils to consider forming its own water service provider, or be part of a wider service provider. Further progress will be made over the next year, until decisions are made, Wellington Water will continue to manage water services for SWDC.

- 4. Information on the view formed by the SWDC representatives on the Wellington Water Committee of the reports from and on Wellington water for its meeting on 24th July 2024 and how did they respond to the matters raised at that meeting of the Committee.**

Please refer to the publicly available meetings page on our website for a copy of the meeting agenda and minutes for the Strategy Working Committee meeting held on 31 July 2024: <https://swdc.govt.nz/wp-content/uploads/SWCAgendaPack-31Jul24-v2.pdf>

Please note that it is our policy to proactively release our responses to official information requests where possible. If this request is selected it will be published at <https://swdc.govt.nz/lgoima-proactive-release/>, with your personal information removed.

You have a right to request a review by the Ombudsman on this response. Further information about this process can be found on <https://www.ombudsman.parliament.nz/what-ombudsman-can-help/complaints-about-government-agencies/how-make-complaint> or email info@ombudsman.parliament.nz

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'Rob Thomas', is centered on the page.

Rob Thomas
Manager, Stakeholder Relationships

Variation to Wellington Water Limited Shareholders Agreement

PARTIES

Wellington City Council

Hutt City Council

Upper Hutt City Council

Porirua City Council

Wellington Regional Council

AGREEMENT dated 9 August 2019

PARTIES

Wellington City Council
("WCC")

Hutt City Council
("HCC")

Upper Hutt City Council
("UHCC")

Porirua City Council
("PCC")

Wellington Regional Council
("WRC")

INTRODUCTION

- A. WCC, HCC, UHCC, PCC and WRC are parties to a Shareholders Agreement relating to Wellington Water Limited ("WWL") dated 16 September 2014 ("**Agreement**").
- B. The Wellington Water Committee, which is jointly established and maintained by the parties, has proposed the participation of mana whenua partner entities ("**MWPEs**") in relation to the governance of WWL.
- C. In consideration of each other party agreeing to certain other changes to the Agreement, the parties are all agreeable to the amendment of the Agreement to provide for the participation of MWPEs in the governance of WWL.
- D. The parties agree to vary the Agreement on the terms set out in this variation agreement ("**Variation**").

AGREEMENT

- 1. **Effective date:** The provisions of this Variation will take effect on and from the date all parties have signed this Variation ("**Effective Date**").
- 2. **Variation:** With effect from the Effective Date, the parties agree that the Agreement shall be amended and restated in the form set out in the Appendix to this Variation.

3. **Other terms in Agreement:** Except as specified in clause 2 of this Variation, all other terms and conditions in the Agreement are unchanged and shall continue in full force and effect.
4. **Counterparts:** This Variation may be executed in any number of counterparts, including by way of facsimile or PDFs of completed signature blocks exchanged by email, and, provided that each party has executed a counterpart, the counterparts together constitute a binding and enforceable agreement between the parties.
5. **Governing law:** This Variation is governed by the laws of New Zealand.

SIGNATURES

WELLINGTON CITY COUNCIL by:

Kevin Lavery

Signature of authorised signatory

KEVIN LAVELY

Name of authorised signatory

CHIEF EXECUTIVE

Designation of authorised signatory

HUTT CITY COUNCIL by:

Signature of authorised signatory

Name of authorised signatory

Designation of authorised signatory

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SIGNATURES

WELLINGTON CITY COUNCIL by:

Signature of authorised signatory

Name of authorised signatory

Designation of authorised signatory

HUTT CITY COUNCIL by:



Signature of authorised signatory

Johanna Elizabeth Miller
Name of authorised signatory

Chief Executive
Designation of authorised signatory

UPPER HUTT CITY COUNCIL by:



Signature of authorised signatory

Peter Kelly

Name of authorised signatory

Chief Executive

Designation of authorised signatory

PORIRUA CITY COUNCIL by:

Signature of authorised signatory

Name of authorised signatory

Designation of authorised signatory

WELLINGTON REGIONAL COUNCIL

by:

Signature of authorised signatory

Name of authorised signatory

Designation of authorised signatory

UPPER HUTT CITY COUNCIL by:

Signature of authorised signatory

Name of authorised signatory

Designation of authorised signatory

PORIRUA CITY COUNCIL by:

Wendy Walker

Signature of authorised signatory

Wendy Walker

Name of authorised signatory

Chief Executive

Designation of authorised signatory

WELLINGTON REGIONAL COUNCIL

by:

Signature of authorised signatory

Name of authorised signatory

Designation of authorised signatory

UPPER HUTT CITY COUNCIL by:

Signature of authorised signatory

Name of authorised signatory

Designation of authorised signatory

PORIRUA CITY COUNCIL by:

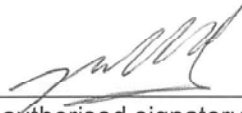
Signature of authorised signatory

Name of authorised signatory

Designation of authorised signatory

WELLINGTON REGIONAL COUNCIL

by:



Signature of authorised signatory

GREG CAMPBELL

Name of authorised signatory

CHIEF EXECUTIVE

Designation of authorised signatory

APPENDIX
Amended and Restated Agreement

Shareholders and Partnership Agreement
relating to
Wellington Water Limited

Wellington City Council

Hutt City Council

Upper Hutt City Council

Porirua City Council

Wellington Regional Council

And any other Shareholder and Mana Whenua Partner Entity
acceding to this Shareholders and Partnership Agreement

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Te Taki o Wellington Water

He wai, he wai

He wai herenga tāngata

He wai herenga whenua

He wairua

He waiora

Tihei Mauri ora

Tis water, tis water

Water that joins us

Water that necessitates the land

Soul of life

Life forever

Tis life

Parties

Wellington City Council (WCC)

Hutt City Council (HCC)

Upper Hutt City Council (UHCC)

Porirua City Council (PCC)

Wellington Regional Council (WRC)

Any other Shareholder(s) acceding to this document in accordance with clause 1.6 below

Any Mana Whenua Partner Entity(ies) acceding to this document in accordance with clause 2.3 below (MWPE)

Background

- A. Wellington Water Limited (**Company**) manages drinking water, wastewater and storm water services in the greater Wellington region for its local authority shareholders, working in partnership with mana whenua, through the MWPEs, to provide leadership across water issues.
- B. The parties are:
 - a. shareholders in the Company; and
 - b. mana whenua partner entities,and wish to enter into this document for the purpose of recording the agreements they have reached in relation to managing their shareholdings in the Company, mana whenua's partnership with the Shareholders in relation to governance of the Company, and their respective relationships with each other.
- C. The existing parties to this document acknowledge that additional parties may accede to this document in the manner described in clause 2.3 below, either as additional shareholders in the Company or as MWPEs.

Operative provisions

1 Shareholder and other obligations

Shareholder and customer

- 1.1 Each Shareholder acknowledges that all Shareholders are expected to also be customers of the Company under a Service Level Agreement.

Duty to comply with Constitution

- 1.2 Each Shareholder shall comply with the Company's Constitution. Each MWPE shall, in the exercise of its role as contemplated in this document, agree that the Company is obliged to comply with the Constitution.

Council controlled organisation

- 1.3 The Shareholders and MWPEs acknowledge that the Company is a council controlled organisation and accordingly:
- 1.3.1 the Shareholders will each use their best endeavours to ensure that they each comply with their, and the Company complies with its, obligations under the LGA and the Companies Act; and
 - 1.3.2 each of the MWPEs will, when undertaking its role as contemplated in this document, agree that the Company is obliged to comply with its obligations under the LGA and the Companies Act.

Security Interest

- 1.4 A Shareholder must not grant a Security Interest over any of its Shares without the written consent of the other Shareholders.

Shareholding

- 1.5 Each Shareholder holds the Shares as set out in the share register for the Company.

New Shareholder accession to this document

- 1.6 The Shareholders acknowledge that from time to time one or more local authorities or council controlled organisations may become shareholders of the Company, by being issued Shares in the Company in accordance with the Constitution. In such event, the new Shareholder will be required under the Constitution to become a party to this document as a Shareholder and may do so by way of entry into a deed of accession in a form required by the Shareholders.

2 Treaty of Waitangi / Te Tiriti o Waitangi

- 2.1 The Shareholders acknowledge the importance of the Treaty of Waitangi / Te Tiriti o Waitangi as a founding document of Aotearoa New Zealand and are committed to the principles it contains. In giving effect to the Treaty of Waitangi / Te Tiriti o Waitangi principles, the Shareholders agree that mana whenua, through the MWPEs, will have an important role in the governance of the Company, as contemplated in this document, including by nominating members on the Wellington Water Committee and by jointly (as part of the Wellington Water Committee) recommending the appointment of the Directors of the Company (such Director appointments to be made by the Class A Shareholders as required under the Constitution).
- 2.2 Each MWPE:
- 2.2.1 is a Māori authority in the geographical area in which the Company operates;
 - 2.2.2 has been jointly approved by all Shareholders as a MWPE for the purposes of this document (as contemplated in clause 2.3 below); and
 - 2.2.3 has acceded to this document as a MWPE by way of entry into a deed of accession in a form required by the Shareholders.
- 2.3 The Shareholders acknowledge that they, any of them and/or the Company may from time to time receive request(s) from any group(s) or entity(ies) seeking recognition as a MWPE for the purposes of this document. The Shareholders agree to consider such request(s) in good faith, and may, by unanimous resolution, agree to recognise as a MWPE under this document any Māori authority within the geographical area in which the Company operates. On such resolution, the relevant Māori authority shall become a MWPE upon acceding to this document as a MWPE by way of entry into a deed of accession as required in clause 2.2.3 above.

3 Wellington Water Committee

Establishment and Terms of Reference

- 3.1 The Shareholders will jointly establish, maintain and operate a Wellington Water Committee in accordance with the Terms of Reference and the provisions of this document, to provide overarching governance in relation to Water Services in the greater Wellington region and to assist the Shareholders to fulfil their obligations under this document.

Committee Membership

- 3.2 The Wellington Water Committee will comprise Committee Members appointed as follows:

- 3.2.1 Each Shareholder will appoint one of its elected members as a Committee Member;
 - 3.2.2 Each MWPE will nominate, and the Shareholders will unanimously appoint, a person to be a Committee Member on the Wellington Water Committee; and
 - 3.2.3 In relation to each Committee Member, whether appointed under clause 3.2.1 or 3.2.2, an Alternate will be appointed in the same way as the relevant primary Committee Member.
- 3.3 Any Committee Member and/or Alternate may be replaced from time to time as follows:
- 3.3.1 a Committee Member who is also an elected member of a Shareholder, by the relevant Shareholder; and
 - 3.3.2 a Committee Member who is not also an elected member of a Shareholder, by the relevant nominating MWPE,
- in each case, by the relevant party providing written notice to the Wellington Water Committee and the Shareholders.

Delegations to Committee Members

- 3.4 Each Shareholder agrees to delegate to its nominated or appointed Committee Member, and their Alternate, those responsibilities and powers set out in the Appendix to the Terms of Reference.

Attendance of Committee Members at meetings

- 3.5 Each:
- 3.5.1 Shareholder agrees to use its reasonable endeavours to ensure that its appointed elected member Committee Member (or their Alternate); and
 - 3.5.2 MWPE agrees to use its reasonable endeavours to ensure that its nominated Committee Member (or their Alternate),
- attends each meeting of the Wellington Water Committee.
- 3.6 It shall be considered a breach of this document if an appointed Committee Member or their Alternate is not present at three consecutive meetings of the Wellington Water Committee.

4 Shareholder decisions

- 4.1 The matters contained in part 1 of Schedule 2 must be approved by unanimous agreement of the Shareholders, which may be approved through their elected members who are on the Wellington Water Committee.

5 Composition of the Board

The Board

- 5.1 The parties agree that the appointment of the Directors must meet the requirements in accordance with the Board Skills Matrix, subject to the maximum number of Directors permitted under the Constitution.
- 5.2 An appointee must not be a person disqualified from acting as a Director under the Companies Act.
- 5.3 Otherwise, the Directors are to be appointed in accordance with the terms of the Constitution and this document.
- 5.4 A performance evaluation of the Board will be undertaken by the Board on an annual basis, in line with accepted good governance principles and practices, and the results will be reported directly to the Wellington Water Committee and to the Chief Executives of the Shareholders.

6 Statement of Intent

- 6.1 The parties agree that the business of the Company is expected to be conducted in accordance with its Statement of Intent, which must be prepared in accordance with the LGA.
- 6.2 Each Shareholder retains its rights under the LGA to comment on and decide whether to approve a Statement of Intent, but will use its best endeavours to co-ordinate its feedback in accordance with the procedure set out in this clause 6.
- 6.3 Unless the parties agree an alternative date, no later than 1 December each year, the Wellington Water Committee will meet to discuss and recommend to the Shareholders details to be included in the Letter of Expectation to the Company in relation to its Statement of Intent.
- 6.4 The parties agree that the Letter of Expectation will request the Company to include in its Statement of Intent appropriate restrictions on the activities set out in part 2 of Schedule 2.
- 6.5 The parties will exercise their power to agree the Letter of Expectation via the Wellington Water Committee.

- 6.6 No later than 15 December in each year, or an alternative date agreed by the Shareholders, the chairperson of the Wellington Water Committee will circulate the agreed Letter of Expectation to the Chairperson of the Board, the Chief Executive of the Company and to all Shareholders.
- 6.7 The Shareholders will procure that the draft Statement of Intent prepared by the Company is provided to the Wellington Water Committee and will exercise its powers in relation to the draft Statement of Intent via the Wellington Water Committee.
- 6.8 The Wellington Water Committee will, in accordance with the Terms of Reference, consider the draft Statement of Intent and will agree feedback and recommendations in respect of the draft Statement of Intent to be provided to the Company.
- 6.9 Subject to clause 6.2, no later than 30 April in each year, the Wellington Water Committee will circulate to the Chairperson of the Board, the Chief Executive of the Company and to all Shareholders a letter outlining Wellington Water Committee's agreed combined feedback to the draft Statement of Intent.
- 6.10 The Wellington Water Committee will, in accordance with the Terms of Reference, consider the final Statement of Intent when it is received from the Company and agree recommendations in respect of the final Statement of Intent to be provided to the Shareholders.
- 6.11 Each Shareholder must formally consider the final Statement of Intent taking into account the recommendations of the Wellington Water Committee.
- 6.12 The parties acknowledge that under the LGA, the Shareholders may jointly, by resolution, require the Board to modify its Statement of Intent.

7 Shareholder amalgamation

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

8 Conduct by the parties

Spirit of collaborative working

- 8.1 The parties must at all times act in a spirit of co-operation and collaborative working, endeavouring to act together to allow for the effective communications for and on, and governance of, the Company.
- 8.2 The parties shall use best endeavours to act under the principle of no surprises, both with the Company and with each other in relation to their respective interests. If any decision under this document has a material impact on a Shareholder's Service Level

Agreement with the Company, that Shareholder must immediately notify the other parties of the change.

9 Dispute resolution

Application of procedures

- 9.1 The procedures set out below must be followed in relation to the resolution of a dispute amongst the parties concerning either of the following:
- 9.1.1 this document, its subject matter, the rights or liabilities under this document or the negotiations leading to it; or
 - 9.1.2 the conduct of the business or affairs of the Company.

Notice in writing

- 9.2 If a party claims that a dispute has arisen, that party must give written notice to the other parties. The written notice must specify the nature of the dispute.

Escalation

- 9.3 The Representatives shall be responsible for dealing with any disputes in a timely manner.

Negotiation in good faith

- 9.4 On receipt of a notice delivered in accordance with clause 9.2 and before any party may refer a dispute to mediation, the Representatives must, in good faith and acting reasonably, do their best to resolve the difficulty quickly and efficiently through negotiation.
- 9.5 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 (where the Representatives are not the Chief Executive) of the applicable Shareholders for resolution.
- 9.6 If the issue has not been resolved within 30 days (or within such other period as agreed by the parties) of the date of the notice referred to in clause 9.4, any party may submit the dispute to mediation.

Mediation

- 9.7 If the parties do not resolve the difficulty by negotiation, the parties must, in good faith and acting reasonably, do their best to resolve the difficulty by participating in mediation with an independent mediator.
- 9.8 If the parties do not agree on a mediator, then the mediator will be appointed by the President of the New Zealand Law Society.
- 9.9 The parties must mediate the difficulty in accordance with principles agreed between them or, if no agreement can be reached, the principles determined by the mediator.

- 9.10 Unless the parties agree otherwise, the mediator's fee and any other costs of the mediation itself (such as for venue hire or refreshments) will be shared equally between the parties, but the parties will each pay their own costs of preparing for and participating in the mediation (such as for travel and legal representation).

Implementation of agreement reached through negotiation or mediation

- 9.11 The parties must do whatever is reasonably necessary to put into effect any negotiated or mediated agreement or other resolution. This includes exercising voting rights and other powers as required.

Rights and obligations during a dispute

- 9.12 During a dispute, each party must continue to perform its obligations under this document.

Interlocutory relief and right to terminate

- 9.13 This clause does not restrict or limit the right of a party to obtain interlocutory relief, or to immediately terminate this document where this document provides such a right.

10 Termination

Duration

- 10.1 This document commences on its execution date in accordance with its terms and continues until:
- 10.1.1 one Shareholder holds all of the Shares or none of the Shareholders hold Shares, and there are no then current MWPEs; or
 - 10.1.2 terminated earlier in accordance with clause 10.2.

Termination for default

- 10.2 This document will terminate if an Insolvency Event occurs in relation to the Company.

Termination by notice

- 10.3 Any Shareholder may withdraw from being a Shareholder and a party to this document if the Service Level Agreement in respect of such Shareholder is terminated.
- 10.4 Any Shareholder may withdraw from being a Shareholder and a party to this document by giving 36 months' prior written notice to the Company and to all other Shareholders.

Right of first refusal

- 10.5 If a Shareholder ceases to be a Shareholder in the Company for any reason, the Shareholder must offer its Shares to the remaining Shareholders pro rata to their respective shareholdings.

- 10.6 No Shareholder is entitled to terminate this document except as expressly permitted in this document.

Effect of termination

- 10.7 Any termination of this document with respect to a Shareholder or a MWPE does not affect any accrued rights that Shareholder or that MWPE may have against the other parties to this document or which the other parties to this document may have against it.
- 10.8 Clause 11 continues to apply to the parties despite any termination of this document.

11 Confidential Information

Confidentiality

- 11.1 Each party must keep, and must ensure that its nominated and/or appointed Committee Member and Representative shall keep, confidential the terms of this document, the contents of all negotiations leading to its preparation and any other information relating to the Company or to another Shareholder or MWPE that it obtains as a result of this document or anything done under it (**Confidential Information**), and must not disclose or permit the disclosure of such Confidential Information to any other person. If a party becomes aware of a breach of this obligation, that party will immediately notify the other parties.

Further permitted use and disclosure

- 11.2 This document does not prohibit the disclosure of Confidential Information by a party in the following circumstances:
- 11.2.1 The other parties have consented to the disclosure of the relevant Confidential Information.
 - 11.2.2 The disclosure is specifically contemplated and permitted by this document.
 - 11.2.3 The disclosure of Confidential Information is to an employee, subcontractor, agent or representative who needs it for the purposes of this document.
 - 11.2.4 The disclosure is to a professional adviser in order for it to provide advice in relation to matters arising under or in connection with this document.
 - 11.2.5 The disclosure is required by a court or governmental or administrative authority.
 - 11.2.6 The disclosure is required by applicable law or regulation, including under the Local Government Official Information and Meetings Act 1987.

Obligations to continue after agreement ends

- 11.3 All obligations of confidence set out in this document continue in full force and effect after this document ends.

12 Announcements

- 12.1 Each party agrees that it will not make any public announcements or issue media releases in connection with, or on behalf of, the other parties or the Wellington Water Committee in relation to the Company or Water Services. Nothing in this provision shall prohibit or restrict a Shareholder from making public announcements or media releases in connection with the Shareholder's own involvement with, or policies in relation to, the Wellington Water Committee or the Company.
- 12.2 Only the Chairperson of the Wellington Water Committee or their nominee shall be authorised to make public announcements or media releases in connection with or on behalf of the Wellington Water Committee in relation to the Company or any Water Services.

13 Notices

Giving notices

- 13.1 Any notice or communication given to a party under this document is only given if it is in writing and sent in one of the following ways:
- 13.1.1 Delivered or posted to that party at its address and marked for the attention of the Representative; or
- 13.1.2 Emailed to that party at its email address and marked for the attention of Representative,

in each case using the contact details notified by each party to the other parties and the Company from time to time (although subject to clause 13.2).

Change of details

- 13.2 If a party gives the other parties and the Company three business days' notice of a change of its postal address or email address, any notice or communication is only given by that other party if it is delivered, posted or emailed to the latest postal address or email address.

Time notice is given

- 13.3 Any notice or communication is to be treated as given at the following time:
- 13.3.1 If it is delivered, when it is left at the relevant address.
- 13.3.2 If it is sent by post, two business days after it is posted.
- 13.3.3 If it is sent by email, when it is received in readable form addressed in the manner specified above.

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

14 Miscellaneous

Assignments and transfers

- 14.1 A party must not assign or transfer any of its rights or obligations under this document without the prior written consent of each of the other parties.

Costs

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

Entire agreement

- 14.3 This document contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this document was executed.

Execution of separate documents

- 14.4 This document is properly executed if each party executes either this document or an identical document. In the latter case, this document takes effect when the separately executed documents are exchanged between the parties.

Further acts

- 14.5 Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this document and all transactions incidental to it.

Inconsistency with Constitution

- 14.6 If there is any inconsistency between this document and the Constitution then the parties agree to abide by this document and to do everything required to change the Constitution so that it is consistent with this document.

No partnership or agency

- 14.7 Nothing contained or implied in this document will create or constitute, or be deemed to create or constitute, a partnership between the parties. A party must not act, represent or hold itself out as having authority to act as the agent of or in any way bind or commit the other parties to any obligation.

Privity

- 14.8 Nothing in this agreement gives any right to a person not named as a party to this agreement, and no such person is entitled to make a claim against any party to this agreement.

No reliance on other matters

- 14.9 Each of the parties acknowledges that in agreeing to enter into this document it has not relied on any representation, warranty or other assurance except those set out in this document.

Severability

- 14.10 Each provision of this document is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected.

Variation

- 14.11 No variation of this document will be of any force or effect unless it is in writing and signed by the parties to this document.

Waivers

- 14.12 A waiver of any right, power or remedy under this document must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 14.13 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this document does not amount to a waiver.

15 Definitions and interpretation

Definitions

- 15.1 In this document the following definitions apply:

Alternate means in relation to a Committee Member, an alternate to that Committee Member, to attend and vote at meetings of the Wellington Water Committee but only where the relevant primary Committee Member is unable to do so.

Board means the board of directors for the time being of the Company.

Board Skills Matrix means the board skills matrix set out in Schedule 1 of the Constitution.

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

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

Committee Member means a member of the Wellington Water Committee.

Companies Act means the Companies Act 1993.

Confidential Information has the meaning set out in clause 11.1.

Constitution means the constitution of the Company.

Director means a director for the time being of the Company, who is jointly appointed by the Shareholders holding Class A Shares (including pursuant to authority delegated to those Shareholders' respectively appointed Committee Member and, in accordance with these terms of reference, that person's Alternate, on the Wellington Water Committee) and who is neither a member (including Councillors and Mayors) of, nor a person employed by, any Local Authority (as defined under the LGA), or a person employed by any MWPE.

Insolvency Event in relation to a party means anything that reasonably indicates that there is a significant risk that that party is or will become unable to pay its debts as they fall due. This includes any of the following:

- (a) The party's liabilities exceed its assets.
- (b) A meeting of the party's creditors being called or held.
- (c) A step being taken to liquidate the party.
- (d) A step being taken to have a receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed to the party or any of its assets or such an appointment taking place.
- (e) The party entering into any type of arrangement with, or assignment for, the benefit of all or any of its creditors including any formal arrangement or compromise under the Companies Act.
- (f) The party ceases or threatens to cease to carry on its main business.

Letter of Expectation means a letter to the Board setting out the expectations of the parties in relation to the Company's Statement of Intent. The process for agreeing such a letter is set out in clause 6.

LGA means the Local Government Act 2002.

Mana Whenua Partner Entity or **MWPE** means a Māori authority jointly approved by the Shareholders as contemplated in clauses 2.2 and 2.3.

Related Person has in relation to companies and natural persons, the same meaning as 'Related company' and 'Relative' under the Companies Act 1993 and in relation to the trustees of a trust includes the settlor and beneficiaries of the trust and any person holding the power to appoint and remove trustees or beneficiaries of the trust.

Representative means any person appointed by a party to this document as its representative for the purposes of this document, including as the primary point of contact for the other parties and to the Wellington Water Committee and means:

- (a) in relation to each Shareholder, the person who is the "Representative" for that Shareholder pursuant to the Constitution, or as applicable, the alternate to that person appointed pursuant to the Constitution; and
- (b) in relation to each MWPE, the Chair of that MWPE (or such other representative as notified in writing by the relevant MWPE to all other parties).

Security Interest includes a mortgage, debenture, charge, lien, pledge, assignment or deposit by way of security, bill of sale, lease, hypothecation, hire purchase, credit sale, agreement for sale on deferred terms, option, right of pre-emption, caveat, claim, covenant, interest or power in or over an interest in an asset and any agreement or commitment to give or create any such security interest or preferential ranking to a creditor including set off.

Service Level Agreement means a contract for provision of management services relating to Water Services between the Company and a Shareholder.

Shareholder means, at the relevant time, a shareholder in the Company. Where Shares are held by persons jointly, those persons are considered one Shareholder for the purpose of this document.

Shares means shares in the Company.

Statement of Intent means each statement of intent to be completed annually by the Board in accordance with the LGA.

Terms of Reference means the terms of reference of the Wellington Water Committee in the form set out in Schedule 3 as amended from time to time by agreement of the parties.

Water Services means the network infrastructure for the delivery of bulk water, water reticulation, wastewater and stormwater services in the Wellington region, for which the Company is responsible for managing and operating.

Wellington Water Committee means the joint committee formed by the Shareholders, together with Mana Whenua Partner Entities as contemplated in this document, pursuant to clauses 3.1 and 3.2.

Interpretation

15.2 In the interpretation of this document, the following provisions apply unless the context otherwise requires:

- 15.2.1 Headings are inserted for convenience only and do not affect the interpretation of this document.

- 15.2.2 A reference in this document to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Wellington, New Zealand.
- 15.2.3 If the day on which any act, matter or thing is to be done under this document is not a business day, the act, matter or thing must be done on the next business day.
- 15.2.4 A reference in this document to dollars or \$ means New Zealand dollars and all amounts payable under this document are payable in New Zealand dollars.
- 15.2.5 A reference in this document to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 15.2.6 A reference in this document to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
- 15.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document. Any schedules and attachments form part of this document.
- 15.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 15.2.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 15.2.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 15.2.11 References to the word 'include' or 'including' are to be construed without limitation.
- 15.2.12 A reference to this document includes the agreement recorded in this document.

Execution and date

Executed as an agreement.

Date:

Wellington City Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

.....
Name of authorised signatory (print)

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Hutt City Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

.....
Name of authorised signatory (print)

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Upper Hutt City Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

.....
Name of authorised signatory (print)

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Porirua City Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

.....
Name of authorised signatory (print)

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Wellington Regional Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

.....
Name of authorised signatory (print)

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Schedule 1 - [NOT USED]

Schedule 2

Matters requiring approval or reflection in Statement of Intent

Part 1 - Matters requiring unanimous resolution of Shareholders

The unanimous agreement of the Shareholders is required for:

- changes to the Constitution;
- increases in share capital and the issue of further securities, share buybacks and financial assistance, excluding buybacks created as a result of the agreed termination provisions in the Service Level Agreement;
- any alteration of rights, privileges or conditions attaching to the Shares;
- any arrangement, dissolution, reorganisation, liquidation, merger or amalgamation of the Company; and
- “major transactions” as that term is defined in the Companies Act.

Part 2 - Matters to be restricted in the Statement of Intent

The parties to the Shareholders' Agreement agree that the Letter of Expectation will request that the Company ensures its Statement of Intent includes appropriate restrictions on the following matters:

- making a loan or borrowing money, except for any borrowings in the ordinary course of business of no more than \$1,000,000 in total;
- granting security over the assets of the Company, or granting an indemnity or guarantee other than in the ordinary course of business;
- making a material change in the nature of the Company's business or engaging in business activities outside the ordinary course of business;
- entering a new customer service level agreement, except in the form already agreed by the parties to the Shareholders' Agreement;
- entering into a partnership or joint venture, except in the ordinary course of business;
- acquiring a new business or shares in another company;
- starting or settling any legal or arbitration proceedings, except in the ordinary course of business; and
- transferring or disposing of real or intellectual property with a value of over \$200,000.

Schedule 3

Form of Wellington Water Committee Terms of Reference

Wellington Water Committee

Purpose

The Wellington Water Committee ("the Committee") is established to:

- Provide governance and leadership across issues which are related to the planning, delivery and management of water services to communities serviced by Wellington Water Limited;
- Provide governance oversight of Wellington Water Limited, including by exhibiting good governance practice;
- Provide a forum for the representatives of Wellington Water Limited's shareholders and mana whenua to meet, discuss and co-ordinate on relevant issues and, through their representatives, to exercise their powers; and
- Strive for consistency across all client councils so all customers receive a similar level of service.

Status

The Committee is, for the purposes of the Local Government Act 2002, a joint committee of the Lower Hutt City Council, Porirua City Council, Upper Hutt City Council, Wellington City Council, and the Wellington Regional Council.

Specific responsibilities

The Committee's responsibilities are:

Governance oversight responsibilities

Shareholder and mana whenua governance oversight of Wellington Water Limited and of the network infrastructure for the delivery of bulk water, water reticulation, wastewater and stormwater services in the geographical areas of Wellington Water Limited's operations, including by:

- Receiving and considering the half-yearly and annual reports of Wellington Water Limited;
- Receiving and considering such other information from Wellington Water Limited as the Committee may request on behalf of the parties to the Shareholders and Partnership Agreement and/or receive from time to time;
- Undertaking performance and other monitoring of Wellington Water Limited;

- Considering and providing recommendations to the parties to the Shareholders and Partnership Agreement on proposals from Wellington Water Limited;
- Providing co-ordinated feedback, and recommendations as needed, on any matters requested by Wellington Water Limited or any of the parties to the Shareholders and Partnership Agreement;
- Providing recommendations to the parties to the Shareholders and Partnership Agreement regarding regional studies which the Shareholders need to be cognisant of;
- Providing recommendations to the parties to the Shareholders and Partnership Agreement regarding water conservation;
- Agreeing the annual Letter of Expectation to Wellington Water Limited;
- Receiving, considering and providing agreed feedback and recommendations to Wellington Water Limited on its draft statement of intent;
- Receiving, considering and providing recommendations to the parties to the Shareholders and Partnership Agreement regarding Wellington Water Limited's final statement of intent.
- Agreeing when Shareholder meetings, or resolutions in lieu of Shareholder meetings, are required, without prejudice to Shareholder and Board rights to call meetings under Wellington Water Limited's constitution and;
- Seeking and interviewing candidates for Wellington Water Limited's Board as needed and recommending to the holders of Class A Shares appointments and/or removals of directors of Wellington Water Limited;
- Recommending the remuneration of directors of Wellington Water Limited;
- Monitoring the performance of the Board of Wellington Water Limited; and
- Providing recommendations to the parties to the Shareholders and Partnership Agreement regarding changes to these terms of reference, the Shareholders and Partnership Agreement and the constitution of Wellington Water Limited.

Membership

The membership of the Committee will be as specified in the Shareholders and Partnership Agreement.

With the exception of the Committee Members nominated by the Mana Whenua Partners Entities, each appointee must be an elected member of the appointing Shareholder.

Chairperson

The Chairperson and Deputy Chairperson will be elected by the Committee once all Committee members have been appointed.

Quorum

Subject to the below for Committee meetings to appoint directors of Wellington Water Limited, for a meeting of the Committee to have a quorum, a majority of Committee Members, or their appointed Alternates, must be present, and the number making up the majority must include at least an equal number of Shareholder appointed Committee Members as MWPE nominated Committee Members.

Where the Committee is providing a forum for the Shareholders to meet and exercise their powers in relation to Wellington Water Limited, the requirements of Wellington Water Limited's constitution will prevail.

Clause 11.3 of the company's constitution provides that Directors shall be appointed and removed by the unanimous resolution of the Shareholders holding Class A Shares. For this matter the quorum for the Committee meeting is therefore attendance by all Committee Members (or their Alternates) for the holders of the Class A Shares.

Alternates

Each Committee Member appointed to the Committee must have an Alternate.

Other Shareholder attendee

Each Shareholder-appointed elected member Committee member will be entitled to invite an officer attendee to Committee meetings, provided however that the additional attendee will not have any voting rights on the Committee.

Decision-making

The Committee will strive to make all decisions by consensus.

In the event that a consensus on a particular matter before the Committee is not able to be reached, each Committee Member has a deliberative vote. In the situation where there is an equality of votes cast on a matter, the Chairperson does not have a casting vote and therefore the matter subject to the vote is defeated and the status quo is preserved.

Other than for those matters for which the Committee has effective decision-making capacity through these Terms of Reference, each Shareholder retains its full

powers to make its own decisions on matters referred to it by the Committee and on matters specified in Part 1 of Schedule 2 to the Shareholders and Partnership Agreement (for clarity, this means that only Shareholders have voting rights in relation to the matters specified in Part 1 of Schedule 2).

Secretariat services

Unless otherwise agreed from time to time by all of the elected member Committee Members, the Council for which the Chairperson is an elected member will provide secretariat services to the Committee.

The Chairperson will be responsible for managing the agenda at Committee meetings.

Standing Orders

The Standing Orders of the Council providing secretariat services to the Committee will apply to Committee meetings, subject to the provisions for meeting quorum and decision making as set out in these terms of reference taking precedence.

Remuneration

Each Shareholder will be responsible for remunerating the elected member Committee Member appointed by it to the Committee, and their Alternate, for any costs associated with those persons' membership on the Committee.

The Shareholders will also be responsible for remunerating (in equal shares) the Committee Members nominated by Mana Whenua Partner Entities, and their Alternates, and appointed to the Committee by the Shareholders, for any costs associated with those persons' membership on the Committee.

Administration

Reports to be considered by the Committee may be submitted by any of the Shareholders, any of the Mana Whenua Partner Entities, or Wellington Water Limited.

Duration of the Committee

In accordance with clause 30(7) of Schedule 7 to the Local Government Act 2002, the Committee is not deemed to be discharged following each triennial election.

Appendix

Common delegations by Shareholders

Governance oversight responsibilities

- Each Shareholder will delegate to the Committee the responsibilities and powers necessary to participate in and carry out the Committee's governance oversight responsibilities.

Shareholders' responsibilities

- Each Shareholder will delegate to its appointed elected member Committee Member and, in accordance with these terms of reference, that person's Alternate, all responsibilities and powers in relation to the agreement of:
 - when Shareholder meetings, or resolutions in lieu of Shareholder meetings, are required (without prejudice to Shareholder and Board rights to call meetings under Wellington Water Limited's constitution); and
 - the appointment, removal and remuneration of Wellington Water Limited's directors.

ACCESSION DEED TO WELLINGTON WATER LIMITED SHAREHOLDERS' AGREEMENT

Date: 26 September 2019

Acceding Party: South Wairarapa District Council

Background

The Acceding Party is, or will become, a shareholder of Wellington Water Limited ("**Company**"). Consequently, the other shareholders of the Company, and the Acceding Party, wish for the Acceding Party to become party to the Shareholders' Agreement relating to the Company ("**Agreement**"). The Acceding Party does so by acceding to the Agreement by entry into this deed.

Covenants

The Acceding Party undertakes and confirms that:

1. It has either been issued Shares in the Company or has received written notice from the Company that it will be issued Shares in the Company.
2. It has been given and has read and understood a copy of the Agreement.
3. With effect from 26 September 2019, the Acceding Party:
 - (a) agrees to accede to the Agreement as a Shareholder;
 - (b) undertakes to be bound by and comply with all of the terms of the Agreement as Shareholder, as if it were named in the Agreement;
 - (c) agrees to have all of the rights of a Shareholder under the Agreement and will observe and perform all of the obligations applicable to, or binding on, a Shareholder under the Agreement, as if it were named in the Agreement; and
 - (d) agrees that each reference in the Agreement to a "Shareholder" will refer also, and apply, to the Acceding Party.
2. For the purposes of the Notice provisions of the Agreement, the details of the Acceding Party are:

Address: 19 Kitchener St, Martinborough 5711
Email: Harry.Wilson@swdc.govt.nz
Representative: Mayor Viv Napier
3. This deed is governed by and is to be construed in accordance with the laws of New Zealand and the Acceding Party submits to the non-exclusive jurisdiction of the New Zealand courts.

EXECUTED AS A DEED

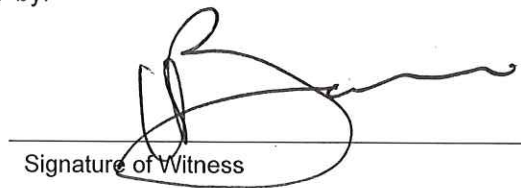
FOR AND ON BEHALF OF THE ACCEDING PARTY by:



Signature of Elected Member / ~~Chief Executive~~ of
Acceding Party

Vivien Napier Mayor SWDC

Name of Elected Member / ~~Chief Executive~~



Signature of Witness

David Bennett

Name of Witness

Second Variation Agreement in Respect of Agreement for Provision of Management Services Relating to Water Services

PARTIES

South Wairarapa District Council
Council

Wellington Water Limited
Wellington Water

AGREEMENT dated

1 July

2024

PARTIES

South Wairarapa District Council of 19 Kitchener Street, Martinborough
5711, New Zealand

("Council")

Wellington Water Limited (company number 1337122) of 25 Victoria
Street, Petone, Lower Hutt, 5012, New Zealand

("Wellington Water")

INTRODUCTION

- A. Council and Wellington Water entered into a service agreement dated 14 October 2019 for the provision of management services relating to water services until 30 June 2029, which was amended and restated by an agreement dated 11 April 2022 ("**First Variation Agreement**") to vary the terms of the Services Agreement to, amongst other things, incorporate provisions addressing the regulation of drinking water, wastewater and stormwater pursuant to the Water Services Act 2021 and the potential transition to a new arrangement for the delivery of three waters services in New Zealand ("**Services Agreement**").
- B. Council and Wellington Water have agreed to vary the terms of the Services Agreement to change the expiry date to 30 June 2025 ("**Second Variation Agreement**").

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 In this Second Variation Agreement, unless the context indicates otherwise, words and expressions defined in the Services Agreement have the same meaning when used in this Second Variation Agreement.

Interpretation

- 1.2 In this Second Variation Agreement, unless the context indicates otherwise, the interpretation provisions of the Services Agreement apply as if they were set out in this Second Variation Agreement.

2. EFFECTIVE DATE, AMENDMENT AND CONFIRMATION

Effective Date

- 2.1 The parties agree that the variations to the Services Agreement set out in this Second Variation Agreement have effect on and from the date ("**Effective Date**") that is the earlier of:

- (a) the date of this Second Variation Agreement; and
- (b) 30 June 2024.

Amendment

- 2.2 With effect from the Effective Date, Schedule 1 of the Services Agreement is deleted and replaced by the new Schedule 1 set out in the Schedule to this Second Variation Agreement, and references in the Services Agreement to "this agreement" shall be references to the Services Agreement as amended by this Second Variation Agreement.

Confirmation

- 2.3 Each of the parties confirms that, except as expressly agreed in this Second Variation Agreement, its obligations and covenants under, and the provisions of, the Services Agreement continue and remain in full force and effect notwithstanding whether this Second Variation Agreement is signed before or after 30 June 2024 (and if it is signed after that date, the parties agree that the provisions of the Services Agreement that would otherwise have been triggered by an expiry of the Services Agreement on 30 June 2024, are deemed not to have been triggered).

3. GENERAL

Assignment

- 3.1 A party may not assign any of its rights or obligations under this Second Variation Agreement without the prior written consent of the other party.

Counterparts

- 3.2 This Second Variation Agreement may be signed in counterparts. All executed counterparts will together constitute one document.

Copies

- 3.3 Any copy of this Second Variation Agreement that is received via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this agreement) may be relied on by any party as though it were an original copy of this Second Variation Agreement. This Second Variation Agreement may be entered into on the basis of an exchange of PDF or other document reproduction format.

Further Acts

- 3.4 Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this Second Variation Agreement and all transactions incidental to it.

Severability

- 3.5 If a clause or part of a clause of this Second Variation Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this

Second Variation Agreement, but the rest of this Second Variation Agreement is not affected.

Variation

3.6 No variation of this Second Variation Agreement will be of any force or effect unless it is in writing and signed by the parties to this Second Variation Agreement and is in accordance with clause 4.7 of the Services Agreement.

Waiver

3.7 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Second Variation Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

Governing Law and Jurisdiction

3.8 This Second Variation Agreement is governed by the laws of New Zealand.

SIGNATURES

SOUTH WAIRARAPA DISTRICT COUNCIL

By:



Signature of Authorised Signatory

Janice Smith

Name of Authorised Signatory

WELLINGTON WATER LIMITED

By:



Signature of Authorised Signatory

Tonia Haskell

Name of Authorised Signatory

SCHEDULE 1

General Information

Term of agreement

(Clause 3)

Commencement date 1 October 2019

Expiry Date 30 June 2025

Council's Representative

(Clause 5)

Name Janice Smith

Position Chief Executive

Contact details Email: Janice.smith@swdc.govt.nz
Address: 19 Kitchener Street, Martinborough
Postal: PO Box 6, Martinborough 5741

Wellington Water's Representative

(Clause 5)

Name Tonia Haskell

Position Chief Executive

Contact details Phone: 04 912 4400
Mobile: 027 4961970
Email: tonia.haskell@wellingtonwater.co.nz
Address: Level 4, 25 Victoria Street, Petone,
Lower Hutt
Postal: Private Bag 39804 Wellington Mail
Centre 5045

Notices (Council)

(Clause 24)

Address 19 Kitchener Street, Martinborough

Email Address Janice.smith@swdc.govt.nz

Attention Janice Smith

Notices (Wellington Water)

(Clause 24)

Address Level 4, 25 Victoria Street, Petone, Lower Hutt

Email Address tonia.haskell@wellingtonwater.co.nz

Attention Tonia Haskell

