

## GUIDANCE MATERIAL

### SHAREHOLDERS' AGREEMENT TEMPLATE (MULTI-COUNCIL WATER ORGANISATION)

<b>BACKGROUND</b>	<p>The Local Government (Water Services) Act 2025 ("<b>Act</b>") enables a council to establish a Water Organisation to deliver water services alone or jointly with one or more other councils. A council must prepare foundation documents for a Water Organisation it establishes. If there is more than one shareholder in a Water Organisation, its foundation documents must include a shareholders' agreement (alongside a constitution, if it has one, or set of rules and other governing documents).<sup>1</sup></p> <p>To avoid future misunderstandings or disputes, shareholders in a joint Water Organisation are advised to agree a Shareholders' Agreement ("<b>SHA</b>") in advance to govern the relationship between shareholders and the Water Organisation, and between the shareholders themselves.</p>
<b>WHO IS THIS TEMPLATE FOR?</b>	<p>The SHA is a contract between multiple shareholders of a Water Organisation setting out each shareholder's rights and obligations in respect of that Water Organisation. The parties may be councils and / or trustees of a consumer trust (established in accordance with section 50 of the Act), as applicable.</p> <p>If the shareholders agree, the Shareholders Council Terms of Reference template attached to the SHA will establish a Shareholder Council as a mechanism for shareholders to agree how they exercise their shareholder rights and powers in respect of the Water Organisation and to provide delegated governance oversight of the Water Organisation.</p>
<b>PURPOSE OF THIS DOCUMENT / TEMPLATE</b>	<p>The purpose of this document is to set out the rights and obligations of each shareholding council (and/or the trustees of any shareholding consumer trust), and the rights and obligations of the Water Organisation itself, in relation to how the Water Organisation will be governed and decision-making at shareholder and Board levels will be managed.</p> <p>In particular, this SHA sets out how shares will be allocated between shareholders and how shareholders will:</p> <ul style="list-style-type: none"> <li>• make decisions on Reserved Matters as shareholders of the Water Organisation;</li> <li>• provide loans and guarantees (if agreed);</li> <li>• deliver their statutory commitments, including preparing the Statement of Expectations to the Water Organisation and ensuring that the business of the Water Organisation is conducted in accordance with it;</li> <li>• provide for any future share issue;</li> <li>• deal with any disagreements between shareholders, or defaults by a shareholder; and</li> <li>• deal with general miscellaneous matters.</li> </ul>

<sup>1</sup> Section 44 of the Local Government (Water Services) Act 2025, and the definition of foundation documents in section 4.

To provide a further level of clarity, and streamline future decision-making, shareholders can choose to delegate oversight and decision-making in respect of the Water Organisation to a Shareholder Council.

The SHA anticipates each Council appointing an agreed number of members to the Shareholder Council which will itself then appoint a Chair and Deputy Chair under the Terms of Reference.

Without a Shareholder Council, the shareholders will each undertake their own governance oversight and decision-making in respect of the Water Organisation.

#### **KEY CONSIDERATIONS FOR COUNCILS**

Before agreeing and signing this SHA, Councils should have undertaken consultation in respect of the decision whether to become a shareholder in the Water Organisation.

Once the SHA is agreed, Councils should establish the Water Organisation, including completing and adopting the Water Organisation Constitution, and sign this SHA<sup>2</sup>.

Councils can then agree and sign a Transfer Agreement with the Water Organisation.

#### **How to use this document / template**

Complete the SHA with the required information e.g. names of signatory councils. Councils will have to make decisions on the following key issues to complete this template:

#### **DECISIONS**

<i>The number of shares each shareholder will receive, and the amount to be paid for those shares</i>	<input type="checkbox"/>
<i>The name, registered office and address for service of the Water Organisation</i>	<input type="checkbox"/>
<i>The identity of the initial directors.</i>	<input type="checkbox"/>
<i>The initial business set up, operational steps and transactions to be procured by the shareholders eg entry into the Transfer Agreement between the Water Organisation and councils</i>	<input type="checkbox"/>
<i>Whether to establish a Shareholder Council and Shareholding council membership</i>	<input type="checkbox"/>
<i>What Reserved Matters will apply, the threshold needed to approve a Reserved Matter, and the monetary thresholds in the Reserved Matters</i>	<input type="checkbox"/>
<i>The initial business plan and budget for the Water Organisation</i>	<input type="checkbox"/>
<i>Any principles to govern future share issues</i>	<input type="checkbox"/>
<i>Any specific matters to be included in a Statement of Expectations (in addition to the requirements in the Local Government (Water Services) Act 2025)</i>	<input type="checkbox"/>

<sup>2</sup> Note that the SHA can be agreed by Councils before the Water Organisation is incorporated, and clause 21 of the SHA allows for this, with the Water Organisation signing once incorporated. Otherwise, the SHA should be signed immediately after the Water Organisation is incorporated and can sign it. It can be signed later if required, but this results in a period during which the SHA will not apply and therefore Councils will have fewer protections.

**DECISIONS**

Various miscellaneous matters set out in Schedule 1



*Note that the provided template is a generic SHA relating to water organisations. Councils may wish to adapt or add to the SHA (in accordance with legislative requirements) based on their particular arrangements. The Department can provide further information or support to councils if required. Please contact [wspd@dia.govt.nz](mailto:wspd@dia.govt.nz).*

*Please note that neither this guidance nor the SHA template or Charter **attached** constitute legal advice. If unsure as to their position on any matter, councils should consider obtaining their own independent legal advice.*