

GUIDANCE MATERIAL

CONSTITUTION TEMPLATE

(MULTI-COUNCIL WATER ORGANISATION)

BACKGROUND	<p>The Local Government (Water Services) Act 2025 ("Act") provides councils with flexibility to determine the optimal structure and delivery method for water services in their service area. One method is through the establishment and ownership of a jointly incorporated council-controlled water organisation ("Water Organisation"), to which multiple councils transfer their responsibility for providing water services by entering into a transfer agreement with the Water Organisation. Section 44 of the Act requires a council to prepare foundation documents for a water organisation it establishes. Foundation documents include the shareholders' agreement, the constitution, or all rules and other documents that establish or govern the Water Organisation (if it does not have a constitution).</p>
WHO IS THIS TEMPLATE FOR?	<p>This Constitution contains rules to govern a multi-shareholder Water Organisation. The shareholders may be councils and / or trustees of a consumer trust. This Constitution aligns with the minimum requirements of the Act, the Companies Act 1993, and the Local Government Official Information and Meetings Act 1987 and provides further detail on requirements and matters for the Board of the Water Organisation.</p>
PURPOSE OF THIS DOCUMENT / TEMPLATE	<p>The Constitution is a means by which shareholders can:</p> <ul style="list-style-type: none"> • specify the business and objectives for the Water Organisation; • restrict how new shares are issued; • provide for calls on shares, and an associated lien over the shares; • restrict transfers of shares, with specific exemptions from those restrictions; • require specific reporting to the shareholders; • provide for how directors are appointed and removed, including the skills required of the Board as a whole; • define what matters fall within the decision-making remit of the Board of the Water Organisation and what matters must be referred back to the shareholders; • require directors of the Water Organisation to act in the interests of the Water Organisation, rather than in the interests of the shareholders; • provide for specific matters related to the Board of the Water Organisation including: <ul style="list-style-type: none"> ○ remuneration; ○ conflicts of interest; and ○ disqualification;

- enable the indemnification of directors and employees of the Water Organisation by the Water Organisation (and not by the shareholders);¹
- provide procedural rules for decision-making by the Board and shareholders of the Water Organisation; and
- provide information on the nature of shareholder involvement (e.g. whether the shareholders can make decisions, or are limited to commenting only) in preparing and finalising a Water Services Strategy and a Water Services Annual Budget for the Water Organisation (with those documents including, amongst other matters, the level of capital and operating expenditure, as well as the level of charges and revenue recovery, for the water services the Water Organisation provides).² Note that the nature of shareholder involvement in those decisions may have significant implications (i.e. for who is considered a “decision-making local government water service supplier” with respect to economic regulation, who is subject to directors duties under the Companies Act 1993, and in relation to borrowing arrangements with the Local Government Funding Agency). Transfer (or not) of decision-making responsibility to the Water Organisation must also be addressed in the Transfer Agreement.³

KEY CONSIDERATIONS FOR COUNCILS

Before completing this Constitution, councils should have:

- undertaken consultation in respect of the decision whether to become a shareholder in the Water Organisation; and
- considered the nature of shareholder involvement in certain decision-making functions of the Water Organisation.

Councils should then:

- agree and enter into a shareholders' agreement in respect of the Water Organisation;
- establish the Water Organisation, including completing and adopting the Water Organisation Constitution;
- each agree and enter into a Transfer Agreement with the Water Organisation and comply with the relevant obligations in sections 12 to 16, and Schedule 2, of the Act;
- note that section 226 of the Act requires a Water Organisation to give effect to the Statement of Expectations provided by its shareholders. The Statement of Expectations must be consistent with the Constitution;⁴ and
- note that the Water Services Strategy adopted by a Water Organisation must also be consistent with its Constitution.⁵

¹ Prohibited by section 43(3) Local Government Act 2002.

² In accordance with sections 236 and 241 of the Local Government (Water Services) Act 2025.

³ See A1 B3 Guidance material - Transfer Agreement.

⁴ Section 228 of the Local Government (Water Services) Act 2025 requires a Statement of Expectations to be consistent with the Water Organisation's foundation documents, and other specified matters.

⁵ Section 232 of the Local Government (Water Services) Act 2025 requires a Water Organisation's Water Services Strategy to be consistent with its foundation documents.

How to use this document / template

Complete the Constitution with the required information e.g. name of the water organisation. Council(s) will have to make decisions on the following key issues to complete this template:

DECISIONS	
Name of the Water Organisation	<input type="checkbox"/>
Number of directors	<input type="checkbox"/>
Preferred method of appointing/removing directors (including whether the Board can appoint additional directors)	<input type="checkbox"/>
Who to appoint as directors. Appointment to be based on competency, and directors must collectively have an appropriate mix of skills, knowledge, and experience in relation to providing water services. Directors cannot be an elected member or employee of the shareholding council, an employee of any other shareholder of the Water Organisation or employee of the Water Organisation. ⁶	<input type="checkbox"/>
Directors' term of appointment	<input type="checkbox"/>
Makeup of a quorum for Board and shareholder meetings	<input type="checkbox"/>
How will the shareholders be involved in preparation of the Water Services Strategy and Water Services Annual Budget by the Water Organisation ⁷	<input type="checkbox"/>

Note that the provided template is a generic Constitution relating to water organisations. Councils may wish to adapt or add to the Constitution (in accordance with legislative requirements) based on their particular arrangements.

The Department can provide further information or support to councils if required. Please contact wSDP@dia.govt.nz

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

⁶ Section 48(2) of the Local Government (Water Services) Act 2025.

⁷ Shareholder involvement must also be in accordance with sections 236 and 242 of the Local Government (Water Services) Act 2025.