



PUBLIC COUNCILLOR BRIEFING

AGENDA & SUPPORTING MATERIAL

Commencing at 11.00am

Wednesday 4 June 2025

Council Chambers

This meeting will be Livestreamed

MEETING	PUBLIC COUNCILLOR BRIEFING		
Date	Wednesday 4 June 2025	Time	Commences at 11.00am
Location	Council Chambers		
AGENDA			
11.00am – 12.00pm	Annual Plan Briefing Memo - DOCUMENT 1a	Steve Gibling, Allison Sneddon, Niel Koh, Cath Carter, Rob Steele, Naz Mansouri, Sarah Carnoutsos, Pip Swift	

The public portion of this meeting is adjourned and reconvenes at 3.15pm

MEETING	PUBLIC COUNCILLOR BRIEFING		
Date	Wednesday 4 June 2025	Time	Commences at 3.15pm
Location	Council Chambers		
AGENDA			
3.15pm - 3.30pm	Draft Revision of Trustee & Director Appointment Policy – DOCUMENT 3a & 3b	Julie Hands	
3.30pm – 4.45pm	Local Water Done Well – DOCUMENT 4a, 4b, 4c, 4d & 4e	Tim Mason, Julie Hands	
4.45pm – 5.00pm	Delegation of Authority Review Outcomes - DOCUMENT 5a & 5b	Jodie Beker	



MEMORANDUM

To: Chief Executive Officer
From: Steve Gibling – Executive Director People, Culture & Capability
Allison Sneddon – Chief Financial Officer
Date: 28 May 2025

Subject: Council Briefing on the draft Annual Plan 2025

PURPOSE

To present to Selwyn District Council an update on the draft Annual Plan 2025 and to discuss the options that will be decided at the Council meeting on 18 June 2025. A slide pack will be presented to Council at the meeting on 4 June 2025.

EXECUTIVE SUMMARY

SELWYN IS STILL GROWING

- Waikirikiri Selwyn continues to be the fastest growing district in New Zealand. Over the last 20 years our population has grown by 165%.
- Our growth continues to present challenges and opportunities as we respond to the 3200 new residents who moved to our district in the past 12 months.

ANNUAL PLAN APPROACH

To keep pace with this growth we are proposing to:

- Maintain the forecast rates increase rates by 14.2% as outlined in the Long-term Plan 2024-2034 (LTP).
- Deliver a capital programme of \$145.8 million, \$12.3 million less than indicated in the LTP due to lower funding than anticipated from NZTA, which has resulted in rephasing projects. This was identified as a risk when we consulted with the community on the LTP in 2024.
- Achieve an operating surplus of \$26.9 million, as indicated in the LTP.

BACKGROUND

- In 2024, Council received 1500 submissions on our LTP, which was the largest feedback Council has ever received.
- Council's LTP was adopted just under a year ago, and we are delivering on this plan.
- Council resolved in November 2024 to use what our community told them mattered most in the LTP process and continue with what we're delivering together. The resolution the Council passed on 13 November 2024 was:

"That Council:

- a) Receives the report Annual Plan 2025/26 Variances and Consultation Options.*
- b) Resolves to deliver an amended work programme for Year 2 of the Long-Term Plan 2025-2034 as set out in Attachment A to this report*



- c) *Notes that the amended work programme does not invoke a requirement to amend the Long-Term 2024-2034.*
- d) *Resolves to not undertake consultation in respect of the Annual Plan for 2025 as any changes from Year Two of the Long-Term Plan are not significant or material.”*
- This presentation is to engage and inform Council on what has been done to prepare the draft Annual Plan 2025 prior to Council making a decision at their meeting on 18 June 2025.

NEXT STEPS

Council will have the following opportunities to engage and provide feedback on the draft Annual Plan 2025 as follows:

- **Wednesday 4 June** – Council briefing on the draft Annual Plan 2025 (livestreamed).
- **Friday 6 June** – Deadline for Councillor feedback on the draft Annual Plan 2025.
- **Wednesday 18 June** – Council meeting to adopt the proposed Annual Plan 2025.

A blue ink signature of Steve Gibling, consisting of stylized, overlapping loops and lines.

Steve Gibling
EXECUTIVE DIRECTOR
PEOPLE CULTURE & CAPABILITY

A blue ink signature of Allison Sneddon, written in a cursive style.

Allison Sneddon
CHIEF FINANCIAL OFFICER

Endorsed For Agenda

A blue ink signature of Sharon Mason, written in a cursive style.

Sharon Mason
CHIEF EXECUTIVE OFFICER

COUNCIL PUBLIC REPORT

TO: Council

FOR: Council Briefing – 4 June

FROM: Steve Gibling, Executive Director – People, Culture and Capability
Julie Hands, Head of Legal and Risk

DATE: 28 May 2025

**SUBJECT: DRAFT REVISION OF THE TRUSTEE AND DIRECTOR
APPOINTMENT POLICY**

1. PURPOSE

The purpose of this report is to provide Council a briefing and opportunity to comment on the revised draft of the Trustee and Director's Appointment Policy.

2. HISTORY/BACKGROUND

Council currently has a Trustee and Director Appointment Policy that was last revised in November 2020.

The Trustee and Director Appointment Policy is a Council policy and all Council require this policy under s 57 of the Local Government Act 2002.

In the Council briefing of 7 May, it was noted that this policy was out of date and no longer reflected Council current practice and was no longer fit for purpose.

Officers committed to bringing a revised draft back to Council within a month for consideration.

As of 2 June 2025, the governance support function reports in the People, Culture and Capability Group and as such responsibility for implementation of this policy been re-aligned with the Executive Director of People, Culture and Capability.

3. DISCUSSION

The Trustee and Director Appointment Policy covers appointments and setting of remuneration for board members of Council Organisations.

The policy, on review, required a full refresh as it was out of step with the Council's current practices.

In preparing the revised policy, guidance was taken from existing practices and a review of the appointment policies of other territorial authorities (of varying sizes).

Some key matters of note from the policy include:

- An Appointments Panel will be established to undertake process for appointment of Board Members and setting of remuneration. This is in line with current Council practice.
- Council retains the right of approval for appointment of board members to all Council Organisations and the setting of remuneration. The Appointments Panel has the right of recommendation only.
- Appointments Panel has mixed representation consisting of the SDC Chief Executive, Mayor, a Councillor nominee, the independent SDC Audit and Risk Chair and the Chair of the relevant Council Organisation. Other persons may be co-opted onto the panel as Council approves.
- Board members continue to be appointed for a term of three years with a limit of nine years on total term.
- Requires Council Organisations to provide to Council their Board skill matrix for transparency each triennium.
- Sets some minimum high-level skill sets it is expected that Council Organisation boards will collectively hold, subject that outside these requirements the board of those organisations will remain responsible for setting their own skill requirements.
- Codifies existing Council practice of not appointing Councillors and / or Council staff to boards of Council Organisations.
- Acknowledges remuneration for Council Organisations should be set at a level which is fair to market however acknowledges an element of public service.
- Council retains the ability to approve variations from the policy where there are circumstances that justify.

4. VIEWS OF THOSE AFFECTED / CONSULTATION

(a) Views of those affected and Consultation

This policy is not subject to proposed community engagement on basis it is assessed as low significance in accordance with our significance and engagement policy.

Council are the first parties to be presented with this policy, subject to comments from briefings it will also be sent to the Selwyn Water and Corde.

(b) Māori and Treaty implications

S 57 of the Local Government Act 2002 requires that when considering skills for appointment that a Council consider whether knowledge of tikanga Māori is required for governance of that organisation. This has been reflected in the draft policy.

(c) Climate Change considerations

There are no direct climate change considerations in respect of this policy.



Julie Hands
Head of Legal and Risk

Endorsed For Agenda (Bold, Sentence Case, Italics)



Steve Gibling
Executive Director – People, Culture and Capability



Appointment and Remuneration of Directors and Trustees Policy

Approver

Council

Owner

Chief Executive

Contact

Executive Director of People, Culture and Capability

Date adopted/last reviewed

[TBC]

Review date

TBC [Six months from close of each election]

Tier

This document supports or gives effect to the



Purpose

The purpose of this policy is to set out, in accordance with section 57(1) of the Local Government Act 2002 (LGA), an objective and transparent process for the:

- identification and consideration of the skills, knowledge and experience required of directors of a Council Organisation;
- appointment of directors to a council organisation; and
- remuneration of directors of a council organisation.

Organisational Scope

This policy applies to all organisations that Selwyn District Council has the right to control appointment to and / or appointment process and / or remuneration setting responsibility for trustees, directors or managers but excludes Canterbury Plains Water Trust which has separate governance arrangements.

In addition to this policy, appointments and reappointments to the boards of council organisations are governed by their respective constitutions, trust deeds or, in some cases, specific legislation. In the event of a conflict, those regulations take precedence over this policy.

Where ownership of Council Organisations is jointly or severally shared with other entities, governance requirements are established through shareholder agreements or equivalent documentation. Such agreements take precedence over this policy, however to the extent possible, it is expected that all appointment processes will be made in a manner consistent with this policy.

Background

This policy is required under section 57 of the Local Government Act 2002.

Key Statements/Principles

The objectives of this policy are to ensure:

- that the process of appointing Board Members is undertaken in an objective and transparent manner, while protecting individual privacy.
- that Board appointments are made based on:
 - an assessment of skills, knowledge and experience, with regard to the nature of scope of the organisations objectives and activities and the desire for diverse representation;
 - the contribution that Board Members can make to the Board as a whole and to the achievement of the organisations' objectives and activities; and
 - the context in which Council, as a publicly accountable body operates.
- continuity through smooth succession of Board Members and Board Chairs.



THE POLICY

Appointments Panel

As soon as practicable after each local body triennial election, the Council will establish a panel, to be known as the Council Organisation Appointments Panel, for the purpose of recommending Council Organisations to Council for appointment.

The Appointments Panel will consist of a minimum of five members.

The standing members of the Appointments Panel will be, as a minimum, the following representatives of Selwyn District Council:

- The Chief Executive;
- The Mayor; and
- The Chair of the Audit and Risk Committee.

When the Appointments Panel is convened for consideration of appointment or remuneration of a role/s the panel will also include two additional members being:

- The Chair of the relevant Council Organisation (or in the event of vacancy in that role a representative the Board of said Council Organisation may nominate in writing); and
- A Councillor nominated by the Council.

Council may agree to appoint additional Council members to the Appointments Panel on a case-by-case basis and may also bring in others as determined necessary by the Panel and with the approval of Council (e.g., senior staff members; Mana Whenua).

Eligibility for Appointment

The Board of each Council Organisation will be responsible for developing their own Board skill matrix relevant to their organisation and objectives, to be reviewed and reported to Council based on the following principles:

- Boards are expected to between their members be capable of demonstrating:
 - the skills, experience and knowledge to guide the organisation and contribute to achievement of its objectives (including those set out in any Statement of Expectations), given the nature and scope of its activities;
 - a commitment to upholding the principles of the Treaty of Waitangi, readiness to promote improved outcomes for Māori and knowledge of Te Ao Māori and established Māori networks;
 - appropriate accountability and responsiveness to the Council and the public and a commitment to public sector ethos;
 - financial accountability with close review of current and proposed activities to deliver value for money;
 - appropriate leadership and cultural response to deliver the required outcomes (and/or deliver on targets as identified);
 - strong governance experience in entities similar in complexity and scale to the relevant CO;
 - commitment to collaborate across the council-controlled organisation group;
 - inclusive and adaptive leadership to harness the benefits of diversity; and



- willingness to where appropriate assist Council in further its strategic objectives.

In considering appointment the Appointment Panel for each recruitment process will have regard to the skill matrix of each Council Organisation and any skill gaps currently present on the Board of that organisation.

In addition to considering skill mix, the Appointment Panel will have regard to the presence on the current Board of potential successors to the roles of Chair and Deputy Chair. If the Chair of the CO informs the Appointment Panel there is no current successor this will be considered a relevant consideration for appointment of any vacant role.

No person is eligible for appointment as a Board Member who:

- has a Conflict of Interest the panel considers cannot be managed;
- is an elected Council member, or
- is a staff member of Council; or
- is otherwise disqualified by virtue of the constitution, trust deed or other governing document or legislation of the CO.

These parties have been excluded to ensure individuals are not compromised by competing interest.

Community Board members remain eligible for consideration for appointment, based on the difference in engagement and the role they play in Council business between Community Board Members and staff or Council members.

Appointments Process

The Chair of a Council Organisation Board will notify the Chief Executive of any upcoming vacancies as soon as practicable after becoming aware of the forthcoming vacancy. The Chief Executive will then convene the Appointments Panel.

Identification of skills, knowledge and experience

Once a vacancy has been established, the Appointments Panel will identify the skills, knowledge and experience required for the position, having regard to any skill matrix of the relevant Council Organisation and the eligibility criteria outlined in this Policy.

This may involve discussions with the Chair of the relevant Council Organisation , consideration of the current composition of the board and a strategic review of future skill requirements.

Candidate search

A candidate search based on the identified required skills will be conducted.

Candidates may be sought through a combination of the following search methods: advertising of the position, executive recruitment search, , nominations from the Mayor, governing body and local board members and crown agencies such as the Ministry of Women's Affairs and Te Puni Kokiri.

A complete list of candidates will be compiled, usually with the assistance of Council's executive recruitment consultant or external recruitment consulting agency.



Screening and short-listing

The Appointments Panel will screen the list to ensure that the candidates have the required core competencies as well as the specific skills and expertise required for the position.

The Appointments Panel with assistance from a recruitment consultant, will prepare a recommended short list of candidates for interview.

Interviewing and assessment of candidates

The Appointments Panel will interview and assess candidates against the required eligibility factor and required skills, knowledge and experience but may also consider other factors such as:

- desirability of diversity of thought;
- Board dynamics and stakeholder relationships;
- the capacity of candidates to attend regular board meetings and fulfil the other requirements of the directorship; and
- Chair and Deputy Chair succession planning.

Recommendation to Council and Council Decision

The Appointment Panel will recommend its preferred candidate(s) to the Council for final appointment. The Appointment Panel should signal to the Council other candidates who on interview, have presented with appropriate skills that match and who could be an alternative, but not preferred, appointee.

Recommendations from the Appointment Panel should outline any Conflicts of Interest have been identified and if identified how this would be proposed to be managed.

Reports recommending appointments and the Council decision should be considered in a publicly excluded portion of the Council meeting, to protect the interests and privacy of the candidate(s).

The successful candidate(s) will be provided a letter of appointment. Public announcement of the appointment will be made as soon as practicable after the Council decision and the letter of appointment signed by the candidate.

Consent and Conflicts of Interest

Prior to being interviewed for a position on a Board, all candidates must complete a consent form and to declare any relevant interests, to allow potential conflicts of to be assessed.

In making appointments, the Appointments Panel will take into consideration a candidate's existing directorships, and any other potential Conflicts of Interest.

In considering any appointment or reappointment where a potential conflict of interest has been identified, the Council needs to be confident that:

- the candidate will be able to make an effective contribution, even if their interest means they cannot participate in an activity of the organisation that relates to a particular matter; and/or
- measures can be put in place to manage the conflict.

Further guidance on Conflicts of Interest can be found in the relevant Council Organisation constitution and sections 139 to 149 of the Companies Act 1993. The Office of the Auditor-General also provides guidance on the management of interests and conflicts.



Tenure

Board Members will be appointed for periods of three years and will be eligible for reappointment for two further terms up to maximum total of nine years.

Reappointments

Where a Board Member's term of appointment has expired and they would like to be considered for reappointment, they may be offered a further term following consideration of the performance of the Board Member and the needs of the Board as a whole.

Where a reappointment is to be considered, the Board Chair will notify the Chief Executive of their request who will convene the Appointments Panel to make a recommendation to Council. Council must approve by resolution any reappointment.

Board members should not be given any expectation that they will be offered a subsequent term of office.

Factors to be considered include:

- the views of the Board Chair;
- whether the current Board skill composition is appropriate;
- whether any aspects of Board performance need to be taken into consideration;
- whether the process offers an opportunity for increasing Board diversity
- whether the retiring Board Member is a potential candidate for future Chair, or alternatively whether there is a need to recruit a director as a future successor to the Chair;
- alignment of the CO Board with the Council's strategic goals, plans and strategies.

Removal of Board Members

Board Members hold office at the pleasure of the Council and may be removed at any time by Council resolution.

Without limiting the right of the council, the following are likely reasons for council to remove a Board Member, where that Board Member:

- is regularly absent from Board meetings without good justification;
- no longer has the confidence of the Board or the Council;
- has breached ethical standards and this reflects badly on the Board and/or Council;
- does not act in the best interests of the organisation;
- breaches the confidence of the Board in any way, including speaking publicly on Board issues without the authority of the Board;
- does not act in accordance with the principles of collective responsibility; or
- is now disqualified from being appointed or holding office as a director of a company under section 151(2) of the Companies Act 1993.

Where a Council Organisation Board has concerns regarding the behaviour of one of its members it should be considered by the Board in the first instance and, where necessary, the Board may recommend the removal of the Board Member to the Council.

Remuneration of Directors

This section only applies where Council has the sole authority to set board fees for a CO.



Board Members' fees will compensate Board Members fully for their normal contribution to the Board, including attending Board and committee meetings, meeting preparation, stakeholder management and any other agreed tasks.

Board Members' fees will reflect the element of public service in serving on the Board of a Council Organisation and will accordingly be set at or below the average for comparable private sector entities.

To ensure transparency, fees will be set by the council for the Board Members and Chairs, rather than allocating a pool to be distributed by the Board.

Fees are to be met from the Council Organisation's own resources.

Fee Setting

Board Members' remuneration will be reviewed once per triennium following local body elections.

The review will be undertaken by the Chief Executive in consultation with the Chair of the relevant Council Organisation board. The Chief Executive will bring a recommendation on remuneration to Council.

A full review will be conducted and include independent benchmarking against comparative entities factoring in any market movement since fees were last set.

The final decision on Board Members' remuneration will be made by a resolution of Council.

Fees will be set taking into consideration the following:

- the size and scale of the Council Organisation (e.g. turnover, value of assets, number of employees) complexity and scope of operations (e.g. complexity of issues, level of guidance for decision-making, relationship management responsibilities);
- accountability (e.g. scale of market risk, public interest and profile, potential risk to board member reputation, and other key risks); and
- skills - the type of expertise and specialisation needed.

Special considerations may also be included in reviewing and setting fees, such as a temporary increase in workload for the Board, or difficulties in recruiting particular skills.

Remuneration for Consultancy Services

No Board Member on the board of a Council Organisation is permitted to undertake consulting work for the organisation.

Board Members Standing for Political Office

Board Members who have been selected to stand as a candidate in a local body or general election should advise the Chair of their Board immediately. Chairs need to advise the Council through the Chief Executive as soon as any members of their Boards have been identified as candidates.

Any Board Member who is formally selected to stand as a candidate for election at a local body or general election, or placed on any political party's list, must stand down from their Board position from nomination day until the election results are notified or such earlier day as may be determined.



This measure aims to ensure that governance of the organisation is not distracted by the Board Member's election activity, and to prevent the possibility of any Conflicts of Interest, real or perceived.

Variation

There may be circumstances that justify deviation from this policy. Any decision not to comply with any provision must be made by resolution of Council and include rationale for deviation.

Delegation

The implementation of this policy is delegated to the Executive Director People Culture and Capability .

Review

To be reviewed and confirmed by Council within four months of each local body triennial election.

Definitions

“Board” means the collective of Board Members for a CO.

“Board Member” includes directors, trustees, managers or office holders (however described by that CO).

“Chief Executive” means the Chief Executive of Selwyn District Council.

“Conflict of Interest” means any actual or perceived conflict which arise in circumstances where personal interests may impact the independence of an individual in discharging their professional obligations to Council or a CO.

“Council Organisation” or “CO” means a council organisation as defined in section 6 of the LGA as an organisation in which the council has a voting interest or the right to appoint a director, trustee or manager (however described).

Related Policies, Procedures and Forms

Local Government Act 2002

Constitution, trust deed or empowering legislation of the relevant organisation and / or trust deeds

COUNCIL PUBLIC BRIEFING

TO: Council

FOR: Council Briefing 4 June 2025

FROM: Tim Mason – Executive Director Infrastructure and Property
Steve Gibling – Executive Director People Culture and Capability
Allison Sneddon – Chief Financial Officer
Alex Cabera – Programme Director – Water

DATE: 28 May 2025

SUBJECT: **Local Water Done Well – Implementation Steps Briefing**

1. PURPOSE

The purpose of this report is to provide Council a briefing and opportunity to comment:

- on the implementation steps for the establishment of Selwyn Water Limited (SWL) on which Council will be asked to make a decision at their 18 June meeting; and
- provide an update on amendments to the implementation timeline (see Appendix A).

The implementation steps to be discussed specifically include:

- An Operational Delivery Agreement which sets out the contractual basis on which Selwyn Water Limited (**SWL**), will deliver drinking water and wastewater services on behalf of Council from 1 July 2025 until final transfer of all drinking water and wastewater assets and operations estimated to occur in December 2025.
- A Transitional Services Agreement which sets out a shared services model which will enable SWL to operate during the transitional period until it becomes fully functional with its own staffing.
- The establishment of a Working Capital Facility is to provide initial (repayable) funding to SWL to allow it to operate, until such time as the assets are transferred (and associated income) and it has established its own lending facilities.

It is noted the above agreements and the Working Capital Facility are transitional arrangements which support the phased transition to a WSCCO from 1 July 2025 to 20 December 2025. The transition approach prioritises service continuity and operational stability, ensuring minimal disruption to customers and staff during the establishment of SWL.

2. HISTORY/BACKGROUND

On 2 April 2025 Council voted in favour of creating a new council-controlled organisation for the Selwyn district's drinking water and wastewater services (the **WSCCO**) and continuing in-house delivery for stormwater services.

Council directed in November 2024 that should a WSCCO be set up, the target date for establishment of the WSCCO would be 1 July 2025. This was based, in part, on achieving first mover advantage, to provide assurance for staff who have been through several years of uncertainty under previous water reforms and to seek alignment with the commencement of a financial year and budget setting.

The 2 April 2025 decision of Council directed a phased transition of drinking water and wastewater services from Council to the WSCCO by 20 December 2025. Council's decision to proceed with phased implementation reflects a prudent approach to managing change, reducing risk and ensuring financial sustainability.

A briefing provided to Council on 16 April 2025 set an indicative timeline for Council briefings and decisions in respect of implementation steps for the establishment of a WSCCO. It was noted that this timeline may require change as the process unfolds and Council will be updated if any changes are made.

Council resolved on 21 May 2025 to incorporate Selwyn Water Limited as a WSCCO.

3. DISCUSSION

Phased transition

A phased transition (as directed by Council on 2 April 2025) allows for:

- Services to be transitioned and processes established progressively to ensure continuity of level of service and customer experience by implementing a comprehensive transition plan to address any disruptions, ensuring that customer expectations for water quality, reliability, and responsiveness are consistently met throughout the transition process;
- Financing to be established – Council is subject to LGFA timelines establishing access for a WSCCO;
- Transfer of assets and obligations until Local Government Water Services Bill (**Bill 3**) following enactment to ensure advantages can be realised;
- Flexibility and adaptability to respond to unforeseen changes in the regulatory, financial, or operational landscape during transition;
- Minimising disruption to staff and maintaining open communication to ensure water expertise and experience is retained to enable continuity of delivery; and
- A structured and measured rollout to help avoid unnecessary or premature expenditure while allowing the organisation to scale responsibly.

Operational Delivery Agreement and Transitional Services Agreement

From 1 July 2025 until final transfer of drinking water and wastewater assets and operations in December 2025, the Operational Delivery Agreement and Transitional Services Agreement provide:

- SWL will deliver drinking water and wastewater services in the Selwyn district on behalf of Council under the Operational Delivery Agreement; and
- Selwyn District Council will deliver specified services to SWL under the Transitional Services Agreement (to enable SWL to carry out the water and wastewater services under the Operational Delivery Agreement).

As each agreement terminates on final transfer, any services that need to be provided by or to Council or SWL following final transfer will be set out in a separate shared services agreement. These agreements ensure consistency in service delivery, retaining institutional knowledge while establishing clear responsibilities between SWL and Council.

The agreements work in parallel, on arm's length commercial terms. Each agreement provides that:

- Services will be delivered in the same manner those services have been delivered in the 12 months prior to 1 July 2025;
- Selwyn District Council and SWL will co-operate and provide each other all information necessary to facilitate the delivery of services by the other;
- A working group with at least one representative from each party will support the implementation and management of the agreements until termination;
- Selwyn District Council retains control over public announcements, any intellectual property claims and termination during the transitional period;
- The parties will consult, cooperate and coordinate activities regarding health and safety issues; and
- The scope of services may change during the transition period.

Charges under the agreements will be confirmed in the decision paper in respect of these implementation steps. However, reciprocity of delivery of services are anticipated as cost neutral under the agreements (subject to confirmation of transitional services and associated costs).

Working Capital Facility

During the transition period SWL will require funding to meet its financial commitments prior to SWL becoming a water organisation. As SWL has no income to lend against, obtaining funding from external sources during the transitional period presents challenges (and would be expensive).

To address those challenges, under the Working Capital Facility Selwyn District Council will provide initial (repayable) funding on a pass-through basis to SWL to

allow it to operate, until such time as SWL is in a position to put in place long-term funding via LGFA and/or other commercial facilities.

This represents a more cost-effective alternative for SWL than short term lending with a commercial bank (which would only be secured if Council acted as guarantor), reducing the costs of funding in the interim (ultimately reducing costs to ratepayers). The facility structure leverages Council's existing lending relationships, avoiding more expensive external borrowing and protecting ratepayer interests.

SWL has requested a total working capital facility of \$9 million, providing the following rationale for that amount.

The recommended working capital amount of \$9 million has been determined to ensure sufficient liquidity to support operational continuity and transitional requirements. This figure is consistent with the current costs incurred by Selwyn District Council for delivering water services, with additional provision for establishment-related activities.

It covers essential overheads, including director fees, council rates, insurance, rent, and health and safety and wellbeing commitments necessary for foundational governance and compliance. The amount also accommodates shared service costs such as customer service, People and Culture, asset management support, and IT services.

Additionally, it includes continued establishment expenditure and phased staff costs as employees transition into the new entity. This level of working capital provides the financial resilience required to manage baseline functions effectively and support a stable and well-governed transition.

The Working Capital Facility is structured as pass through lending, utilising Selwyn District Council's existing funding streams with LGFA and/or Westpac.

The Working Capital Facility is on terms typical for an arrangement of this nature and contains the following key terms:

- SWL may make one drawdown of the facility per month during the term on the basis that (among other things):
 - SWL must specify the portion of the \$9 million facility to be made available during that month;
 - SWL's drawdown notice must specify the purpose for which the funding is required; and
 - Selwyn District Council has confirmed it is able to secure an advance from its lender of an amount equal to the drawdown amount requested by SWL.
- All interest costs incurred by Selwyn District Council are passed through to SWL (and as such the lending is intended to be cost neutral to SDC).

- It is intended the facility (plus interest) will be repaid, or debt transferred to SWL on 31 March 2026. The Facility may be extended by SWL if it has not been able to obtain assurance the Facility will be refinanced, provided that the term may not extend beyond 30 June 2026 (to align with Selwyn District Council's end of financial year).

Updated Implementation Timeline

Appendix A shows the timeline of implementation steps. There have been some minor amendments to the timeline, specifically with the Water Services Delivery Plan being moved from this briefing to the 18 June Council meeting, and an extraordinary meeting for the adoption decision of the WSDP scheduled for 2 July.

This change has been made on the basis this is a critical document and deserves stand-alone consideration. The change does not impact any critical timelines or prevent a 1 July establishment.

Officers are currently further reviewing the timeline for implementation and will provide an update on any other changes (if required) will be provided on 18 June 2025.

4. VIEWS OF THOSE AFFECTED / CONSULTATION

Consultation has taken place as part of the broader process set out in the Local Water Done Well Delivery Model Report (as recorded in the Extraordinary Council meeting of 2 April 2025, Item 3).

The development of the transitional arrangements has been informed by engagement with internal teams and alignment with the strategic intent of the Local Water Done Well framework.

5. FUNDING IMPLICATIONS

Funding implications are set out above.

6. LEGAL/POLICY IMPLICATIONS HEADING

There are no critical legal or policy implications.

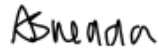


Tim Mason
EXECUTIVE DIRECTOR INFRASTRUCTURE AND PROPERTY



Steve Gibling

EXECUTIVE DIRECTOR PEOPLE CULTURE AND CAPABILITY



Allison Sneddon

CHIEF FINANCIAL OFFICER



Alex Cabera

PROGRAMME DIRECTOR - WATER

Appendix One: Timeline

Note:

- Any lines greyed out have been completed, they have been retained for clarity.
- Decision meetings are highlighted in red.
- Dates beyond June are indicative and timeline will continue to be updated as process evolves.

Block One – Incorporation Decisions (COMPLETED)

Date	Type of Meeting	Milestone
7 May	Council Briefing	Draft Constitution
21 May	Council Decision	Adoption Constitution Authorise Incorporation of CCO (LGA) Appointment of Board Chair (Murray Strong)

Block Two – Establishment Decisions

Date	Type of Meeting	Milestone
4 June	Council Briefing	Draft Operational Delivery Agreement Draft Transitional Services Agreement Draft Interim Financing Agreement
18 June	Council Decision	Authorise Final Operational Delivery Agreement Authorise Transitional Services Agreement Approve any Interim Financing

Block Three – WSDP Adoption Decisions

Date	Type of Meeting	Milestone
18 June	Council Briefing	Draft WSDP

25 June	Council Decision	Adopt and approve WSDP
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Block Four - Final Transfer Decisions

Date	Type of Meeting	Milestone
Late July / Early August	Council Workshop	Direction to Officers on development of final Statement of Expectations
August (Date TBC)	Council Briefing	Draft Statement of Expectations
August / Sept (Date subject to Bill 3 confirmation)	Council Decision	Approval of Transfer Agreement Approval of Statement of Expectations Delegation to CE to implement Approval of any required amendments to Constitution (if required)

Block Five - LTP Amendment and Development Contribution Decisions

Date	Type of Meeting	Milestone
27 August	Council Briefing	Briefing on LTP Amendment Briefing on Developments Contributions Policy
Date TBC	Council Decision	Adoption of LTP Amendment Adoption of Development Contribution
October / Early November	Council Briefing	Briefing of New Council on LWDW Progress incl. LTP Amendment and Development Contribution Review

Block Six – Completion Report

Date	Type of Meeting	Milestone
December	Council Briefing	Final report back to Council

SDC Version: 27 May 2025

OPERATIONAL DELIVERY AGREEMENT

SELWYN DISTRICT COUNCIL

SELWYN WATER LIMITED

**SIMPSON
GRIERSON**

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AGREEMENT DATED**2025****PARTIES**

1. **SELWYN DISTRICT COUNCIL**, a territorial authority established under the Local Government Act 2002 (**Council**)
2. **SELWYN WATER LIMITED**, a company incorporated in New Zealand (company number 9344511) (**Selwyn Water**)

BACKGROUND

- A. The Council has decided to establish Selwyn Water as a new Council-Controlled Organisation to take over the Council's current obligations to deliver drinking water and wastewater services in the Selwyn region, as contemplated by the Proposed Water Services Act.
- B. In anticipation of the enactment of the Proposed Water Services Act, the Council has decided that it will appoint Selwyn Water to carry out the Water Services (as defined below) for an interim period until the Proposed Water Services Act is enacted and Selwyn Water accepts the transfer of the Water Services obligations (and associated assets, liabilities and debts) from the Council in the manner contemplated by the Proposed Water Services Act and as agreed between the Council and Selwyn Water.
- C. This agreement sets out the terms on which Selwyn Water will carry out Water Services for that interim period. At the same time as the parties are entering into this agreement, the parties will enter into the Transitional Services Agreement (as defined below) pursuant to which the Council will provide services to Selwyn Water to enable Selwyn Water to perform its obligations under this agreement.
- D. Any services required to be provided following the Transfer Date will be delivered under a separate shared services agreement between the parties.

THIS AGREEMENT RECORDS THAT:**1. DEFINITIONS AND INTERPRETATION****1.1 Definitions:** In this agreement, unless the context indicates otherwise:

Business Day means any day excluding Saturdays, Sundays and statutory public holidays in the Selwyn district;

Confidential Information means any information (in any form):

- (a) relating to the terms of this agreement;
- (b) relating to the Water Services;
- (c) relating directly or indirectly to the business of either party, or to their respective suppliers or customers which is subject to an obligation of confidentiality applicable to a party; or

- (d) disclosed by either party to the other party or otherwise obtained by the other party on the express basis that such information is confidential in nature,

provided that, where information relates exclusively to one party, nothing in this agreement will require that party to maintain confidentiality in respect of that information;

Council-Controlled Organisation has the meaning given to it in section 6 of the Local Government Act 2002;

Customer Data means all information and data relating to any person who receives drinking water and/or wastewater services from the Council immediately prior to the Effective Date;

Effective Date means 1 July 2025;

Force Majeure means, in relation to either party (**Affected Party**) any events or circumstances, which are beyond the reasonable control of the Affected Party, including:

- (a) lightning, storm, flood, fire, earthquake, volcanic eruption or similar acts of God;
- (b) strike, lock-out or other industrial disturbance by or amongst employees of a person other than the Affected Party;
- (c) act of public enemy, or declared or undeclared war or threat of war;
- (e) terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party);
- (f) pandemic, epidemic or regional or nationwide response to any health issue; or
- (e) governmental or regional or local authority restraint, legislation or by law,

but does not include any:

- (f) event or circumstance which could have been avoided or overcome by the exercise, by the Affected Party, of a standard of reasonable care at a reasonable cost; or
- (g) lack of funds or authority or power on the part of the Affected Party;

GST means goods and services tax in terms of the Goods and Water Services Tax Act 1985, at the rate prevailing from time to time, including any tax levied in substitution for that tax;

Intellectual Property means trade marks, rights in domain names, copyright, patents, registered designs, rights in computer software, databases and lists, Confidential

Information, know-how and trade secrets, operating manuals, quality manuals and all other intellectual property, in each case whether registered or unregistered (including applications for the grant of any of the foregoing), including the goodwill associated with the foregoing and all rights of action, powers and benefits in respect of the same;

Laws means all present and future laws, regulations, codes, ordinances, local laws, by-laws, orders, judgments, licences, rules, permits and requirements of all government agencies and authorities applicable in any jurisdiction in which activities contemplated by this agreement take place;

Personnel of a person means:

- (a) the officers, employees (including temporary employees), contractors (including sub-contractors) and agents of that person; and
- (b) the officers, employees (including temporary employees), contractors (including sub-contractors) and agents of that person,

but in the case of:

- (c) the Council, excludes the Personnel of Selwyn Water; and
- (d) Selwyn Water, excludes the Personnel of the Council;

Proposed Water Services Act means the Local Government (Water Services) Bill;

Service Charges means the amounts payable for the Water Services calculated and determined on the basis set out in [Schedule 2](#);

Systems means information technology systems, including hardware, firmware, protocols, software and other peripheral equipment, networks, communications systems and other equipment of whatever nature;

Term means the period from the start of the Effective Date to the end of the Transfer Date;

Transfer Agreement means the transfer agreement to be agreed and entered into between the Council and Selwyn Water under which Selwyn Water will accept the transfer of certain drinking water and wastewater obligations (and associated assets, liabilities and debts) from the Council in the manner contemplated by the Proposed Water Services Act;

Transfer Date means the date on which completion occurs under the Transfer Agreement;

Transitional Services Agreement means the transitional services agreement entered into between the Council and Selwyn Water dated on or about the date of this agreement;

Water Services means the provision of the drinking water and wastewater services in the Selwyn region set out in [Schedule 1](#) (subject to clause [2.2](#)); and

Working Group means the working group established by the parties pursuant to clause [4.1](#).

1.2 Interpretation: In this agreement, unless the context indicates otherwise:

- (a) **Defined Expressions:** expressions defined in the main body of this agreement have the defined meaning throughout this agreement including the background;
- (b) **Headings:** clause and other headings are for ease of reference only and will not affect this agreement's interpretation;
- (c) **Persons:** references to a person include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (d) **Parties:** references to any party include that party's executors, administrators, successors and permitted assigns (but the Council will be regarded as a single party);
- (e) **Plural and Singular:** references to the singular include the plural and vice versa;
- (f) **Clauses/Schedules:** references to clauses and schedules are to clauses in, and the schedules to, this agreement. Each such schedule forms part of this agreement;
- (g) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (h) **Inclusive Expressions:** the terms includes and including (and any similar expression) are deemed to be followed by the words without limitation;
- (i) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
- (j) **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time.

2. WATER SERVICES

2.1 Appointment: The Council appoints Selwyn Water to provide the Water Services during the Term, on the terms set out in this agreement.

2.2 Scope of Water Services: As at the date of this agreement, the Water Services comprise those services as described in [Schedule 1](#). The parties may agree in writing any changes to the scope of the Water Services, provided that any addition or deletion

of a Water Service will take effect from the end of the then current month, unless expressly agreed otherwise as part of such amendment.

2.3 Purpose and Principles: The parties:

- (a) acknowledge that the purpose of this agreement is for the Selwyn community to receive drinking water and wastewater services in the same manner as they are currently receiving those services;
- (b) have entered into this agreement for the purpose of Selwyn Water delivering the Water Services in the manner those Water Services have been delivered by the Council in the 12 months prior to the Effective Date; and
- (c) acknowledge that as at the date of this agreement, Selwyn Water requires the Council to provide services to Selwyn Water under the Transitional Services Agreement to enable Selwyn Water to provide the Water Services at the time and in the manner contemplated by this agreement,

and therefore agree that the following principles will apply to their approach to this agreement with the intention of enabling the purposes set out in clauses [2.3\(a\)](#) and [2.3\(b\)](#) to be achieved at all times during the Term:

- (d) each party will act in good faith and communicate openly with the other party;
- (e) each party will provide all information, instructions and assistance to the other party as reasonably required in order to enable the other party to perform its obligations under this agreement, at the time and in the manner contemplated by this agreement; and
- (f) each party (**First Party**) will seek to minimise any loss, damage, cost or expense that may be suffered or incurred by the other party arising from a breach by the First Party of any of its obligations under this agreement.

2.4 Provision of the Water Services: Without limiting clauses [2.3\(a\)](#) and [2.3\(b\)](#), Selwyn Water will provide the Water Services:

- (a) to a reasonable standard of care, skill, timeliness, diligence, and prudence; and
- (b) in accordance with all applicable Laws, and all policies, procedures and directions notified by the Council to Selwyn Water in writing from time to time.

2.5 General Obligations: Selwyn Water will:

- (a) promptly provide to the Council (or to any other person the Council may direct from time to time) all information (including copies of documents and data) within its control which is requested by the Council, and which is reasonably necessary for, or reasonably incidental to, the receipt of the Water Services by the Council or any third party (including any customer receiving drinking water and/or wastewater services in the Selwyn region);

- (b) use reasonable endeavours to comply with any reasonable instructions which the Council may issue in respect of the provision of the Water Services; and
- (c) provide all co-operation reasonably requested by the Council in connection with the Water Services.

2.6 Subcontracting: Selwyn Water may subcontract the provision of any part of the Water Services to a third party without the Council's consent. Selwyn Water will take reasonable steps to ensure that all subcontractors and all persons directly or indirectly engaged, employed or used to carry out any of the Water Services are qualified to carry out, and capable of performing, the Water Services they are contracted to perform at the time and in the manner contemplated by this agreement.

2.7 Errors and Defects: Upon Selwyn Water becoming aware of any error or defect in the performance of any Water Service, Selwyn Water will:

- (a) as soon as reasonably practicable in the circumstances after becoming aware of the error or defect, use best endeavours to correct (or procure the correction of) such error or defect in all respects or re-perform in all respects the relevant Water Service (or part thereof) at the Council's request;
- (b) take such action (at its cost) as may reasonably be requested by the Council or otherwise as is reasonably necessary to minimise the impact of the error or defect and prevent it from reoccurring; and
- (c) keep the Council reasonably advised (in writing) of the status of the relevant investigations and remedial efforts being undertaken with respect to the error or defect and the underlying cause of the error or defect.

2.8 Reporting: Selwyn Water will provide monthly reports to the Council detailing:

- (a) the provision of the Water Services against the standards of service provided in clauses [2.3\(a\)](#) and [2.3\(b\)](#); and
- (b) the quantum of the Services Charges incurred that month in accordance with clause [3](#).

2.9 Security: Each party undertakes to the other party that it will not, and will ensure that its Personnel do not:

- (a) damage or compromise the security or integrity of, or cause any deterioration to, the other party's Systems or business data, including by circumventing or attempting to circumvent or remove any access controls, firewalls or other security measures put in place from time to time to protect the other party's Systems; or
- (b) alter or attempt to alter the configuration of the other party's Systems; or
- (c) add or attempt to add new hardware or software to the other party's Systems or information technology environment generally,

in each case, except to the extent otherwise agreed in writing with the other party.

2.10 Council's General Obligations: The Council will:

- (a) provide Selwyn Water with access to the Council's assets, employees and contractors, and to the Council's Systems, data, records and information, in each case, as is reasonably required from time to time by Selwyn Water in order to provide the Water Services at the time and in the manner contemplated by this agreement;
- (b) to the maximum extent permitted by Law, grant authority to Selwyn Water to perform actions on its behalf to the extent required to deliver the Water Services at the time and in the manner contemplated by this agreement;
- (c) maintain, and comply with all conditions in respect of, all resource consents, permits and other rights (contractual or otherwise), and all insurances, that it is required to hold for the purpose of providing drinking water and wastewater services in the Selwyn region;
- (d) take all actions reasonably required by Selwyn Water to enforce any contracts and other obligations which relate to the Water Services so as to enable Selwyn Water to perform the Water Services; and
- (e) comply with all applicable Laws in connection with the subject matter of this agreement.

2.11 Notify Impact: Each party will promptly notify the other party of any matter which will or is reasonably likely to impact on the ability of that party to perform its obligations in accordance with this agreement in any material respect.

2.12 Availability: Each party will ensure that those of its personnel whose decisions are necessary for the performance of the Water Services (including each parties' respective Relationship Manager) are available at all reasonable times on reasonable notice for consultation on any material matter relating to the Water Services.

2.13 Provide Information: Each party will provide all information, instructions and assistance as reasonably required in order to enable the other party to perform its obligations under this agreement, in the manner contemplated by this agreement.

3. PAYMENTS

3.1 Service Charges: In consideration for Selwyn Water providing the Water Services, the Council will pay the Service Charges for those Services provided in each month, on the 20th day in the following month in which the Water Services were performed. Selwyn Water will provide the Council with a GST invoice for all Service Charges on a monthly basis in arrears.

3.2 GST: The Service Charges are plus GST (if any). The Council will pay Selwyn Water GST on the Service Charges at the same time as it pays the Service Charges.

4. WORKING GROUP

4.1 Working Group: The parties will establish a Working Group consisting of a minimum of one Council representative and one Selwyn Water representative (**Representative**). Either party may, by written notice to the other party, replace from time to time that party's Representative by giving written notice to the other party. The initial members of the Working Group will be:

- (a) [name] for the Council; and
- (b) [name] for Selwyn Water.

4.2 Role: The role of the Working Group will be to act as the primary point of contact between the parties in relation to the implementation of this agreement. Each party will ensure that their Representative is kept fully informed of all relevant information and is at all times involved in the performance by the parties of their respective obligations under this agreement.

4.3 Ongoing Consultation: The Working Group will meet at regular intervals, not less than once every month, to review any matters arising relating to performance by the parties of their obligations under this agreement, and to resolve any issues which arise in relation to this agreement.

5. INTELLECTUAL PROPERTY

5.1 Ownership: Unless otherwise specified, nothing in this agreement affects the ownership of any Intellectual Property of a party, at the Effective Date.

5.2 Use of IP: Subject to clause [5.3](#), neither party will be entitled to copy or adapt any of the Intellectual Property of the other party, except to the extent expressly provided for in this agreement or otherwise with the express prior written consent from the owner of the relevant Intellectual Property.

5.3 Licence: Each party (**First Party**) grants to the other party a non-exclusive licence to use such of the First Party's Intellectual Property (including any Intellectual Property which is used under the licence from any third person) during the Term strictly as necessary in connection with the performance or receipt of the Water Services (as relevant), subject to such reasonable directions as the First Party may give from time to time.

5.4 IP Claims: Each party (**First Party**) will promptly notify the other party in writing upon becoming aware of any claim by a third party that the First Party's use of any Intellectual Property owned by or licensed to the other party breaches that third party's rights (**IP Claim**). The Council will manage any IP Claims arising, and Selwyn Water will provide all assistance reasonably required by Council for that purpose.

6. INFORMATION AND ANNOUNCEMENTS

6.1 Confidential Information: Each party will maintain as confidential at all times and will not at any time, directly or indirectly, disclose or permit to be disclosed to any person,

use for itself, or use to the detriment of the other party any Confidential Information except:

- (a) as required by any Law or regulatory or tax obligation, provided that any such disclosure is limited to only those persons to whom disclosure is necessary to comply with the relevant Law or obligation;
- (b) as is already or becomes public knowledge, otherwise than as a result of a breach, by the party disclosing or using that Confidential Information, of any provision of this agreement;
- (c) as authorised in writing by the other party;
- (d) developed independently without reliance on any of the disclosing party's Confidential Information; or
- (e) to the extent reasonably required by this agreement (and, without limiting the effect of this clause, a party may disclose Confidential Information only to those of its investors, officers, employees or professional advisers, on a "need to know" basis, as is reasonably required for the implementation of this agreement).

6.2 Records: Each party must keep and maintain full records and documentation in relation to this agreement in accordance with the Public Records Act 2005, the Local Government Official Information and Meetings Act 1987, the Building Act 2004, the Local Government Act 2002, the Proposed Water Services Act, and any applicable standards or policies.

6.3 Required Disclosures: The parties acknowledge that the use or disclosure of information relating to the other party may be required by Law (including under the Local Government Official Information and Meetings Act 1987), so that a party may be obliged to disclose Confidential Information or other information of the other party.

6.4 Announcements: Unless required by Law, neither party will make any announcements or disclosures as to the subject matter of this agreement (**Announcing Party**), except in a form and manner, and at a time, previously approved in writing by the other party (such approval not to be unreasonably or arbitrarily withheld). The Announcing Party will notify the other party of any material issues prior to the other party approving the form of the announcement in accordance with this clause [6.4](#).

7. DATA AND PRIVACY

7.1 Privacy Act: The parties agree to comply with all relevant Laws, including the Privacy Act 2020 (**Privacy Act**), in respect of all Customer Data received by it or in its possession in connection with its rights and obligations under this agreement.

7.2 Use of Data: Selwyn Water may only use the Customer Data for the purpose of complying with its obligations under this agreement and the Transitional Services Agreement, as relevant.

7.3 Restrictions: Selwyn Water:

- (a) must not transfer, store or make available, or permit the transfer, storage or making available of any Customer Data, outside New Zealand, without the prior written consent of the Council;
- (b) must securely return or destroy the Customer Data once it is no longer required for the purposes for which it was held or by Law. Where the Customer Data is to be destroyed, Selwyn Water will use best endeavours to destroy Customer Data in a manner that ensures it can no longer be recovered or reconstructed;
- (c) must comply with all applicable Laws in relation to its use, storage, processing or transmittal of the Customer Data, including the Privacy Act; and
- (d) must not disclose, make available, transfer, sub-license or sell the Customer Data, or any copy, extract or modified form of the Customer Data, to any third party except to the extent this agreement expressly provides for.

7.4 Customer Consent: The Council will be responsible for obtaining any required consent or authorisation from the persons to whom the Customer Data relates to the sharing of their Customer Data with Selwyn Water in relation to the provision by Selwyn Water of the Water Services.

8. HEALTH AND SAFETY

8.1 Health and safety: The parties will comply with their respective health and safety duties under Law in relation to the provision and receipt of the Water Services. Without limiting this clause 8.1:

- (a) each shall, so far as is reasonably practicable, provide a work environment that is without risks to health and safety. If either party becomes aware of any health and safety related concern affecting any person (including an incident or injury affecting the person's health and safety in the workplace), it shall notify the other party so that the parties can coordinate their response to any such concern;
- (b) each party shall provide all supervision and any additional training or instruction that is necessary to protect its Personnel and the Personnel of the other party involved in providing Transitional Services under the Transitional Services Agreement or other services to each other, so far as is reasonably practicable, from risks to their health and safety arising from the performance of such services;
- (c) each party will provide its Personnel and the Personnel of the other party involved in providing Transitional Services under the Transitional Services Agreement with appropriate personal protective equipment if this is required to minimise risks to health and safety when performing the services; and
- (d) the parties will, so far as reasonably practicable, consult, cooperate, and coordinate activities regarding health and safety issues relating to the Water Services.

9. LIABILITY AND INDEMNITY

9.1 Exclusion: Nothing expressed or implied in this agreement will confer any liability on either party (**First Party**) in respect of any:

- (a) indirect, consequential or special loss, damage, cost or expense suffered or incurred by the other party as a direct or indirect result of a breach by the First Party of any of its obligations under this agreement; or
- (b) loss, damage, cost or expense suffered or incurred by the other party, to the extent to which this results from any act or omission by the other party.

9.2 Consumer Legislation: The parties agree that they are each in trade and that the Water Services are being provided for business purposes and accordingly:

- (a) all provisions of the Fair Trading Act 1986 which may be excluded are hereby excluded;
- (b) the Water Services are business transactions for the purposes of section 43(2) of the Consumer Guarantees Act 1993; and
- (c) The Council will not assert or attempt to assert any rights or claims against Selwyn Water under the provisions of the Consumer Guarantees Act 1993.

10. DISPUTES

10.1 Disputes: The Representatives will, in the first instance, meet and discuss any dispute between the parties arising out of this agreement.

10.2 Senior Management: If the discussions referred to in clause [10.1](#) fail to resolve the relevant dispute within 10 Business Days, either party may (by written notice to the other party) require that the respective CEOs of each party meet at least once (and within 10 Business Days of the date of the notice) to discuss and resolve the dispute.

10.3 Mediation: If the discussions referred to in clause [10.2](#) fail to resolve the relevant dispute within 20 Business Days of the date of the notice given under that clause, either party may (by written notice to the other party) require that the dispute be submitted for mediation by a single mediator nominated by the President for the time being of the New Zealand Law Society. In the event of any submission to mediation:

- (a) **Expert:** the mediator will not be acting as an expert or as an arbitrator;
- (b) **Procedure:** the mediator will determine the procedure and timetable for the mediation; and
- (c) **Costs:** the parties will share equally the cost of the mediation.

10.4 Legal Proceedings: No party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any dispute, unless that party has first taken all reasonable steps to comply with clauses [10.1](#), [10.2](#) and [10.3](#).

11. TERMINATION

- 11.1 Termination:** This agreement may be terminated at any time by the Council by written notice to Selwyn Water.
- 11.2 Consequences of Termination:** Upon the expiry or termination of this agreement for any reason:
- (a) such termination will be without prejudice to the rights and remedies of any party in respect of any breach of this agreement by any other party, where such breach occurred prior to the termination of this agreement; and
 - (b) the provisions of clauses [5](#), [6](#), [8](#), [10](#) and [11](#), together with those other provisions of this agreement which are incidental to, and required in order to give effect to those clauses, will remain in full force and effect.

12. NOTICES

- 12.1 Method of Delivery:** Any written notice required under this agreement must be signed by a duly authorised representative of the party giving that notice and (without limiting the means by which notice may be given under this agreement) will be deemed validly given if:
- (a) **Hand:** delivered by hand to the intended recipient's physical address as set out below (or to such other physical address as the intended recipient notifies to each other party by written notice from time to time) and signed by the party giving that notice; or
 - (b) **Email:** Sent by email to the intended recipient's email address set out below, provided that that email transmission is not rejected, following despatch.
- 12.2 Addressees:** The relevant addressees for sending notices are as follows:
- (a) **Council:** if to the Council, to:

Attention: Tim Mason

Email address: Tim.Mason@selwyn.govt.nz

Selwyn Water: if to Selwyn Water, to:

Attention: Alex Cabrera

Email address: Alex.Cabrera@selwyn.govt.nz
- 12.3 Delivery:** A written notice given in accordance with this clause [12](#) is deemed to be received:
- (a) **Hand:** If delivered by hand, on delivery; or
 - (b) **Email:** If delivered by email, on written confirmation from the recipient that the email has been received.

12.4 Time of Delivery: Any notice delivered after 5.00 pm on a Business Day, or at any time on a non Business Day, will be deemed received at 9.00 am on the next Business Day (being, in each case, the time of day at the intended place of receipt of that notice).

13. FORCE MAJEURE

13.1 Effects of Force Majeure Event: Despite any other provision of this agreement, if a party is unable to perform or is delayed in performing an obligation under this agreement which is caused by or which arises or results from a Force Majeure event and notice has been given in accordance with clause 13.2:

- (a) that obligation is suspended but only so far and for so long as it is affected by the Force Majeure event; and
- (b) the affected party will not be responsible for any loss or expense suffered or incurred by any other party as a result of, and to the extent that, the affected party is unable to perform or is delayed in performing its obligations because of the Force Majeure event.

13.2 Notice of Force Majeure Event: A party affected by a Force Majeure event must, as soon as reasonably practicable after becoming aware of the Force Majeure event, give the other party a written notice which:

- (a) sets out the full details of the Force Majeure event;
- (b) identifies the nature and extent of the obligations affected by the Force Majeure event;
- (c) advises the period of time during which the affected party estimates that it will not be able to perform or will be delayed in performing its obligations; and
- (d) provides details of the action that it has taken or proposes to take to remedy the situation.

13.3 Obligations of Affected Party: A party affected by a Force Majeure event must:

- (a) take all reasonable commercial steps to avoid, remove or limit the effects of the Force Majeure event on its performance of the obligations as quickly as possible;
- (b) perform its obligations not affected by the event; and
- (c) promptly re-commence performing the suspended obligations as soon as reasonably commercially possible.

13.4 Alternative Arrangements: During the period for which an obligation of the affected party is suspended pursuant to clause [13.1\(a\)](#) the party to whom the obligation is owed may make alternative arrangements for the performance of the suspended obligation (whether by another person or otherwise), without any liability to the affected party.

14. GENERAL

- 14.1 Costs:** Unless otherwise stated in this agreement, each party will bear its own costs and expenses in connection with the negotiation, preparation and implementation of this agreement.
- 14.2 Partial Invalidity:** If any provision of this agreement is or becomes invalid or unenforceable, that provision will be deemed deleted from this agreement. The invalidity or unenforceability of that provision will not affect the other provisions of this agreement, all of which will remain in full force and effect to the extent permitted by Law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- 14.3 Entire Agreement:** This agreement records the entire understanding and agreement of the parties relating to the matters dealt with in this agreement. This agreement supersedes all previous understandings or agreements (whether written, oral or both) relating to such matters.
- 14.4 Further Assurances:** Each party will do all things and execute all documents reasonably required to give effect to the provisions and intent of this agreement.
- 14.5 Waiver:** Any waiver by a party of any of its rights or remedies under this agreement will be effective only if it is recorded in writing and signed that party. If the waiver relates to a breach of any provision of this agreement, this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver of any breach, or failure to enforce any provision, of this agreement at any time by a party will in any way affect, limit or waive that party's right to subsequently require strict compliance with this agreement.
- 14.6 Counterparts:** This agreement may be signed in any number of counterpart copies which, read together, will constitute one and the same document. Any party may enter into this agreement by signing any such counterpart.
- 14.7 Copies:** Any email copy of this agreement (including any email copy of any document evidencing any party's signature of this agreement) may be relied on by the parties as though it were an original copy. This agreement may be entered into on the basis of an exchange of such email copies.
- 14.8 Amendment:** No amendment to this agreement will be effective unless it is in writing and signed by each party.
- 14.9 Assignment:** Neither party will assign or otherwise transfer any of its rights or obligations under this agreement to any other person without the other party's written consent.
- 14.10 Governing Law and Jurisdiction:** This agreement is governed by the Laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this agreement.

SIGNATURES

SIGNED on behalf of **SELWYN DISTRICT COUNCIL** by:

Signature of authorised signatory

Name of authorised signatory

SIGNED on behalf of **SELWYN WATER LIMITED** by:

Signature of director/authorised signatory

Name of director/authorised signatory

SCHEDULE 1

WATER SERVICES

Service	Description
Provision of services	<p>Operational Delivery</p> <p>Providing technical support for the delivery of water and wastewater services operations including by:</p> <ul style="list-style-type: none"> managing the C1241 Network Management Contract sampling water and wastewater (including management of sampling and laboratory contractor) managing trade wastewater discharges to the wastewater network including new applications and existing trade waste discharges monitoring and reporting on legislative and regulatory compliance and communicating with regulatory bodies assessing operational plans and risks providing business support to users including connection applications and general customer support managing and operating all relevant Control Systems undertaking planned operational projects including renewals. providing BeforeUdig services to the community supplying fleet and facilities for operations engineering review of commercial BCs and PIMs and applying conditions. technical support to the LIM team <p>Capital Delivery</p> <p>Delivering the water and wastewater capital works agreed in the Annual Plan in accordance with SDC policies including procurement, contract award, project management and on site monitoring.</p> <p>Asset Management</p> <ul style="list-style-type: none"> Undertaking of all Asset Management for water and wastewater services including: <ul style="list-style-type: none"> renewal planning preparing asset management plans managing hydraulic model build & use growth planning preparing and reviewing bylaws, policy and strategy strategic planning Providing development engineering services for water and wastewater services, including: <ul style="list-style-type: none"> Initial acceptance of 5 Water Servicing certificate applications and final review prior to issuing Engineering review of Resource Consents and applying engineering conditions to resource consents Engineering review of BC's, LIM's and PIM's and applying conditions Engineering Acceptance of detailed design Onsite construction monitoring

	<ul style="list-style-type: none">○ Acceptance of vested assets○ Monitoring of Defects Liability period○ Final hand over of assets○ Handling any defects or design faults outside of the defects liability period where there are grounds• Managing the AMS asset data systems and assisting with asset data updates and the collection and analysis of data and reporting.
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SCHEDULE 2

SERVICE CHARGES

[To be inserted]

SDC Version: 27 May 2025

TRANSITIONAL SERVICES AGREEMENT

SELWYN DISTRICT COUNCIL

SELWYN WATER LIMITED

**SIMPS
GRIERSON**

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AGREEMENT DATED

2025

PARTIES

1. **SELWYN DISTRICT COUNCIL**, a territorial authority established under the Local Government Act 2002 (**Council**)
2. **SELWYN WATER LIMITED**, a company incorporated in New Zealand (company number 9344511) (**Selwyn Water**)

BACKGROUND

- A. The Council has decided to establish Selwyn Water as a new Council-Controlled Organisation to take over the Council's current obligations to deliver drinking water and wastewater services in the Selwyn region, as contemplated by the Proposed Water Services Act.
- B. In anticipation of the enactment of the Proposed Water Services Act, the Council has decided that it will appoint Selwyn Water to carry out certain drinking water and wastewater services in the Selwyn region for an interim period (as set out in the Operational Delivery Agreement, as defined below) until the Proposed Water Services Act is enacted and Selwyn Water accepts the transfer of certain drinking water and wastewater obligations (and associated assets, liabilities and debts) from the Council in the manner contemplated by the Proposed Water Services Act and as agreed between the Council and Selwyn Water.
- C. In order to enable Selwyn Water to perform its obligations under the Operational Delivery Agreement, the Council has agreed to provide certain services to Selwyn Water, on the terms set out in this agreement.
- D. Any services required to be provided following the Transfer Date will be delivered under a separate shared services agreement between the parties.

THIS AGREEMENT RECORDS THAT:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this agreement, unless the context indicates otherwise:

Business Day means any day excluding Saturdays, Sundays and statutory public holidays in the Selwyn district;

Confidential Information means any information (in any form):

- (a) relating to the terms of this agreement;
- (b) relating to the Transitional Services;

- (c) relating directly or indirectly to the business of either party, or to their respective suppliers or customers which is subject to an obligation of confidentiality applicable to a party; or
- (d) disclosed by either party to the other party or otherwise obtained by the other party on the express basis that such information is confidential in nature,

provided that, where information relates exclusively to one party, nothing in this agreement will require that party to maintain confidentiality in respect of that information;

Council-Controlled Organisation has the meaning given to it in section 6 of the Local Government Act 2002;

Customer Data means all information and data relating to any person who receives drinking water and/or wastewater services from the Council immediately prior to the Effective Date and any person who receives such services during the Term;

Effective Date means 1 July 2025;

Force Majeure means, in relation to either party (**Affected Party**) any events or circumstances, which are beyond the reasonable control of the Affected Party, including:

- (a) lightning, storm, flood, fire, earthquake, volcanic eruption or similar acts of God;
- (b) strike, lock-out or other industrial disturbance by or amongst employees of a person other than the Affected Party;
- (c) act of public enemy, or declared or undeclared war or threat of war;
- (e) terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party);
- (f) pandemic, epidemic or regional or nationwide response to any health issue; or
- (e) governmental or regional or local authority restraint, legislation or by law,

but does not include any:

- (f) event or circumstance which could have been avoided or overcome by the exercise, by the Affected Party, of a standard of reasonable care at a reasonable cost; or
- (g) lack of funds or authority or power on the part of the Affected Party;

GST means goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time, including any tax levied in substitution for that tax;

Intellectual Property means trade marks, rights in domain names, copyright, patents, registered designs, rights in computer software, databases and lists, Confidential Information, know-how and trade secrets, operating manuals, quality manuals and all other intellectual property, in each case whether registered or unregistered (including applications for the grant of any of the foregoing), including the goodwill associated with the foregoing and all rights of action, powers and benefits in respect of the same;

Laws means all present and future laws, regulations, codes, ordinances, local laws, by-laws, orders, judgments, licences, rules, permits and requirements of all government agencies and authorities applicable in any jurisdiction in which activities contemplated by this agreement take place;

Operational Delivery Agreement means the Operational Delivery agreement entered into between the Council and Selwyn Water dated on or about the date of this agreement;

Personnel of a person means:

- (a) the officers, employees (including temporary employees), contractors (including sub-contractors) and agents of that person; and
- (b) the officers, employees (including temporary employees), contractors (including sub-contractors) and agents of that person,

but in the case of:

- (c) the Council, excludes the Personnel of Selwyn Water; and
- (d) Selwyn Water, excludes the Personnel of the Council;

Proposed Water Services Act means the Local Government (Water Services) Bill;

Service Charges means the amounts payable for the Transitional Services calculated and determined on the basis set out in Schedule 8;

Systems means information technology systems, including hardware, firmware, protocols, software and other peripheral equipment, networks, communications systems and other equipment of whatever nature;

Term means the period from the start of the Effective Date to the end of the Transfer Date;

Transfer Agreement means the transfer agreement to be agreed and entered into between the Council and Selwyn Water under which Selwyn Water will accept the transfer of certain drinking water and wastewater obligations (and associated assets, liabilities and debts) from the Council in the manner contemplated by the Proposed Water Services Act;

Transfer Date means the date on which completion occurs under the Transfer Agreement;

Transitional Services means (subject to clause [2.2](#)) the transitional services described in Schedules 1 to 7; and

Working Group means the working group established by the parties pursuant to clause [6.1](#).

1.1 Interpretation: In this agreement, unless the context indicates otherwise:

- (a) **Defined Expressions:** expressions defined in the main body of this agreement have the defined meaning throughout this agreement including the background;
- (b) **Headings:** clause and other headings are for ease of reference only and will not affect this agreement's interpretation;
- (c) **Persons:** references to a person include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (d) **Parties:** references to any party include that party's executors, administrators, successors and permitted assigns (but the Council will be regarded as a single party);
- (e) **Plural and Singular:** references to the singular include the plural and vice versa;
- (f) **Clauses/Schedules:** references to clauses and schedules are to clauses in, and the schedules to, this agreement. Each such schedule forms part of this agreement;
- (g) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (h) **Inclusive Expressions:** the terms includes and including (and any similar expression) are deemed to be followed by the words without limitation;
- (i) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
- (j) **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time.

2. SERVICES

- 2.1 Provide Transitional Services:** The Council agrees to provide the Transitional Services to Selwyn Water during the Term, on the terms and conditions set out in this agreement.

2.2 Scope of Transitional Services: The scope of the Transitional Services as at the Effective Date will be as set out in Schedule 1 to Schedule 7. The parties may agree to amend any of these Schedules, or to include any additional Schedules of Transitional Services, at any time in writing, provided that any addition or deletion of a Transitional Service will take effect from the end of the then current month, unless expressly agreed otherwise as part of such amendment.

2.3 Standards: The Council will provide each of the Transitional Services:

- (a) in the same manner, to materially the same standard of service, as it has provided those services itself in the 12 month period prior to the Effective Date; and
- (b) without limiting clause [2.3\(a\)](#), to a reasonable standard of care, skill, timeliness, diligence, and prudence (having due regard to the nature and importance of the relevant Transitional Services to the ability of Selwyn Water to perform its obligations under the Operational Delivery Agreement, at the time and in the manner set out in the Operational Delivery Agreement),

in each case, whichever is the higher standard, and in each case in accordance with all applicable Laws, and all policies, procedures and directions notified by the Council to Selwyn Water in writing from time to time under the Operational Delivery Agreement.

2.4 Council's Obligations: The Council will:

- (a) to the extent that a Transitional Service is directly or indirectly provided by a third party, use reasonable endeavours to procure that such services are provided to Selwyn Water and to the standard of service that the third party is required to provide under the terms of the relevant agreement with that third party;
- (b) promptly provide to Selwyn Water (or to any other person Selwyn Water may direct from time to time) all information (including copies of documents and data) within its control which is requested by Selwyn Water, and which is reasonably necessary for, or reasonably incidental to, the receipt of the Transitional Services by Selwyn Water; and
- (c) provide all co-operation reasonably requested by Selwyn Water in connection with the Transitional Services.

2.5 Subcontracting: The Council may subcontract the provision of any part of the Transitional Services to a third party without Selwyn Water's consent. The Council will take reasonable steps to ensure that all subcontractors and all persons directly or indirectly engaged, employed or used to carry out any of the Transitional Services are qualified to carry out, and capable of performing, the Transitional Services they are contracted to perform at the time and in the manner contemplated by this agreement.

2.6 Errors and Defects: Upon the Council becoming aware of any error or defect in the performance of any Transitional Service, the Council will, to the extent within its control:

- (a) as soon as reasonably practicable in the circumstances after becoming aware of the error or defect, use best endeavours to correct (or procure the correction of) such error or defect in all respects or re-perform in all respects the relevant Transitional Service (or part thereof) at Selwyn Water's request;
- (b) take such action (at its cost) as may reasonably be requested by Selwyn Water or otherwise as is reasonably necessary to minimise the impact of the error or defect and prevent it from reoccurring; and
- (c) keep Selwyn Water reasonably advised (in writing) of the status of the relevant investigations and remedial efforts being undertaken with respect to the error or defect and the underlying cause of the error or defect.

2.7 Additional Transitional Services: To the extent that Selwyn Water is required to provide a service to the Council under the Operational Delivery Agreement and Selwyn Water does not have the resources or systems in place to provide that service, the parties will use reasonable endeavours to include that service as a Transitional Service under this agreement (subject to the operation of clause [2.2](#)).

2.8 Reporting: The Council will provide monthly reports to Selwyn Water detailing:

- (a) the provision of the Transitional Services against the standards of service provided in clause [2.3](#); and
- (b) the quantum of the Services Charges incurred that month in accordance with clause [4](#).

2.9 Security: Each party undertakes to the other party that it will not, and will ensure that its Personnel do not:

- (a) damage or compromise the security or integrity of, or cause any deterioration to, the other party's Systems or business data, including by circumventing or attempting to circumvent or remove any access controls, firewalls or other security measures put in place from time to time to protect the other party's Systems;
- (b) alter or attempt to alter the configuration of the other party's Systems; or
- (c) add or attempt to add new hardware or software to the other party's Systems or information technology environment generally,

in each case, except to the extent otherwise agreed in writing with the other party.

2.10 Mutual Obligations: In performing their respective obligations under this agreement, each party will:

- (a) promptly notify the other party of any matter which will or is reasonably likely to impact on the ability of that party to perform its obligations in accordance with this agreement in any material respect;
- (b) ensure that those of its personnel whose decisions are necessary for the performance of the Transitional Services (including each parties' respective Relationship Manager) are available at all reasonable times on reasonable

notice for consultation on any material matter relating to the Transitional Services; and

- (c) provide all information, records, instructions and assistance as reasonably required in order to enable the other party to perform its obligations under this agreement, in the manner contemplated by this agreement.

2.11 Third party agreements and consents

- (a) The Council shall use reasonable endeavours to obtain and maintain permissions, consents, agreements or authorisations required from a third party for the provision of the Transitional Services or their receipt by Selwyn Water (**Third Party Consents**) which are material to permit the Council to provide the Transitional Services in the manner in which they were provided or used immediately prior to the Effective Date by the Council.
- (b) Selwyn Water shall provide the Council with such assistance as the Council may reasonably request in connection with obtaining the Third Party Consents, including, if required, negotiating the terms of any Third Party Consent.
- (c) Selwyn Water shall comply with the terms of all agreements with a third party for the provision of goods, a service, a lease or a licence necessary for the provision of the Transitional Services by the Council to Selwyn Water (**Third Party Agreements**) and the Third Party Consents, in each case to the extent they are relevant to the receipt of the Transitional Services, provided that the relevant terms of the relevant Third Party Agreement or Third Party Consent have previously been made available to Selwyn Water.

4. PAYMENTS

- 4.1 **Service Charges:** In consideration for the Council providing the Transitional Services, Selwyn Water will pay the Service Charges for those Transitional Services provided in each month, on the 20th day in the following month in which the Transitional Services were performed. The Council will provide Selwyn Water with a GST invoice for all Services Charges on a monthly basis in arrears.
- 4.2 **GST:** The Service Charges are plus GST (if any). Selwyn Water will pay the Council GST on the Service Fees at the same time as it pays the Service Fees.

5. PREMISES:

- 5.1 **Premises:** The Council agrees to provide to Selwyn Water access to, and use of, its premises and utilities at 2 Norman Kirk Drive which includes access to, and use of, furniture, fittings and office equipment at the premises. The premises to be accessed by Selwyn Water will be agreed between the Council and Selwyn Water and may be adjusted as needed to reflect reasonable requirements of each party.
- 5.2 **Rent and outgoings:** Selwyn Water is to pay to the Council a reasonable share of monthly rent and outgoings (plus GST, if any) payable by the Council in respect of its occupation and use of those premises reflective of the proportion of space used by Selwyn Water compared to the overall space occupied by Council.

6. WORKING GROUP

6.1 Working Group: The parties will establish a Working Group consisting of a minimum of [one] Council representative and [one] Selwyn Water representative (**Representative**). Either party may, by written notice to the other party, replace from time to time that party's Representative by giving written notice to the other party. The initial members of the Working Group will be:

(a) [name] for the Council; and

(b) [name] for Selwyn Water.

6.2 Role: The role of the Working Group will be to act as the primary point of contact between the parties in relation to the implementation of this agreement. Each party will ensure that their Representative is kept fully informed of all relevant information, and is at all times involved in the performance by the parties of their respective obligations under this agreement.

6.3 Ongoing Consultation: The Working Group will meet at regular intervals, not less than once every month, to review any matters arising relating to performance by the parties of their obligations under this agreement, and to resolve any issues which arise in relation to this agreement.

7. INTELLECTUAL PROPERTY

7.1 Ownership: Unless otherwise specified, nothing in this agreement affects the ownership of any Intellectual Property of a party at the Effective Date.

7.2 Use of IP: Subject to clause 7.3, neither party will be entitled to copy or adapt any of the Intellectual Property of the other party, except to the extent expressly provided for in this agreement or otherwise with the express prior written consent from the owner of the relevant Intellectual Property.

7.3 Licence: Each party (**First Party**) grants to the other party a non-exclusive licence to use such of the First Party's Intellectual Property (including any Intellectual Property which is used under the licence from any third person) during the Term strictly as necessary in connection with the performance or receipt of the Transitional Services (as relevant), subject to such reasonable directions as the First Party may give from time to time.

7.4 IP Claims: Each party (**First Party**) will promptly notify the other party in writing upon becoming aware of any claim by a third party that the First Party's use of any Intellectual Property **owned** by or licensed to the other party breaches that third party's rights (**IP Claim**). The Council will manage any IP Claims arising, and Selwyn Water will provide all assistance reasonably required by Council for that purpose

8. INFORMATION AND ANNOUNCEMENTS

8.1 Confidential Information: Each party will maintain as confidential at all times, and will not at any time, directly or indirectly disclose or permit to be disclosed to any person,

use for itself, or use to the detriment of the other party any Confidential Information except:

- (a) as required by any law or regulatory or tax obligation, provided that any such disclosure is limited to only those persons to whom disclosure is necessary to comply with the relevant law or obligation;
- (b) as is already or becomes public knowledge, otherwise than as a result of a breach, by the party disclosing or using that Confidential Information, of any provision of this agreement;
- (c) as authorised in writing by the other party;
- (d) developed independently without reliance on any of the disclosing party's Confidential Information; or
- (e) to the extent reasonably required by this agreement (and, without limiting the effect of this clause, a party may disclose Confidential Information only to those of its investors, officers, employees or professional advisers, on a "need to know" basis, as is reasonably required for the implementation of this agreement).

8.2 Records: Each party must keep and maintain full records and documentation in relation to this agreement in accordance with the Public Records Act 2005, the Local Government Official Information and Meetings Act 1987, the Building Act 2004, the Local Government Act 2002, the Proposed Water Services Act, and any applicable standards or policies.

8.3 Required Disclosures: The parties acknowledge that the use or disclosure of information relating to the other party may be required by Law (including under the Local Government Official Information and Meetings Act 1987), so that a party may be obliged to disclose Confidential Information or other information of the other party. In such case, disclosure shall be limited to only those persons to whom disclosure is necessary to comply with the relevant law.

8.4 Announcements: Unless required by law, neither party will make any announcements or disclosures as to the subject matter of this agreement (**Announcing Party**), except in a form and manner, and at a time, previously approved in writing by the other party (such approval not to be unreasonably or arbitrarily withheld). The Announcing Party will notify the other party of any material issues prior to the other party approving the form of the announcement in accordance with this clause [8.4](#).

9. DATA AND PRIVACY

9.1 Privacy Act: The parties agree to comply with all relevant Laws, including the Privacy Act 2020 (**Privacy Act**), in respect of all Customer Data received by it or in its possession in connection with its rights and obligations under this agreement.

9.2 Use of Data: Selwyn Water may only use the Customer Data for the purpose of complying with its obligations under this agreement and the Operational Delivery Agreement, as relevant.

9.3 Restrictions: Selwyn Water:

- (a) must not transfer, store or make available, or permit the transfer, storage or making available of any Customer Data, outside New Zealand, without the prior written consent of the Council;
- (b) must securely return or destroy the Customer Data once it is no longer required for the Purposes. Where the Customer Data is to be destroyed, it must be destroyed by Selwyn Water in a manner that ensures it can no longer be recovered or reconstructed;
- (c) must comply with all applicable Laws in relation to its use, storage, processing or transmittal of the Customer Data, including the Privacy Act; and
- (d) must not disclose, make available, transfer, sub-license or sell the Customer Data, or any copy, extract or modified form of the Customer Data, to any third party except to the extent this agreement expressly provides for.

9.4 Customer Consent: The Council will be responsible for obtaining any required consent or authorisation from the persons to whom the Customer Data relates to the sharing of their Customer Data with Selwyn Water in relation to the provision by Council of the Transitional Services to Selwyn Water.

10. HEALTH AND SAFETY

10.1 Health and safety: The parties will comply with their respective health and safety duties under Law in relation to the provision and receipt of the Transitional Services. Without limiting this clause 10.1:

- (a) each shall, so far as is reasonably practicable, provide a work environment that is without risks to health and safety. If either party becomes aware of any health and safety related concern affecting any person (including an incident or injury affecting the person's health and safety in the workplace), it shall notify the other party so that the parties can coordinate their response to any such concern;
- (b) each party shall provide all supervision and any additional training or instruction that is necessary to protect its Personnel and the Personnel of the other party involved in providing Water Services under the Operational Delivery Agreement or other services to each other, so far as is reasonably practicable, from risks to their health and safety arising from the performance of such services;
- (c) each party will provide its Personnel and the Personnel of the other party involved in providing Water Services under the Operational Delivery Agreement with appropriate personal protective equipment if this is required to minimise risks to health and safety when performing the services; and
- (d) the parties will, so far as reasonably practicable, consult, cooperate, and coordinate activities regarding health and safety issues relating to the Transitional Services.

11. LIABILITY AND INDEMNITY

11.1 Exclusion: Nothing expressed or implied in this agreement will confer any liability on either party (**First Party**) in respect of any:

- (a) indirect, consequential or special loss, damage, cost or expense suffered or incurred by the other party as a direct or indirect result of a breach by the First Party of any of its obligations under this agreement; or
- (b) loss, damage, cost or expense suffered or incurred by the other party, to the extent to which it results from any act or omission by the other party.

11.2 Consumer Legislation: The parties agree that they are each in trade and that the Transitional Services are being provided for business purposes and accordingly:

- (a) all provisions of the Fair Trading Act 1986 which may be excluded are hereby excluded;
- (b) the Transitional Services are business transactions for the purposes of section 43(2) of the Consumer Guarantees Act 1993; and
- (c) Selwyn Water will not assert or attempt to assert any rights or claims against the Council under the provisions of the Consumer Guarantees Act 1993.

12. DISPUTES

12.1 Disputes: The Representatives will, in the first instance, meet and discuss any dispute between the parties arising out of this agreement.

12.2 Senior Management: If the discussions referred to in clause [12.1](#) fail to resolve the relevant dispute within 10 Business Days, either party may (by written notice to the other party) require that the respective CEOs of each party meet at least once (and within 10 Business Days of the date of the notice) to discuss and resolve the dispute.

12.3 Mediation: If the discussions referred to in clause [12.2](#) fail to resolve the relevant dispute within 20 Business Days of the date of the notice given under that clause, either party may (by written notice to the other party) require that the dispute be submitted for mediation by a single mediator nominated by the President for the time being of the New Zealand Law Society. In the event of any submission to mediation:

- (a) **Expert:** the mediator will not be acting as an expert or as an arbitrator;
- (b) **Procedure:** the mediator will determine the procedure and timetable for the mediation; and
- (c) **Costs:** the parties will share equally the cost of the mediation.

12.4 Legal Proceedings: No party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any dispute, unless that party has first taken all reasonable steps to comply with clauses [12.1](#), [12.2](#) and [12.3](#).

13. TERMINATION

- 13.1 Termination:** This agreement may be terminated at any time by the Council by written notice to Selwyn Water.
- 13.2 Future Transitional Services:** Selwyn Water will provide notice to the Council at least 45 days prior to the Transfer Date, detailing any Transitional Services that it requires the Council to continue providing after the Transfer Date.
- 13.3 Consequences of Termination:** Upon the expiry or termination of this agreement for any reason:
- (a) such termination will be without prejudice to the rights and remedies of any party in respect of any breach of this agreement by any other party, where such breach occurred prior to the termination of this agreement; and
 - (b) the provisions of clauses [7](#), [8](#), [10](#), [12](#) and [13](#), together with those other provisions of this agreement which are incidental to, and required in order to give effect to those clauses, will remain in full force and effect.

14. NOTICES

- 14.1 Method of Delivery:** Any written notice required under this agreement must be signed by a duly authorised representative of the party giving that notice and (without limiting the means by which notice may be given under this agreement) will be deemed validly given if:
- (a) **Hand:** delivered by hand to the intended recipient's physical address as set out below (or to such other physical address as the intended recipient notifies to each other party by written notice from time to time) and signed by the party giving that notice; or
 - (b) **Email:** Sent by email to the intended recipient's email address set out below, provided that that email transmission is not rejected, following despatch.
- 14.2 Addresses:** The relevant addressees for sending notices are as follows:
- (a) **Council:** if to the Council, to:

Attention: Tim Mason

Email address: Tim.Mason@selwyn.govt.nz

Selwyn Water: if to Selwyn Water, to:

Attention: Alex Cabrera

Email address: Alex.Cabrera@selwyn.govt.nz
- 14.3 Delivery:** A written notice given in accordance with this clause [14](#) is deemed to be received:

- (a) **Hand:** If delivered by hand, on delivery; or
- (b) **Email:** If delivered by email, on written confirmation from the recipient that the email has been received.

14.4 Time of Delivery: Any notice delivered after 5.00 pm on a Business Day, or at any time on a non Business Day, will be deemed received at 9.00 am on the next Business Day (being, in each case, the time of day at the intended place of receipt of that notice).

15. FORCE MAJEURE

15.1 Effects of Force Majeure Event: Despite any other provision of this agreement, if a party is unable to perform or is delayed in performing an obligation under this agreement which is caused by or which arises or results from a Force Majeure event and notice has been given in accordance with clause [15.2](#):

- (a) that obligation is suspended but only so far and for so long as it is affected by the Force Majeure event; and
- (b) the affected party will not be responsible for any loss or expense suffered or incurred by any other party as a result of, and to the extent that, the affected party is unable to perform or is delayed in performing its obligations because of the Force Majeure event.

15.2 Notice of Force Majeure Event: A party affected by a Force Majeure event must, as soon as reasonably practicable after becoming aware of the Force Majeure event, give the other party a written notice which:

- (a) sets out the full details of the Force Majeure event;
- (b) identifies the nature and extent of the obligations affected by the Force Majeure event;
- (c) advises the period of time during which the affected party estimates that it will not be able to perform or will be delayed in performing its obligations; and
- (d) provides details of the action that it has taken or proposes to take to remedy the situation.

15.3 Obligations of Affected Party: A party affected by a Force Majeure event must:

- (a) take all reasonable commercial steps to avoid, remove or limit the effects of the Force Majeure event on its performance of the obligations as quickly as possible;
- (b) perform its obligations not affected by the event; and
- (c) promptly re-commence performing the suspended obligations as soon as reasonably commercially possible.

15.4 Alternative Arrangements: During the period for which an obligation of the affected party is suspended pursuant to clause [1.1\(a\)](#) the party to whom the obligation is owed may make alternative arrangements for the performance of the suspended obligation (whether by another person or otherwise), without any liability to the affected party.

16. GENERAL

16.1 Costs: Unless otherwise stated in this agreement, each party will bear its own costs and expenses in connection with the negotiation, preparation and implementation of this agreement.

16.2 Partial Invalidity: If any provision of this agreement is or becomes invalid or unenforceable, that provision will be deemed deleted from this agreement. The invalidity or unenforceability of that provision will not affect the other provisions of this agreement, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

16.3 Entire Agreement: This agreement records the entire understanding and agreement of the parties relating to the matters dealt with in this agreement. This agreement supersedes all previous understandings or agreements (whether written, oral or both) relating to such matters.

16.4 Further Assurances: Each party will do all things and execute all documents reasonably required to give effect to the provisions and intent of this agreement.

16.5 Waiver: Any waiver by a party of any of its rights or remedies under this agreement will be effective only if it is recorded in writing and signed by that party. If the waiver relates to a breach of any provision of this agreement, this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver of any breach, or failure to enforce any provision, of this agreement at any time by a party will in any way affect, limit or waive that party's right to subsequently require strict compliance with this agreement.

16.6 Counterparts: This agreement may be signed in any number of counterpart copies which, read together, will constitute one and the same document. Any party may enter into this agreement by signing any such counterpart.

16.7 Copies: Any email copy of this agreement (including any email copy of any document evidencing any party's signature of this agreement) may be relied on by the parties as though it were an original copy. This agreement may be entered into on the basis of an exchange of such email copies.

16.8 Amendment: No amendment to this agreement will be effective unless it is in writing and signed by each party.

16.9 Assignment: Neither party will assign or otherwise transfer any of its rights or obligations under this agreement to any other person without the other party's written consent.

16.10 Governing Law and Jurisdiction: This agreement is governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this agreement.

SIGNATURES

SIGNED on behalf of **SELWYN DISTRICT COUNCIL** by:

Signature of authorised signatory

Name of authorised signatory

SIGNED on behalf of **SELWYN WATER LIMITED** by:

Signature of director/authorised signatory

Name of director/authorised signatory

SCHEDULE 1**ACQUISITION, DISPOSALS AND LEASING TRANSITION SERVICES**

Service	Description
Provision of services	<ul style="list-style-type: none"> • Assistance with acquisitions and disposals of land for pump stations • Assistance with disposals of surplus sites and/or land • Management of water related easements • Management of lease portfolio over water related land, including lease surrenders and temporary licences • Management of grazing/farming licenses and leases
Provision of software and data	<p>Access to:</p> <ul style="list-style-type: none"> • Acquisitions, Disposals and Leasing team knowledge (for projects that may impact joint use sites) • Adapt AMS (asset management solution) • Compass (learning management systems) • Vault (health & safety and risk monitoring) • Datacom Datapay (pay and leave) • LandOnline (Land Information New Zealand) • MagiQ – General Ledger and Purchase Orders • Mapviewer (GIS map viewer) • Mimecast Cyber Awareness (cyber-security training) • Microsoft Power BI (business analytics and reporting) • NinTex Promapp (process mapping and documentation) • Talent Propeller (job advertising) • Microsoft M365 office products • SDC website
Staff requirements	<ul style="list-style-type: none"> • 1-2 FTE

SCHEDULE 2**COMMUNICATIONS AND ENGAGEMENT TRANSITION SERVICES**

Service	Description
Provision of services	<ul style="list-style-type: none"> • On call water communications: <ul style="list-style-type: none"> ○ Out of hours updates to the community regarding impacts to water supplies. ○ Conserve water notices, large water outage notices, boil water notices. ○ Website and social media updates. ○ Responses to media enquiries. • Emergency works notices: <ul style="list-style-type: none"> ○ Working with contractors on emergency works notices. ○ Drafting notices and delivering to affected residents. ○ All ancillary advice/communications. • General Communications: <ul style="list-style-type: none"> ○ Marketing activities including annual conserve water campaigns, associated media spend and promotional activity. ○ All ancillary customer interactions and community engagement. ○ Responding to general media enquiries. • Transitional Communications <ul style="list-style-type: none"> ○ Strategic communications, public relations and marketing campaigns that align with Selwyn Water's mission and objectives to connect with stakeholders, promote services and build a positive reputation within the community.
Provision of software and data	<ul style="list-style-type: none"> • Access to SDC website and social media channels.
Staff requirements	<ul style="list-style-type: none"> • Access to on-call communications staff for urgent water communications (0.63 FTE). • Staff to carry out key communications and engagement services described above (0.06 FTE).

SCHEDULE 3**FINANCE TRANSITION SERVICES**

Service	Description
Provision of services	<ul style="list-style-type: none"> • Provide general accounting support as may be reasonably requested by Selwyn Water in relation to the accounting functions of the Business, including: <ul style="list-style-type: none"> ○ Financial modelling/reporting ○ Invoicing and collection ○ Accounts payable ○ Reporting and audit ○ [Internal and external customer queries ○ Budgeting services]
Provision of software and data	Access to: <ul style="list-style-type: none"> • Kofax • MagiQ - Assets • MagiQ - Creditors • MagiQ - Debt Management • MagiQ - Debtors • MagiQ - Delegations • MagiQ - General Ledger • MagiQ - Invoicing • MagiQ - Job Costing • MagiQ - Names • MagiQ - Performance • MagiQ - Purchase Orders • MagiQ - Rates • MagiQ - Rates Rebates • MagiQ - Valuations • MagiQ - Water billing • Mapviewer (GIS map viewer) • Mimecast Cyber Awareness (cyber-security training) • NinTex Promapp (process mapping and documentation) • Talent Propeller (job advertising) • Microsoft M365 office products • SDC website
Staff requirements	<ul style="list-style-type: none"> • Financial modelling and reporting (1.0 FTE) • Invoicing and customer queries (0.75 FTE) • Accounts payable (0.25 FTE)

SCHEDULE 4**DIGITAL TRANSITION SERVICES**

Service	Description
Provision of services	<p>Managed IT Workstation Hardware and Licencing</p> <ul style="list-style-type: none"> • Laptop • 2x Monitors • Docking Station • Keyboard/Mouse • Laptop Bag <p>Managed IT Workstation Software</p> <ul style="list-style-type: none"> • Microsoft 365 E5 licence <p>Managed Enterprise Services Comprehensive support for IT infrastructure, cloud environments and applications, including:</p> <ul style="list-style-type: none"> • IT support • cyber security • Azure Active Directory Systems • network support • applications specialists • remote access <p>Managed Systems and Infrastructure Licensing All application, systems, cloud, and infrastructure licensing for water and wastewater services</p>
Provision of software and data	<p>Access to:</p> <ul style="list-style-type: none"> • AlphaOne • Adapt AMS • ArcGIS Fieldmaps • ArcGIS Online • ArcGIS Pro • ArcGIS Web App • Compass (Learning management systems) • Damstra (Vault) • Datacom Datapay • Datran - SCADA • Eroad • Spark Etxt • Guardian Angel • Integriti Mobile • IVMS 4200 (CCTV) • Lutra • MagiQ - General Ledger • MagiQ - Purchase Orders • MagiQ - Service Requests • Mapviewer

Schedule 4: Digital Services Transitional Services

	<ul style="list-style-type: none"> • Mimecast Cyber Awareness • Monsido • Power BI • Promapp • RAMM • WebPHP RT • Snap, Send, Solve • Survey123 • Talent Propeller • Microsoft M365 office products • ArcGIS Enterprise Suite • Dicentis (portable) • SDC Website • Apex • Adobe Photoshop • Autocad • Sketchup • MagiQ - General Property • MagiQ - Job Costing • MagiQ - Resource Consents • ForwardsWorkViewer
Staff requirements	Provision of staff to administer services as described above (2.6 FTE)

SCHEDULE 5**HUMAN RESOURCES TRANSITION SERVICES**

Service	Description
Provision of services	<ul style="list-style-type: none"> • Writing/reviewing position descriptions • Writing/reviewing HR Policies • Support with change management including structure design, consultation implementation, people experience • SP10 evaluations, pay parity and equity across groups and entire organisations, annual salary reviews • Payroll support • Recruitment • Contracts and changes to terms and conditions of employment • Public Service Association management • Talent management • Annual performance review set up and support • Staff engagement surveys • Employment relations • Training and Development • Onboarding and offboarding • Reporting • Health and safety and wellbeing
Provision of software and data	<ul style="list-style-type: none"> • Talent Propeller • Check Mate • LinkedIn • Seek • Advertising • Ministry of Justice • Police Vetting • Strategic Pay Remwise Licence • HR Data (internal SQL spreadsheet, Power BI) • Digital People Ads • Telus • TDDA • Ask Your Team • Compass • Datacom • Supereasy • Work and Income • IRD • Westpac
Staff requirements	<ul style="list-style-type: none"> • Human Resource Lead (1.0 FTE) • Talent Specialist (0.06 FTE) • Learning and Organisational Development Advisor (0.06 FTE) • Payroll Specialist (0.06 FTE) • Lead Resource Combined (0.06 FTE)

Schedule 7: Infrastructure and Property Transitional Services

SCHEDULE 6**INFRASTRUCTURE AND PROPERTY TRANSITION SERVICES**

Service	Description
Provision of services	<p>Executive Leadership and Support Providing executive leadership and support from time to time for the services set out below.</p> <p>Operational Delivery Providing technical support for the delivery of water and wastewater services operations including by:</p> <ul style="list-style-type: none"> • managing the C1241 Network Management Contract • sampling water and wastewater (including management of sampling and laboratory contractor) • managing trade wastewater discharges to the wastewater network including new applications and existing trade waste discharges • monitoring and reporting on legislative and regulatory compliance and communicating with regulatory bodies • assessing operational plans and risks • providing business support to users including connection applications and general customer support • managing and operating all relevant Control Systems • undertaking planned operational projects including renewals. • providing BeforeUdig services to the community • supplying fleet and facilities for operations • engineering review of commercial BCs and PIMs and applying conditions. • technical support to the LIM team <p>Capital Delivery Delivering the water and wastewater capital works agreed in the Annual Plan in accordance with SDC policies including procurement, contract award, project management and on site monitoring.</p> <p>Asset Management</p> <ul style="list-style-type: none"> • Undertaking of all Asset Management for water and wastewater services including: <ul style="list-style-type: none"> ○ renewal planning ○ preparing asset management plans ○ managing hydraulic model build & use ○ growth planning ○ preparing and reviewing bylaws, policy and strategy ○ strategic planning • Providing development engineering services for water and wastewater services, including: <ul style="list-style-type: none"> ○ Initial acceptance of 5 Water Servicing certificate applications and final review prior to issuing

Schedule 7: Infrastructure and Property Transitional Services

	<ul style="list-style-type: none"> ○ Engineering review of Resource Consents and applying engineering conditions to resource consents ○ Engineering review of BC's, LIM's and PIM's and applying conditions ○ Engineering Acceptance of detailed design ○ Onsite construction monitoring ○ Acceptance of vested assets ○ Monitoring of Defects Liability period ○ Final hand over of assets ○ Handling any defects or design faults outside of the defects liability period where there are grounds <ul style="list-style-type: none"> ● Managing the AMS asset data systems and assisting with asset data updates and the collection and analysis of data and reporting. <p>Emergency Management Providing co-ordination support during emergency events.</p>
Provision of software and data	<p>Data:</p> <ul style="list-style-type: none"> ● Existing water services and data and records ● Planning and building data ● Rates database <p>Software:</p> <ul style="list-style-type: none"> ● The PORT ● Adapt ● IDS ● GIS ● Microsoft Suite ● DATRAN ● SQL Databases ● MagiQ ● BWN Portal ● Apex ● Infrastructure ID (Lutra) ● ProMapp ● DataCom ● Trakk
Staff requirements	<p>Executive Leadership and Support</p> <ul style="list-style-type: none"> ● Head of Operational Delivery (0.25 FTE) ● Head of Capital Delivery (0.25 FTE) ● Head of Asset Management (0.25 FTE) ● Executive Director Infrastructure & Property (0.25 FTE) ● Personal Assistant to Executive Director Infrastructure & Property (0.25 FTE) ● Roading Engineer (BeforeUdig) (0.25 FTE) <p>Operational Delivery</p> <ul style="list-style-type: none"> ● Control Systems Engineer (0.80 FTE) ● Principal Control Systems Engineer (0.80 FTE) ● Principal Wastewater Engineer (1.0 FTE) ● Principal Water Engineer (1.0 FTE)

Schedule 7: Infrastructure and Property Transitional Services

	<ul style="list-style-type: none"> • Trade Waste Advisor (1.0 FTE) • Wastewater Compliance Officer (1.0 FTE) • Wastewater Engineer (1.0 FTE) • Water Safety & Quality Officer (1.0 FTE) • Water Services Business Support Lead (0.55 FTE) • Water Services Business Support Officer (0.55 FTE) • Water Services Contract Engineer (0.70 FTE) • Water Services Delivery Manager (0.70 FTE) • Water Services Quality & Compliance Lead (1.0 FTE) <p>Capital Delivery</p> <ul style="list-style-type: none"> • Capital Works Technical Support (0.32 FTE) • Horizontal Infrastructure Projects Lead (0.50 FTE) • Project Manager – Horizontal (1.0 FTE) • Project Manager – Horizontal (1.0 FTE) • Project Manager – Horizontal (1.0 FTE) • Project Manager – Horizontal (1.0 FTE) • Senior Project Manager (0.60 FTE) <p>Asset Management</p> <ul style="list-style-type: none"> • AMS Data Support Analyst (1.0 FTE) • Asset Management Systems Lead (0.25 FTE) • Development Engineer (0.40 FTE) • Development Engineer (0.40 FTE) • Development Engineer (0.40 FTE) • Development Engineer (0.40 FTE) • Development Engineering Manager (0.45 FTE) • Development Engineering Technical Advisor (0.50 FTE) • Principal Asset Management Engineer (0.50 FTE) • Principal Asset Management Engineer - Water and Wastewater (1.0 FTE) • Senior Development Engineer (0.45 FTE) • Senior Development Engineer (0.45 FTE) • Senior Development Engineer (0.45 FTE) • Water Services Asset Manager (0.60 FTE) • Water Services Asset Planning Analyst (0.70 FTE)
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SCHEDULE 7

LEGAL

Service	Description
Provision of services	In-house legal services
Staff requirements	In-house legal services from time to time (0.25 FTE)

SCHEDULE 8

SERVICE CHARGES

[Drafting note: To be confirmed]

To confirm for each Service:

- Provided at SDC internal cost or cost plus (administration) margin.
- Third party costs to be passed through at cost or cost plus administration margin/fee.
- Any shared resources (eg software) to be billed for pro-rata based on usage.
- Charge payable monthly in arrears, with a wash-up to actual usage or similar to the extent required for each service.

WORKING CAPITAL FACILITY AGREEMENT

SELWYN WATER LIMITED

SELWYN DISTRICT COUNCIL

DRAFT

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SCHEDULES

[SCHEDULE 1 DRAWDOWN NOTICE](#)

AGREEMENT DATED**2025****PARTIES**

1. **SELWYN WATER LIMITED (Borrower)**
2. **SELWYN DISTRICT COUNCIL (Lender)**

BACKGROUND

- A. The Lender has decided to establish the Borrower as a Council Controlled Organisation to take over its current obligations to deliver drinking water and wastewater services in the Selwyn region (**Water Services**), as contemplated by the Local Government (Water Services) Bill (**Bill #3**).
- B. The Lender intends that the Borrower will to carry out the Water Services for an interim period until Bill #3 is enacted (anticipated to occur in December 2025) and the Borrower takes a transfer of the Water Services obligations (and associated assets, liabilities and debts) from the Lender and obtain its own funding from The New Zealand Local Government Funding Agency Limited (**LGFA**) (**Interim Period**).
- C. In order for the Borrower to fund its establishment costs and working capital for the duration of the Interim Period the Borrower has requested that the Lender provide a working capital facility to the Borrower on the terms and subject to the conditions of this Agreement.
- D. The Lender has agreed to provide the Facility to the Borrower.

THE PARTIES AGREE THAT:

1. **INTERPRETATION**

In this Agreement, unless the context indicates otherwise:

- 1.1 **Definitions:**

Advance means each advance made or to be made under the Facility;

Agreement means this agreement and the schedules to it;

Availability Period means the period commencing on the effective date of this Agreement and ending one day before the Termination Date (or on such earlier date (if any) on which the whole of the Facility is cancelled);

Applicable Law includes:

- (a) Local Government Act 2002;
- (b) Local Government (Water Services Preliminary Arrangements) Act 2024; and

- (c) once in force, the Act that will come into force from Bill #3 once such bill completes the legislative process and receives royal assent;

Available Facility means, on any date, the Facility Amount less the Outstanding Amount;

Council Controlled Organisation has the meaning given to it in section 6 of the Local Government Act 2002;

Dollars and \$ means the lawful currency of New Zealand;

Drawdown Date means a date on which an Advance is made or to be made;

Drawdown Notice means a notice requesting an Advance substantially in the form set out in Schedule 1;

Event of Default means any of the events set out in clause 13;

Facility means the facility, up to the Facility Amount, to be made available by the Lender to the Borrower pursuant to the terms of this Agreement;

Facility Amount means \$9,000,000, as reduced or cancelled in accordance with this Agreement;

Financial Indebtedness includes any indebtedness for or in respect of money borrowed or raised (whether or not for cash consideration) or any financial accommodation of any kind including under or in respect of any Guarantee, bill, acceptance, deposits, endorsement, discounting, factoring, finance lease, hire purchase, redeemable preference shares, sale and repurchase, sale and leaseback, any form of "off-balance sheet" financing, deferred purchase price of any assets or services (other than for goods and services obtained on normal commercial terms in the ordinary course of business and due for payment in full within 90 days) and any derivative facility;

Guarantee means a guarantee, indemnity, letter of credit, performance bond, acceptance or endorsement of a negotiable instrument, or legally enforceable undertaking or obligation (whatever called and of whatever nature):

- (a) to pay, purchase, or provide funds (whether by the advance of money, the purchase of, or subscription for, shares or other securities or the purchase of assets or services) or to enable payment or discharge of;
- (b) to indemnify against the consequences of default in the payment of; or
- (c) otherwise to be responsible for,

any obligation (whether or not it involves the payment of money) or indebtedness, or otherwise to be responsible for the solvency or financial condition, of any other person;

Interest Rate means, in respect of an Advance, the aggregate of the Lender's Cost of Funds for that Advance;

Lender's Cost of Funds means, for an Advance, the cost (expressed as a percentage rate per annum) determined by the Lender to be its cost of funding the Advance for a tenor approximately equal to the Term of that Advance (taking into account all interest, commitment or like fees and hedging costs);

Outstanding Amount means, on any date, the aggregate principal amount of all outstanding Advances;

Outstanding Money means, at any time, the Outstanding Amount and all other money payable by the Borrower under the Transaction Documents and outstanding at such time including accrued interest, fees, indemnities and costs;

Permitted Acquisition means an acquisition by the Borrower:

- (a) of assets and services in the ordinary course of business;
- (b) of assets (other than shares or businesses) comparable or superior as to type, value or quality to other assets exchanged or using the cash proceeds of a Permitted Disposal;

Permitted Disposal means a disposal by the Borrower:

- (a) of assets in the ordinary course of business and on arm's length terms;
- (b) of assets (other than shares or businesses) in exchange for other assets comparable or superior as to type, value or quality or for cash where the proceeds of disposal are intended to be used to purchase other assets comparable or superior as to type, value or quality;
- (c) of obsolete or redundant assets (other than shares or businesses);
- (d) arising as a result of a Permitted Security Interest;
- (e) any expenditure of cash in payment of property or services acquired on arms-length terms or any disposal of cash in connection with any capital expenditure or any Permitted Acquisition, distribution or any other transaction that is not restricted under this Agreement; or
- (f) of assets compulsorily acquired by any governmental authority;

Permitted Financial Indebtedness means any financial indebtedness owed by the Borrower:

- (a) under this Agreement;
- (b) to the LGFA (or any other 3rd party financial institution incurred for the purposes of refinancing this Facility (and associated transaction costs);
- (c) in respect of any interest rate or other hedging arrangements in accordance the treasury policy (however described of the Borrower from time to time);

- (d) in respect of any leasing transactions entered into in the ordinary course of business;
- (e) that is subordinated (on terms reasonably satisfactory to the Lender) to amounts outstanding under this Agreement; or
- (f) incurred under trade accounts and accrued expenses arising in the ordinary course of business on arm's length terms;

Permitted Security Interest means:

- (a) any lien arising by operation of law and in the ordinary course of trading, if the debt it secures is paid when due or contested in good faith and appropriately provisioned;
- (b) any security interest in relation to personal property that is created or provided for by:
 - (i) a transfer of an account receivable or chattel paper;
 - (ii) a lease for a term of more than one year; or
 - (iii) a commercial consignment,
 that does not secure payment or performance of an obligation;
- (c) any right of set-off, netting or combination of account that arises in the ordinary course of its banking arrangements or business; or
- (d) any security over goods acquired by the Borrower in the ordinary course of trading that is discharged within 90 days of supply;

Potential Event of Default means any event which, with the giving of notice or lapse of time or both or the fulfilment of any other conditions, would become an Event of Default;

Term means, in relation to each Advance, the period from the relevant Drawdown Date to the Termination Date;

Termination Date means 31 March 2026, unless the Termination Date is extended in accordance with clause [2.32.2](#); and

Transaction Documents means:

- (a) this Agreement; and
- (b) any other agreement that the parties agree will be a Transaction Document,

and when referred to in relation to any particular person, means every Transaction Document to which that person is party or by which it is bound;

1.2 Reference to Terms:

an **agreement** includes an agreement, contract, deed, licence, franchise, undertaking or other document (whether or not in writing);

assets of any person includes the whole or any part of its present and future undertaking, property, assets, rights and revenues including capital;

authorisation includes:

- (a) any consent, authorisation, registration, filing, agreement, notarisation, certificate, licence, permit, approval, authority or exemption from, by or with a governmental agency or self-regulatory organisation; or
- (b) in relation to anything which will be proscribed or restricted in whole or part by law or directive if a governmental agency or self-regulatory organisation intervenes or acts in any way within a specified period after lodgment, filing, registration or notification, the expiry of that period without such intervention or action;

business day means a day (other than a Saturday or Sunday) on which registered banks are open for normal banking business in Auckland and Christchurch;

one person being **controlled** by another means that the other person (whether directly or indirectly and whether by the ownership (legally or beneficially) of capital, the possession of voting power, contract or otherwise):

- (a) has the power to appoint and/or remove the majority of the members of the governing body of that person or a member or members of the governing body of that person who is or are in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of the governing body of that person;
- (b) otherwise controls, or has power to control, the affairs and policies of that person; or
- (c) is in a position to derive the whole or a substantial part of the benefit of the existence or activities of that person,

and **control** will be construed accordingly;

default includes breach, failure to comply or failure to do, however caused, whether voluntary or involuntary and whether within or beyond the control of any person;

directive includes any present or future directive, regulation, request, requirement, credit restraint programme or notification by any means (in each case, whether or not having the force of law but, if not having the force of law, compliance with which is in accordance with the general practice of persons to whom the directive is addressed);

disposal includes any sale, assignment, exchange, transfer, concession, loan, gift, lease, surrender of lease, licence, reservation, waiver, compromise, release, dealing with,

parting with possession or parting with ownership of, or the granting of any option, right or interest, or any agreement for any of the same but excludes the creation of a security interest, and **dispose** means to make a disposal;

dissolution of any person includes the bankruptcy, insolvency, removal from the register, winding-up or liquidation of that person and any equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, resident or carries on business or has assets;

governmental agency includes any state, governmental, semi-governmental or judicial agency or authority or any body or person charged with the administration of any law or directive;

indebtedness includes any obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal or surety or otherwise) for the payment or repayment of money;

law includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, by-law, statute, treaty or other legislative measure, in each case of any jurisdiction and **lawful** and **unlawful** will be construed accordingly;

something having a **material adverse effect** on a person is a reference to it having a material adverse effect:

- (a) on that person's financial condition, business, operations or assets; or
- (b) on that person's ability to perform and comply with its obligations under any Transaction Document,

and **material adverse change** will be construed accordingly;

person includes an individual, firm, body corporate or association of persons (whether corporate or not), trust, joint venture and any governmental agency, in each case whether or not having separate legal personality;

receiver means a receiver, manager or receiver and manager;

rights includes rights, authorities, discretions, powers, authorisations, causes of action and remedies;

security interest includes a security interest (as defined in section 17 of the Personal Property Securities Act 1999), mortgage, charge (fixed or floating), encumbrance, hypothecation, lien, pledge, trust, finance lease, deferred purchase, sale and lease back, sale and repurchase, title retention or any other arrangement which in effect secures payment or performance of an obligation;

subsidiary of a person includes:

- (a) a subsidiary of such person within the meaning of sections 5 to 8 of the Companies Act 1993;

- (b) an in-substance subsidiary of such person in accordance with the terms of NZ GAAP; and
- (c) a person controlled by that person and/or any such subsidiary or in-substance subsidiary; and

tax includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding whatever called and of whatever nature, regardless of where or by whom assessed, collected, levied, imposed or withheld together with any interest, penalties, fines, charges, costs and expenses and other amounts imposed or made on, or in respect of, any of the foregoing, and **taxation** will be construed accordingly;

1.3 General:

- (a) words denoting the singular include the plural, and vice versa;
- (b) words denoting any gender include all genders;
- (c) references to any legislation or to any provision of any legislation will be deemed to be references to that legislation or provision as from time to time amended, re-enacted, consolidated or substituted and, unless the context otherwise requires, will also include any laws issued under any such legislation or provision;
- (d) references to any document (however described) will include references to that document as modified, varied, novated, supplemented or replaced from time to time;
- (e) references to any party to a Transaction Document or any other document will include its successors and permitted transferees or assignees;
- (f) references to clauses and schedules are to clauses and schedules of this Agreement;
- (g) writing and similar expressions include all means of reproducing words in a tangible and permanently visible form;
- (h) anything which may be done at any time may also be done from time to time;
- (i) headings and table of contents are for convenience only and will not affect interpretation;
- (j) any obligation not to do anything includes an obligation not to allow, cause or procure that thing to be done;
- (k) a reference to anything (including any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them; and

- (l) mentioning anything after include, includes or including does not limit what else might be included.

1.4 Companies Act: Words defined in the Companies Act 1993 will, subject to the foregoing, have the same meaning in this Agreement.

2. FACILITY

2.1 Facility: The Lender agrees to make the Facility available to the Borrower during the Availability Period on the terms and subject to the conditions of this Agreement.

2.2 Purpose: The Borrower will use the Facility to finance the establishment costs of the Borrower and provide interim working capital.

2.3 Term Extension: The Facility will be made available to the Borrower until the Termination Date, provided that if, not more than 20 business days prior to the existing Termination Date, the Borrower has not yet been able to obtain satisfactory assurance that the Facility will be refinanced by LGFA (or another financial institution acceptable to the Borrower), the Borrower may send a notice (in writing) to the Lender:

- (a) advising the Lender accordingly; and
- (b) requesting an extension of the Termination Date to a date specified in the notice (being a date that is not more than 1 month after the existing Termination Date).

2.4 Confirmation: The Lender will, subject to clause [2.5](#), promptly confirm (in writing) the requested extension upon receipt of a notice that complies with clause [2.3](#).

2.5 Backstop Date: The Termination Date may be extended from time to time in accordance with this clause [2](#), provided that the Termination Date may not be extended beyond 30 June 2026.

3. CONDITIONS PRECEDENT

3.1 To First Advance

- (a) **Availability:** The Facility will not be available to the Borrower unless and until the Lender has confirmed that it has received the following, each in a form and substance satisfactory to the Lender in all respects:
 - (i) a duly executed copy of this Agreement and any other Transaction Document;
 - (ii) a certificate signed by a director of the Borrower including the specimen signatures of the persons authorised to sign for the Borrower;
 - (iii) a legal opinion from Simpson Grierson, the solicitors of the Lender;

- (iv) payment of all outstanding fees, costs and expenses due to the Lender; and
 - (v) such other documents or information the Lender may, acting reasonably, request.
- (b) **Right to Waive:** The condition precedents in clause 3.1(a) are inserted for the sole benefit of the Lender and only the Lender may waive them.

3.2 To Drawdown: The Lender will make available an Advance to the Borrower under the Facility if:

- (a) **Conditions Precedent:** in respect of the first Advance, the provisions of clause 3.1(a) have first been complied with;
- (b) **Availability Period:** the Drawdown Date is a business day during the Availability Period;
- (c) **Number of Advances:** the Advance would not cause the number of Advances made in a calendar month to exceed one (1);
- (d) **Available Facility:** the making of the Advance when added to the Outstanding Amount on the same day will not exceed the Available Facility on the Drawdown Date;
- (e) **Purpose:** the drawdown notice provides details as to the purpose for which the Advance is being drawn down;
- (f) **Notification of Advance:** the provisions of clause 4 have first been complied with;
- (g) **Matched Funding:** the Lender has confirmed to the Borrower, on or prior to a Drawdown Date, that it has been able to secure an advance in an amount equal to the Advance, and for a term equivalent to the Term of the Advance (or otherwise acceptable to the Lender) (**Matched Funding**);
- (h) **No Default:** no Event of Default or Potential Event of Default has occurred, or will occur as a result of the Lender making available the Advance;
- (i) **No Illegality:** none of the events mention in clause 14.2 have occurred, or will occur as a result of the Lender making available the Advance; and
- (j) **Representations:** the representations and warranties made in the Transaction Documents are and would be true and accurate in all material respects and not misleading in any material respect as at the date of the Drawdown Notice and the Drawdown Date with reference to the facts and circumstances existing on those dates.

3.3 Matched Funding: The Lender shall use best endeavours to obtain Matched Funding (as defined in clause 3.2(g)) in respect of each requested Advance.

4. ADVANCES

Provided that the conditions of clause 3 have first been complied with, the Lender will make available to the Borrower an Advance under the Facility if the Lender has received by no later than 10.30 am on the date falling five (5) business days before the proposed Drawdown Date an irrevocable Drawdown Notice.

5. INTEREST

5.1 Interest: The Borrower will pay to the Lender all interest accrued on each Advance on the Termination Date.

5.2 Interest Rate: The rate of interest payable under clause 5.1 for each Advance will be the Interest Rate. The Lender will notify the Borrower of each determination of the rate and amount of interest payable under this clause.

5.3 Calculation: Interest will accrue daily and will be calculated on the basis of a year of 365 days and the actual number of days elapsed. Interest in respect of each Advance will accrue from (and including) its first day of the relevant Term to (but excluding) its last.

6. REPAYMENT

Unless earlier repaid in accordance with the terms of this Agreement the Borrower will repay all Outstanding Money to the Lender on the Termination Date.

7. CANCELLATION

The Borrower may cancel all or any part of the Available Facility without penalty on giving at least 20 business days prior irrevocable written notice to the Lender specifying the date on which all or that part of the Available Facility will be cancelled. During that period the Borrower may not give a Drawdown Notice purporting to draw the amount the subject of that notice of cancellation. Any amount so cancelled will reduce the Facility Amount accordingly and will no longer be available to the Borrower.

8. PAYMENTS

8.1 Payment: The Borrower will make each payment to the Lender under a Transaction Document in funds that are freely transferable and immediately available for disbursement on the day of payment. Each payment will be made to such account and/or in such manner as the Lender may from time to time specify not later than 5.00 pm on the due date for payment. If a payment is made after 5.00 pm on the due date, the Borrower will pay to the Lender, on demand, interest on the payment concerned until the next business day as if the payment were made on the later day.

8.2 Application: Any Advance to be made to the Borrower may, if the Lender so elects, be applied by the Lender in or towards repayment of an Advance to be repaid on the Drawdown Date for that Advance so that only the net amount is payable on that day.

Nothing in this clause is to affect the obligation of the Borrower to make timely repayment of an Advance in full if, for any reason other than default of the Lender in advancing the new Advance, such application is not made. All money received by the Lender under or by reason of this Agreement will be applied in the manner and order determined by the Lender.

8.3 Dollars: The Borrower will make all payments under a Transaction Document in Dollars unless otherwise stated in that Transaction Document.

8.4 No Deductions: All payments by the Borrower to the Lender under a Transaction Document will be made free of any restriction or condition and, except to the extent required by law, without deduction or withholding of any nature whether by way of set-off, counterclaim or otherwise.

8.5 Business Days: If any payment by the Borrower falls due on a day which is not a business day it will be made on the next succeeding business day unless that business day occurs in the following calendar month, in which case that payment will be made on the previous business day.

8.6 Reinstatement: If any payment by the Borrower to the Lender under any Transaction Document is avoided by law:

- (a) the Borrower's obligation to have made such payment will be deemed not to have been affected or discharged; and
- (b) the Lender and the Borrower will, in any such case, be deemed to be restored to the position in which each would have been and will be entitled to exercise the rights they respectively would have had, if that payment had not been made.

9. SET-OFF

The Borrower authorises the Lender to apply (without prior notice or demand) any credit balance of the Borrower on any account, in any currency and at any offices of the Lender in or towards satisfaction of any indebtedness then due to the Lender on any account and unpaid.

10. TAXES

10.1 Gross-up: If:

- (a) the Borrower is required by law to make any deduction or withholding from any amount paid or payable by it to the Lender under a Transaction Document; or
- (b) the Lender is required by law to make any deduction, withholding, or payment on, or calculated by reference to, any amount received or receivable by it under a Transaction Document for or on account of tax (except on account of tax on overall net income of the Lender) or otherwise,

then the amount payable by the Borrower in respect of which such deduction, withholding or payment is required to be made will be increased to the extent

necessary to ensure that, after the making of such deduction, withholding or payment, the Lender receives and retains (free from any liability in respect of any such deduction, withholding or payment) a net amount equal to the amount which it would have received and so retained had no such deduction, withholding or payment been required to be made.

10.2 Payment: The Borrower will:

- (a) notify the Lender immediately it is required to make any deduction or withholding;
- (b) ensure that such deduction or withholding does not exceed the legal minimum; and
- (c) pay the amount required to be deducted or withheld to the applicable taxation or other authority before the date on which penalties attach.

10.3 Tax Receipts: The Borrower will deliver to the Lender promptly, on receipt, a copy of the receipt issued by the applicable taxation or other authority or other evidence satisfactory to the Lender evidencing that such deduction or withholding has been made.

11. REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties: The Borrower represents and warrants that:

- (a) **Status:** it is a company duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- (b) **Power:** it has power and authority:
 - (i) to own its assets and to carry on its business as it is now being conducted or contemplated; and
 - (ii) to enter into, exercise its rights and perform and comply with its obligations under the Transaction Documents;
- (c) **Corporate Authorisations:** it has taken all necessary corporate action to authorise the entry into and performance of, and compliance with, its obligations under the Transaction Documents;
- (d) **Authorisations:** each authorisation that is required:
 - (i) to enable it lawfully to enter into, execute and exercise its rights and perform and comply with its obligations under, the Transaction Documents;
 - (ii) to ensure that those obligations are legal, valid, binding and enforceable in accordance with their respective terms; and

- (iii) in relation to its business as now conducted (including pursuant to any directive),

has been obtained or effected, is in full force and effect and has been complied with;

- (e) **Documents Binding:** its obligations under the Transaction Documents are its legal, valid and binding obligations enforceable in accordance with their respective terms subject to applicable insolvency, reorganisation and similar laws affecting creditors' rights generally;
- (f) **No Contravention:** the entry into, execution and delivery of each Transaction Document and the exercise of its rights and performance of, and compliance with, its obligations under such Transaction Documents, does not and will not:
 - (i) violate any other agreement which is binding on it or any of its assets;
 - (ii) violate any law or directive to which it or any of its assets is subject;
 - (iii) violate any document constituting it;
 - (iv) cause any limitation on any of its powers, or on the right or ability of its directors to exercise those powers, to be exceeded;
 - (v) result in the creation, or imposition, of any security interest over or affecting its assets; or
 - (vi) result in the acceleration or cancellation of any obligation with respect to any Financial Indebtedness, or anything which constitutes (or which, with the giving of notice and/or lapse of time would constitute) an event of default or termination, cancellation, special prepayment or similar event (whatever called) under any agreement relating to Financial Indebtedness;
- (g) **Accounts:** its accounts have been prepared in accordance with any legislation applicable to it and are audited in accordance with any statutory requirements;
- (h) **Solvency:** it is solvent and able to pay its indebtedness as it falls due;
- (i) **No Dissolution:** it has not taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against it for its dissolution or reorganisation or for the appointment of a receiver, statutory manager, inspector, trustee, administrator or similar officer of it or its assets, nor has it been declared at risk pursuant to the Corporations (Investigation and Management) Act 1989;

- (j) **No Default:**
- (i) it is not in default under any law, directive, authorisation or agreement or which is binding on it or any of its assets to an extent or in a manner which is likely to have a material adverse effect on its ability to carry on its business; and
 - (ii) nothing which constitutes (or which, with the giving of notice and/or lapse of time would constitute) an event of default or termination, cancellation, special prepayment or similar event (whatever called) under any authorisation or agreement referred to in (i) above has occurred;
- (k) **Proceedings:** no litigation, arbitration, dispute or administrative or other proceeding or claim is current, pending or (to the best of its knowledge and belief) threatened against it which is likely to have a material adverse effect on it;
- (l) **Immunity from suit:** it does not have, nor do any of its assets have, immunity from suit;
- (m) **Information:**
- (i) all information provided by or on behalf of it to the Lender at any time in connection with the Transaction Documents was, at the time it was provided, true, complete and accurate in all material respects and not misleading; and
 - (ii) there are no material facts or circumstances that have not been disclosed to the Lender and which make that information untrue, inaccurate or misleading or which may, if disclosed, materially adversely affect the decision of a person considering whether or not to enter into and perform its obligations under the Transaction Documents; and
- (n) **No Default:** no Event of Default or Potential Event of Default has occurred and is continuing.
- 11.2 Continuing:** The representations and warranties in clause 11.1 will be deemed to be repeated on the delivery of each Drawdown Notice and on each Drawdown Date by reference to the facts and circumstances existing on those dates.
- 11.3 Reliance:** The Borrower acknowledges that the Lender has been induced to enter into this Agreement and will be induced to make the Facility available in reliance on the representations and warranties in clause 11.1 and as repeated from time to time pursuant to clause 11.2.

12. UNDERTAKINGS

12.1 General: The Borrower undertakes to the Lender that it will:

- (a) **Events of Default:** notify the Lender of the occurrence of any Event of Default or Potential Event of Default and any event or series of events, whether related or not, or any circumstances arise or exist which is likely to have a material adverse effect on it immediately on becoming aware of it, giving full details of it and of any action taken (or to be taken) in respect of it;
- (b) **Authorisations:** obtain, maintain in full force and effect and comply with all authorisations which are required:
 - (i) to enable it lawfully to enter into, exercise its rights and perform and comply with its obligations under the Transaction Documents; and
 - (ii) to ensure that those obligations are legal, valid, binding and enforceable in accordance with their respective terms;
- (c) **Proceedings:** promptly deliver to the Lender written details of any litigation, arbitration, dispute or administrative or other proceedings or claims in relation to the Borrower;
- (d) **Notify:** promptly notify the Lender of:
 - (i) each change in its authorised signatories, giving specimen signatures and evidence satisfactory to the Lender of the authority of each new authorised signatory;
 - (ii) any change to its constitution or any Applicable Law that may adversely affect the rights of the Lender; and
 - (iii) (and provide a copy of such notice) any material notice or material order from a governmental agency relating to its business, assets or the Transaction Documents or the transactions thereunder;
- (e) **Validity:** take all steps required under any Applicable Law to enable it to perform and comply fully with its obligations under the Transaction Documents or required on its part for the validity or enforceability of the Transaction Documents;
- (f) **Information on request:** on request, promptly provide any information that the Lender may reasonably require;
- (g) **Laws:** duly and promptly comply in all material respects with all laws, directives and authorisations binding on or affecting it;
- (h) **Pari passu ranking:** ensure that at all times any unsecured and unsubordinated claims of the Lender against it under a Transaction Document rank at least pari passu with the claims of all its other unsecured

and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies;

- (i) **Pay taxes:** file all tax returns as required by law, and pay and discharge all taxes, assessments and governmental charges payable by it or on its assets prior to the date upon which penalties become payable, except only to the extent that those taxes, assessments or governmental charges are being contested in good faith by appropriate proceedings and adequate reserves and/or credit lines are set aside for their payment;
- (j) **Carry on Business:** carry on and conduct its business in an efficient, prudent and businesslike manner and according to best current commercial practice appropriate to that business;
- (k) **Transaction Documents:** duly and promptly perform and comply with its obligations under the Transaction Documents; and
- (l) **Inspection:** permit the Lender and persons appointed by it on reasonable notice to inspect its premises, books, documents and records.

12.2 Negative Undertakings: The Borrower undertakes to the Lender that it will not, without the prior consent of the Lender:

- (a) **Financial Accommodation:** lend or otherwise provide any financial accommodation or give any Guarantee or indemnity or incur or permit to remain outstanding obligations to support any third party;
- (b) **Negative Pledge:** create, agree to create, allow to come into existence or permit to subsist any security interest over or affecting its assets other than any security interest which is a Permitted Security Interest;
- (c) **Financial indebtedness:** incur or allow to remain outstanding any Financial Indebtedness, other than Permitted Financial Indebtedness;
- (d) **Merger:** enter into any amalgamation, demerger, merger or corporate reconstruction;
- (e) **Acquisitions:** acquire any assets, company or any equity securities, business or undertaking (or, in each case, any interest in any of them) or make any other similar investment other than a Permitted Acquisition;
- (f) **Arm's length dealings:** enter into any material transaction of any nature with, or for the benefit of, any person except on arm's length commercial terms or on terms that are more favourable to it than arm's length commercial terms.
- (g) **Change of Business:** procure that a material change is made to the general nature of its business;

- (h) **Compromise:** enter into or make any proposal for a compromise or arrangement with all or any of its creditors except on terms previously approved by the Lender in writing;
- (i) **Financial Assistance:**
 - (i) acquire or redeem any of its own shares;
 - (ii) give financial assistance for the purpose of, or in connection with, the purchase of shares issued or to be issued by it or by its holding company, whether directly or indirectly; or
 - (iii) cancel, limit or reduce the liability of a member to it in relation to a share held by the member;
- (j) **Disposal of Assets:** enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset other than a Permitted Disposal; or
- (k) **Transaction Documents:** at any time vary (in any material respect), terminate or cancel a Transaction Document.

13. EVENTS OF DEFAULT

13.1 Event of Default: Each of the following is an Event of Default (whether or not it is in the control of the Borrower):

- (a) **Non-payment:** the Borrower does not pay any amount payable under this Agreement or any other Transaction Document on its due date and such non-payment continues unremedied for five business days after its due date;
- (b) **Other Obligations:** the Borrower commits any breach of, or omits to observe, any of its undertakings or obligations under any Transaction Document (other than those specifically referred to in clause 13.1(a)) and, in respect of any such breach or omission that is capable of being remedied, such breach or omission is not remedied within 30 Business Days after receipt by the Borrower of a notice in writing from the Lender specifying the breach or omission and requiring it to be remedied;
- (c) **Misrepresentations:** any representation or warranty made by the Borrower in a Transaction Document is incorrect in any material respect or misleading in any material respect when made or deemed to be made and, if the circumstances causing the misrepresentation are capable of remedy, the Borrower within 30 business Days of the earlier of (i) receipt by the Borrower of notice from the Lender of the representation or warranty being incorrect in any material respect or misleading in any material respect and (ii) the time the Borrower becomes aware of the representation or warranty being incorrect in any material respect or misleading in any material respect, fails to remedy the circumstance that caused the representation or warranty to be incorrect in that material respect or misleading in that material respect;

(d) Cross-default:

- (i) any indebtedness of the Borrower is not paid when due nor within any originally applicable grace period;
- (ii) any indebtedness of the Borrower is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an enforcement event, event of default, acceleration event or similar event (howsoever described); or
- (iii) any creditor of the Borrower becomes entitled to declare any indebtedness of the Borrower due and payable prior to its specified maturity as a result of an enforcement event, event of default, acceleration event or similar event (howsoever described)

(e) Dissolution/Compromise:

- (i) an application is made, a resolution is passed or proposed in a notice of meeting, any corporate action is taken or any proceedings are commenced for the dissolution or reorganisation of the Borrower except for the purpose of and followed by a solvent reconstruction, amalgamation or reorganisation of the Borrower on terms previously approved in writing by the Lender before that step is taken; or
- (ii) any step is taken for the purpose of the Borrower entering into any assignment, arrangement or compromise with, or for the benefit of, its creditors generally or any class of them;

- (f) **Receiver:** a receiver, inspector, trustee, liquidator, provisional liquidator, administrator or analogous person is appointed or any application is made for such appointment in respect of the Borrower or the assets of the Borrower or the holder of any security interest or other encumbrancer takes possession of any assets of the Borrower;

(g) Insolvency: the Borrower:

- (i) is unable to pay its indebtedness as it falls due or otherwise is insolvent or is presumed to be so under any law; or
- (ii) stops or suspends or threatens to stop or suspend payment of, or a moratorium is declared on, any class of its indebtedness;

- (h) **Litigation:** the Borrower is or becomes party to any litigation, tax claim or administrative or arbitration proceedings before or of any court, tribunal, arbitrator, or governmental agency, or to any dispute with any government or governmental agency, that has or would if adversely determined have a material adverse effect;

- (i) **Cease Business:** the Borrower ceases or threatens to cease to carry on all or substantially all of its business or operations, except for the purpose of, and followed by, an amalgamation or solvent reconstruction on terms previously approved in writing by the Lender;
- (j) **Statutory Management/Administration:**
 - (i) any step is taken to appoint or with a view to appointing an administrator in respect of the Borrower, or a statutory manager or any recommendation is made to appoint a statutory manager by the Financial Markets Authority under the Corporations (Investigation and Management) Act 1989 in respect of the Borrower or any associated person (as defined in that Act) or any of those persons is declared to be under statutory management; or
 - (ii) any step is taken to declare or with a view to declaring any of the persons referred to in sub-clause (i) above to be a corporation at risk under the abovementioned Act or any of those persons is declared to be a corporation at risk;
- (k) **Material Adverse Effect:** any event or circumstance, or series of events or circumstances (whether related or not) occurs that has or is reasonably likely to have a material adverse effect on the Borrower;
- (l) **Invalidity:** any material provision of a Transaction Document:
 - (i) ceases to have effect in whole or in part, other than by performance or as permitted by its terms; or
 - (ii) becomes wholly or partly void, voidable, illegal, invalid or unenforceable (other than by reason only of a party waiving any of its rights), or the performance of any such provision becomes illegal, or the Borrower, or any person on its behalf, makes any allegation or claim to that effect;
- (m) **Authorisations:** an authorisation which is material to the performance by the Borrower of a Transaction Document or to the validity and enforceability of it or to its business is repealed, revoked or terminated or expires or is modified or amended or conditions are attached to it in a manner unacceptable to the Lender, and is not replaced by another authorisation acceptable to the Lender; or
- (n) **Event of Default under Transaction Document:** an event of default (as that term is defined in any Transaction Document) occurs under any Transaction Document.

13.2 Consequences: On or at any time after the occurrence of an Event of Default (whether or not it is continuing) the Lender may do all or any of the following:

- (a) **Accelerate Outstanding Money:** by notice to the Borrower declare the Outstanding Money immediately due and payable, and the Borrower will immediately pay that Outstanding Money; and/or
- (b) **Exercise Rights:** exercise all or any rights under any Transaction Document or at law; and/or
- (c) **Cancel Facility:** cancel the Facility in which case the Lender's obligation to make available the Facility will cease immediately.

14. CHANGE IN CIRCUMSTANCES

14.1 Increased Costs: If, after the date of this Agreement, as a result of:

- (a) the introduction of, or any change in, any law or directive or in its interpretation by any agency or authority charged with its administration or by a court; or
- (b) compliance by the Lender with any directive,

the Lender determines that:

- (c) the cost to the Lender of making, funding or continuing the Facility or an Advance or of otherwise giving effect to any Transaction Document or any of the arrangements contemplated in it is increased;
- (d) any amount received or receivable by the Lender or the effective return to the Lender under or in connection with the Facility or any of the Transaction Documents is reduced except on account of tax on overall net income of the Lender;
- (e) the Lender makes any payment (except on account of tax on overall net income of the Lender) or foregoes any interest or other return on, or calculated by reference to, any amount received or receivable by it from the Borrower under, or in connection with, any Transaction Document; or
- (f) the Lender is unable to obtain the rate of return on its overall capital which it would have received at the date of this Agreement,

then, and in each such case:

- (g) the Lender may notify the Borrower in writing of such event provided that failure to do so will not affect the Lender's rights pursuant to this clause; and
- (h) on demand from time to time by the Lender, the Borrower will pay to the Lender the amount certified by the Lender to be necessary to compensate the Lender for such increased cost, reduction, payment or foregone interest or other return.

14.2 Illegality: If at any time and for any reason the Lender determines that it has or will become contrary to any law or directive, impossible or impractical for the Lender to make, fund or to continue the Facility or an Advance or to comply with its obligations or exercise its rights under any Transaction Document, then, on the Lender notifying the Borrower accordingly:

- (a) the Lender may cancel the Facility; and
- (b) the Borrower will immediately or on such later date as the Lender may specify as being permissible to comply with the relevant law or directive repay the Outstanding Money.

15. INDEMNITIES

15.1 General Indemnity: The Borrower will indemnify the Lender and will hold the Lender harmless against, and will pay the Lender on demand the amount certified by the Lender as being the amount required to compensate it for, all or any losses (including any loss of profits or margin, interest or other funding costs and costs and losses incurred by reason of the liquidation or re-deployment of deposits), costs, penalties, claims, demands, liabilities, expenses (including all legal expenses on a full indemnity basis) and taxes which the Lender may sustain or incur directly or indirectly as a result of:

- (a) **Advances:** all or any part of an Advance not being advanced on the proposed Drawdown Date (excluding default by the Lender) including by reason of non-fulfilment of any condition precedent to an Advance;
- (b) **Default:** the occurrence or continuance of any Event of Default or Potential Event of Default or the Borrower not complying with any obligation expressed to be assumed by it in a Transaction Document;
- (c) **Payment not on Due Date:** any amount payable by the Borrower under any Transaction Document not being paid when due (whether by acceleration, prepayment or otherwise); and/or
- (d) **Prepayment:** all or any part of an Advance being repaid or becoming repayable before the Termination Date.

Without limitation, such indemnity will extend to other funds acquired or contracted for by the Lender to make, fund or continue an Advance or any part of it and any losses, costs, penalties and expenses which may be incurred by the Lender in terminating any derivative facilities entered into in connection with this Agreement or in entering into any new such contracts which it considers appropriate to protect the return it would otherwise have expected pursuant to this Agreement.

16. COSTS

16.1 Expenses: The Borrower will pay the Lender on demand for all costs and expenses (including all reasonable legal expenses) and taxes on a full indemnity basis in connection with:

- (a) the preparation, negotiation, execution and delivery of each Transaction Document; and
- (b) any amendment to, or any consent, waiver, release or discharge of or under, any Transaction Document.

16.2 Enforcement: The Borrower will pay the Lender on demand for all costs and expenses (including all legal expenses) and taxes on a full indemnity basis in connection with the review, administration, enforcement or attempted or contemplated enforcement or preservation or attempted or contemplated preservation of any rights under any Transaction Document.

16.3 Other Duties: The Borrower will indemnify the Lender and will hold the Lender harmless against and will pay the Lender on demand, all stamp, documentary, transaction, registration and other like duties, fees and taxes to which the Facility or any Transaction Document are subject or any payment made or to be made under any Transaction Document.

17. NOTICES

17.1 Method: A notice, consent or other communication (each a **Communication**) under this Agreement will be in writing, signed by the person giving it or by a representative of that person, addressed to the person to whom it is to be given and either delivered, or sent by pre-paid mail to that person's address.

17.2 Receipt: No Communication will be effective until received. A Communication given to the Borrower, however, will be deemed as having been given and received:

- (a) **Delivery:** if delivered, on the day of delivery if delivered before 5.00 pm on a business day, otherwise on the next business day; and
- (b) **Mail:** if sent by pre-paid mail, three business days after posting.

17.3 Address: A person may take the address and email of another person to be:

- (a) the address set out below; or
- (b) where the recipient notifies the sender of another address, the last address so notified to it:

The Borrower

Attention:

Address:

Email:

The Lender

Attention: Alison Sneddon

Address: 2 Norman Kirk Drive, Rolleston 7643
PO Box 90, Rolleston

Email: allison.sneddon@selwyn.govt.nz

- 17.4 Authenticity:** Where any Communication is given or appears to have been given by the Borrower to the Lender, the Lender will have no obligation to make any enquiry or require any evidence as to the authenticity, validity or legality of any such Communication despite that the Communication may subsequently be proven not to have been authorised or not to have been made, given or signed by the person purporting to give it.

18. GENERAL

- 18.1 Counterparts:** This Agreement may be executed in any number of counterparts each of which will be deemed an original and together will constitute a single document. Any party may enter into this Agreement by signing any counterpart. No party will be bound by this Agreement until all parties have duly executed and delivered this Agreement. Each party consents to this Agreement (including any counterpart of it) being signed and delivered in electronic form in accordance with the Contract and Commercial Law Act 2017.
- 18.2 Time of Essence:** Time will be of the essence for the performance of each party's obligations under each Transaction Document.
- 18.3 No Waiver:** No failure or delay by the Lender in exercising any right will operate as a waiver of such right nor will any single or partial exercise of any such right preclude any other or further exercise of it or the exercise of any other right.
- 18.4 Rights Cumulative:** The rights provided in this Agreement are cumulative and not exclusive of any rights provided by law.
- 18.5 Survival:** The obligations and indemnities set out in this Agreement:
- (a) will survive termination of the Facility and the payment of the Outstanding Money; and
 - (b) will not be discharged or impaired by any act, omission, matter or thing which might discharge or impair them but for this provision.
- 18.6 Non-merger:** If the Lender has provided the Borrower with a letter of offer, the terms of the letter of offer will not merge on either the execution of this Agreement or the

provision of the Facility but will remain enforceable to the fullest extent despite any rule of law to the contrary.

- 18.7 Conflicts:** If there is any conflict between the provisions of this Agreement and any other Transaction Document then the Lender will in its absolute discretion determine which is to prevail in respect of such conflict.
- 18.8 Amendment:** This Agreement may only be amended in writing signed by the parties.
- 18.9 Waiver:** Any consent, waiver or acknowledgment by the Lender under this Agreement must be in writing and may contain such conditions as the Lender thinks fit.
- 18.10 Determination:** Except where otherwise provided in this Agreement:
- (a) any determination by the Lender of any rate (including the Lender's Cost of Funds, the Interest Rate and the Default Rate) from time to time for the purposes of this Agreement will, in the absence of manifest error, be conclusive evidence of such rate; and
 - (b) any other determination, statement or the certificate of the Lender as to any amount or fact which might reasonably be expected to be within the Lender's knowledge relating to it will be prima facie evidence of the matter, thing or fact stated in it.
- 18.11 Partial Invalidity:** The illegality, invalidity or unenforceability of a provision of this Agreement under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of any other provision of this Agreement.
- 18.12 Assignment:**
- (a) **Borrower:** The Borrower may not assign or transfer any of its rights or obligations under any Transaction Document.
 - (b) **Lender:** The Lender may assign or transfer all or any part of its rights and/or obligations under any Transaction Document without the consent of any party. Every assignee or transferee of such rights and/or obligations will have the same rights and obligations (or a proportion of those rights and obligations if it is the assignee or transferee of part only) as it would have had if it had been named in this Agreement as the Lender.
 - (c) **Disclose:** The Lender may disclose to a potential assignee or transferee of its rights or obligations under any Transaction Document such information about the Borrower as the Lender considers appropriate but before doing so will, in relation to information which is not publicly available, require from any potential assignee or transferee or other person with whom contractual relations in connection with any Transaction Document are contemplated an undertaking protecting the confidentiality of that information.

19. GOVERNING LAW AND JURISDICTION

This Agreement is governed by and is to be interpreted in accordance with the laws of New Zealand and each of the parties submits to the non-exclusive jurisdiction of the courts of New Zealand.

DRAFT

SIGNATURES

SIGNED on behalf of **Selwyn Water Limited**
as Borrower by:

Signature of authorised signatory

Witness:*

Name of authorised signatory

Signature of witness

Full name of witness

Occupation of witness

Address of witness

**The witness must not be a party to this Agreement.*

SIGNED on behalf of **SELWYN DISTRICT COUNCIL** as Lender by:

Signature of authorised signatory

Witness:*

Name of authorised signatory

Signature of witness

Full name of witness

Occupation of witness

Address of witness

**The witness must not be a party to this Agreement.*

SCHEDULE 1

DRAWDOWN NOTICE

TO:

ATTENTION:

**\$9,000,000 Facility Agreement between Selwyn District Council and Selwyn Water Limited
dated 2025 (Agreement)**

1. Terms defined in the Agreement have the same meaning in this Drawdown Notice.
2. We request that the following Advance be made available under the Facility:
 - (a) Amount: \$[]
 - (b) Drawdown Date: []
3. Please credit the proceeds of the Loan to our account no. [] with *[name of bank]* *[branch]*.
4. We confirm that:
 - (i) no Event of Default or Potential Event of Default has occurred, or will occur, because of the Lender making available the Advance; and
 - (ii) the representations and warranties made in the Transaction Documents are true and accurate in all respects and not misleading in any respect if repeated at the date of this Drawdown Notice with reference to the facts and circumstances now existing.

DATED

Borrower - Authorised Signatory
Name:

COUNCIL MEMORANDUM

TO: [Council]
FOR: Council 4 June 2025
FROM: Jodie Beker, Legal Counsel – Policy & Compliance
Julie Hands, Head of Legal and Risk
DATE: 4 June 2025
SUBJECT: **DELEGATIONS OF AUTHORITY REVIEW PROJECT BRIEFING**

1. PURPOSE

To brief Council on what information they will receive in June regarding the outcome of the review of non-financial delegations of authority.

2. HISTORY/BACKGROUND

The review of delegations has been approached in 2 stages.

- Stage 1: Financial Delegations.

Stage 1 was completed in Quarter 4 2024 and involved revisions to the structure of our financial delegations, and changes to the financial authority of the Chief Executive, ELT and staff.

- Stage 2: Non-Financial Delegations.

This stage involves all delegations not captured by the financial delegations review and constitutes a much larger piece of work.

A review of non-financial delegations consisted of pulling together all delegated authority contained in terms of reference, policy documents, and the Delegation Manual to provide a complete picture of the powers exercised by members of staff.

Delegations Manuals from across the sector were also reviewed as reference for wording of delegations and for their Delegations of Authority Policy or similar.

Schedules were produced for each Group containing authority being exercised within that Group.

Concurrently with the development of these schedules, the delegations have undergone a compliance check against the Local Government Act 2002 to identify if any delegations by staff fall into delegations reserved explicitly for Council.

A new Digital platform (Locosoft) was procured in mid-2024 to support the delivery of the project. This is our new Delegations Register, which currently houses the revised financial delegations, and will house all revised delegations once made.

3. DISCUSSION

Council can expect to see on 18 June:

a) Delegation of Authority Policy

The policy will outline the foundational principles of delegations as well as how delegations occur, approval and rules around exercising delegations.

b) A revised schedule of Council delegations.

This will be a more expended list than what may have been previously provided to Council. This is because delegations from policy documents identify Council as decision-maker on certain items.

c) Delegations to the Chief Executive

The review has identified that the Chief Executive is missing a “catch-all” delegation which permits the Chief Executive, by delegation from Council, to exercise all powers required to fulfil the duties, functions and obligations of council not explicitly retained by Council (as the governing body). This is a common delegation in the sector.

Like with the financial delegations, Council will be requested to delegate to the Chief Executive all powers it has not retained. The Chief Executive will then delegate to members of staff and those delegations will be recorded on the Delegation Register

This will mean that staff who receive a delegation from the Chief Executive will not be able to delegate to any of their direct reports. This will enable the Chief Executive to have improved oversight over the authority being exercised by staff and help to ensure that staff are receiving appropriate delegated authority and are exercising authority appropriately (one of the Chief Executive’s legislative responsibilities under S 42 (2) (c) Local Government Act 2002).

Where changes to legislation occur or new legislation is introduced, a review will be undertaken to identify any authority which must be, or is already, retained by Council.

d) Delegations to the Executive Team Members.

So that Council can see how the Chief Executive intends to delegate to members of staff, a schedule of powers of her Executive Team will also be provided.

Delegations at this level and below will be categorised in accordance with the structure of the Delegations Register which will be as follows:

- Acts

All delegations derived directly from legislation relevant to council, will be recorded under the relevant Act in the Acts section of the Delegations Register.

- Bylaws

All delegations derived directly from Council bylaws, will be recorded under the relevant Bylaw within the Bylaw Section of the Delegations Register.

- Delegation derived from policy or other sources other than Acts and bylaws.

Delegations derived from policy and other sources will be categorised into activities e.g., Asset Disposal

Procurement

Treasury Management

e) Proposal to Retire the Delegations Manual and Revoke Previous Delegations

Because delegations will be contained within the new Delegations Register, the Delegation Manual will become redundant and outdated once the Chief Executive makes the delegation to staff.

Council will be asked to:

- **Delegate to the Chief Executive all powers required to fulfil the duties, functions and obligations of council not explicitly retained by Council, with immediate effect.**

This will allow the Chief Executive to make the appropriate delegations to staff allowing population of the Delegations Register. Any delegation the Chief Executive makes to staff after 18 June would not come into effect until the Delegations Register becomes live.

- **Retire the Delegations Manual and revoke the delegations Council has made to staff contained within it from the date the Delegations Register goes live.**

Because there will be a delay between Council's delegation to the Chief Executive on the 18 June and the Delegations Register going live, this will allow staff to continue to exercise the existing delegations they have while the Delegations Register is populated.

4. ALIGNMENT WITH COUNCIL PLANS, STRATEGY, POLICY AND REGULATORY/COMPLIANCE OBLIGATIONS

Waikirikiri Ki Tua/Future Selwyn

The following aspects of [Waikirikiri Ki Tua/Future Selwyn](#) have been identified as relevant to this issue, proposal/decision/activity/project, and inform both the outcomes of the project as well as the way the project develops:

Outcome and/or Direction	Relevance
Strategic priorities and outputs	Delegations of authority assist staff to deliver services and achieve organisational goals by providing clarity over decision-making responsibilities.

5. SIGNIFICANCE ASSESSMENT/COMPLIANCE STATEMENT

The decisions and matters of this report are assessed as being of Low significance, in accordance with the Council's Significance and Engagement Policy.

6. VIEWS OF THOSE AFFECTED / CONSULTATION

In making a decision, Council needs to know enough about and give adequate consideration to the views and preferences of affected and interested parties. The degree to which Council seeks views of affected and interested parties will be proportionate to the significance of the decision or issue being considered.

(a) Views of those affected and Consultation.

No external consultation was required.

(b) Māori and Treaty implications

There are no Māori or Treaty implications contained in this report.

(c) Resiliency and Sustainability considerations

The revised delegations will assist the council to make efficient decisions through increased clarity on who can make decisions.

7. RISK IMPLICATIONS

There are some risk implications with implementing this project. There is an initial risk that delegations will be identified as being at a high risk of non-compliance without amendments, non-compliant, or create ambiguity after the Delegations Register goes live. Non-compliance and ambiguity are ongoing risks however, and are not specific to the particular digital platform, but are inherent in the maintenance of these records in whatever format.

The ongoing risks are mitigated by having all delegations from various sources in one place so that it becomes easier to identify conflicting or non-compliant delegations. The approval process for delegations also reduces the likelihood that conflicting and delegation at risk of non-compliance delegations are entered into the Delegations Register as any proposed delegations will be reviewed before any proposal is made.

Policy review and development procedures will also pick up on any delegations being made within documents. Because both processes are overseen by the same team, this increases the likelihood that problematic delegations will be picked up and addressed before any formal delegation is made.

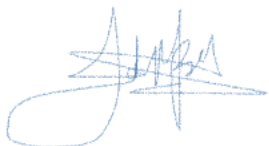
8. LEGAL/POLICY IMPLICATIONS HEADING

The delegations have been reviewed against legislative requirements of the Local Government Act.

Where a delegation is recorded in a policy document, these will need to be updated incrementally to reflect the changes. Because changes to delegates will be a minor change, they will likely be assessed as low significance considering the Significance and Engagement Policy, as they will not significantly alter the policy itself. This means no or little engagement with the community will be required to give effect to these changes.



JULIE HANDS
HEAD OF LEGAL AND RISK



JODIE BEKER
LEGAL COUNSEL - POLICY & COMPLIANCE

Endorsed For Agenda (Bold, Sentence Case, Italics)



STEVE GIBLING
EXECUTIVE DIRECTOR, PEOPLE, CULTURE AND CAPABILITY



Title of Document Here

Approver

Council

Owner

Executive Director, People, Culture and Capability

Contact

Legal Counsel – Policy and Compliance

Date adopted/last reviewed

[Insert the date the document was last adopted (used when Council is the approver) or approved (when a member of ELT is the approver)]

Review date

[Insert the date the policy will need to be reviewed by]

Tier

1

This document supports or gives effect to the

Waikirikiri Tua | Future Selwyn Strategy



Purpose

Provide clarity on the way delegations of authority operate in practice within council and the foundational principles that underpin them.

Organisational Scope

This policy applies to elected members, employees and contractors of council.

Background

What may and may not be delegated is governed by legislation, primarily the Local Government Act 2002 (LGA), Schedule 7 cl 32 but other delegation provisions exist in other instruments e.g., Resource Management Act. This policy codifies the legislative framework set out in the LGA to assist ensure that our decision-making process is robust to mitigate and reduces legal risk.

Key Statements/Principles

Delegation of duties, powers, and responsibilities of the local authority.

- a) The council, through its governing body, may delegate powers, duties, and responsibilities of the local authority made under legislation to its committees, subordinate decision-making bodies, to employees or another organisation or person.
- b) Committees, subordinate decision-making bodies, employees, or people, that receive a delegation from the Council may further delegate (called a "sub-delegation") to any sub-committees subordinate decision-making body, employee, or person (unless restricted from doing so by the first delegation).
- c) The Chief Executive may sub-delegate powers received from Council or its committees and any power, duties, or responsibilities specific to the Chief Executive under any enactment to a Secondary Delegate (subject to any restrictions or prohibitions in place).

Receiving a delegation of authority

- a) The following can receive a delegation of authority:
 - A Committee that comprises all elected members of the local authority;
 - Committees appointed by the Council like Audit & Risk and Executive Committee of Council;
 - Joint Committees like CPW Joint Trust;
 - Any sub-committees of a), b) and c);
 - A working group, advisory board established by Council or established under a delegated authority of Council.
 - A Community Board;
 - Any officer of council;
 - An elected member of the Council;
 - Any other local authority organisation, or person where authorised under legislation; the enforcement, inspection, licensing, and administration related to bylaws and other regulatory matters.



- b) Multiple delegates can receive the same delegation e.g., 2 individual Project Sponsors can have the same delegated authority. However, any delegation to multiple delegates must not confuse responsibility or accountability for a task or function.
- c) Outside of an emergency or event, a delegate can only receive a delegation which reflects their area of responsibility and function. For example, a Committee of Council cannot receive a delegation which is outside of that committee's terms of reference, a staff member cannot receive a delegation outside of their area of responsibility.
- d) In the event of an emergency or the like, delegations may need to be made to those where the delegation would usually be outside of that delegates area of responsibility and function.

What can and cannot be delegated.

- a) Any duties, responsibilities, and powers held by the local authority set out in any enactment may be delegated, except for any which are prohibited from being delegated under any enactment, however;
 - If delegation is permitted, a Primary Delegate may sub-delegate any power, duty, or responsibility to any other officer (unless restricted from doing so by the delegator). Sub-delegation will be subject to any conditions, limitations, or prohibitions on the exercise of that delegation imposed on the Primary Delegate's exercise of their delegation. The Primary Delegate may also impose any restrictions on a sub-delegation.
 - An officer, who is a Secondary Delegate, is prohibited from further delegating any power to another officer.
 - An Elected Member of Council cannot be delegated any powers, duties, or responsibilities which Council are prohibited from delegating, or any powers, duties, or responsibilities that have already been delegated to a body identified under Principle 2 from a) – e).

Note: Examples of acceptable delegations to a member or members of Council are attending conferences on behalf of the Council, vote on remits, travel overseas to represent the Council, make decisions as accredited hearing commissioners.
- b) The act of delegating a power, duty, or responsibility does not absolve the delegator of any accountability for the exercise of that power, duty or responsibility; a delegator always retains accountability.¹
- c) A delegation should not be made where the delegator is restricted, limited or prevented from ensuring the delegation is appropriately exercised, managed and risks are properly mitigated.

Exercising delegated authority.

- a) Council, and any delegate, may choose whether or not to exercise a delegation.

¹ Accountability – assumption of the responsibility for the actions and decisions of others you are responsible for.



- b) Before an authority is exercised, a delegate may:
 - refer the exercise of the authority to the delegator instead of making exercising it themselves,
 - or
 - refer the exercise of the authority to another person to a body with appropriate delegated authority,
- c) A delegator retains the ability to exercise any power, duty, or responsibility despite any delegation of all or part of the same. Once a delegate exercises their authority, the line manager of the delegate may review the exercise of that authority. A recommendation or instruction to amend or change the decision may be made to the delegate.
- d) A Primary Delegate may delegate any duties, powers, or responsibilities they hold to a Secondary Delegate (subject to any restrictions or prohibitions).
- e) Any Secondary Delegate must exercise a delegation in accordance with any conditions, limitations, or prohibitions imposed regarding the exercise of that delegation.
- f) Where a delegation is made, the delegate is assumed to exercise their authority in accordance with the delegation and any conditions or limitations, unless evidence is provided to the contrary.
- g) Where a responsibility, duty or power has been delegated, all related responsibilities, duties or powers necessary to give effect to that delegation may be exercised unless these have already been explicitly delegated to another role.
- h) An officer to whom any responsibilities, duties or powers are delegated may exercise them in the same way and with the same effect as the delegator could have done. A delegation of a power enables a delegate to fulfil the responsibilities of their role, not any other role. The exercise of any delegation must only be for the purposes of fulfilling the responsibilities of the role for which it was given.
- i) An officer appointed to act in the role of another officer has all the powers, functions, and duties of the role in which they are acting for the period they are covering the role.
- j) Where a delegation is made to a committee, advisory panel, or another body, the delegation can only be exercised collectively and not by any particular individual in that group.
- k) Where multiple delegates receive the same delegation, there needs to be clear conditions or limitations around the exercise of that delegation per delegate to avoid any confusion over where accountability or responsibility lies for any function or task.
- l) In the case of an emergency or similar, a Primary Delegate is permitted to delegate authority to a Secondary Delegate outside of a Secondary Delegate's usual responsibility or function for the period that the emergency or similar remains in place, or until such time as determined by the delegator to effectively respond or recovery from such an event. The authority delegated must still be



- m) Only delegations made in accordance with the principles of this policy and approved in accordance with correct procedure may be exercised.

Continuation and Revocation of Authority

- a) Only Council or a Primary Delegate may revoke a delegation it has made. i.e., Council can revoke a delegation it made to a role/s and a Primary Delegate can revoke a delegation to a Secondary Delegate.
- b) Unless specifically time-limited, a delegation will continue in force until specifically revoked or varied by the delegator.
- c) Where roles change title only and there is no substantive change made to the responsibilities, duties or powers of that role, the delegation continues as if it were being exercised by the same role.

Delegation Requests

- a) Requests for staff to receive delegated authority must first be discussed with the Legal Team by a line manager of the staff member requiring the delegation.
- b) Once the Legal Team has provided advice which does not prevent the delegation from progressing, the line manager of the staff member requiring the delegation must discuss the delegation with the relevant ELT member before the delegation is sought from the Chief Executive, or from Council where there is no delegation.
- c) The Legal Team provide advice on the drafting of the delegation and who may make the delegation.

Definitions

Council – When used with a capital C within a sentence, “Council” or the “Council” means the governing body.

When a sentence starts with “Council” without a “the” preceding it, or within a sentence as a lower case “c” this means the organisation.

Delegate: *Either a “Primary” or “Secondary delegate”, someone who have received a delegation.*

Delegator: *The body or individual who makes a delegation*

Delegation of Authority: *The sharing of a power held by one body or to another*

Primary delegate: *Those bodies or individuals that receive a delegation **directly** from Council are “Primary Delegates”.*

Secondary delegate/sub-delegate: *Any delegation **made by a Primary Delegate** is a “sub-delegation” and the sub-delegate is a “Secondary Delegate”.*

e.g., Council delegates to the CE. CE = Primary Delegate



CE delegates to an Executive Director = Secondary Delegate/Sub-delegate

Local authority organisation or person where authorised under legislation; the enforcement, inspection, licensing, and administration related to bylaws and other regulatory matters: External organisation or person providing a regulatory role under clause 32(5), 7th Schedule). Examples include Police for trespass, Armourgard for noise control and potentially parking enforcement companies or the like.

Officer: Employee of council or an external person who undertaking the work of an officer of council.

Subordinate decision-making body: A community board, an advisory board, working group, joint committee or the like established by Council or established under a delegated authority of Council.

Related Policies, Procedures and Forms

TBC

Version control table

Version	Action	Approver	Action Date
1.00	New policy introduced.	Council	