

# **AGENDA**

## **Downlands Water Supply Committee Meeting**

**Monday, 12 July 2021**

**Date** Monday, 12 July 2021

**Time** 1.00pm

**Location** Meeting Room 1  
District Council Building  
King George Place  
Timaru  
1433085

## **Downlands Water Supply Committee**

**Notice is hereby given that a meeting of the Downlands Water Supply Committee will be held in the Meeting Room 1, District Council Building, King George Place, Timaru, on Monday 12 July 2021, at 1.00pm.**

### **Downlands Water Supply Committee Members**

Cr Richard Lyon, John McDonald, Cr Sally Parker, Cr Paddy O'Reilly, Cr Sandy McAlwee, Cr Stuart Barwood, Cr Bill Wright and Mayor Nigel Bowen

Quorum – each elected member of the Councils and two (2) other appointed members

### **Local Authorities (Members' Interests) Act 1968**

Committee members are reminded that if you have a pecuniary interest in any item on the agenda, then they must declare this interest and refrain from discussing or voting on this item and are advised to withdraw from the meeting table.

Andrew Dixon

**Group Manager Infrastructure**

**Order Of Business**

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- 1 Apologies**
- 2 Identification of Items of Urgent Business**
- 3 Identification of Matters of a Minor Nature**
- 4 Declaration of Conflicts of Interest**
- 5 Chairperson's Report**

## **6 Confirmation of Minutes**

### **6.1 Minutes of the Downlands Water Supply Committee Meeting held on 15 June 2020**

**Author:** Michelle Heal, Executive Assistant Infrastructure

#### **Recommendation**

That the Minutes of the Downlands Water Supply Committee Meeting held on 15 June 2020 be confirmed as a true and correct record of that meeting and that the Chairperson's electronic signature be attached.

#### **Attachments**

- 1. Minutes of the Downlands Water Supply Committee Meeting held on 15 June 2020**

# **MINUTES**

## **Downlands Water Supply Committee Meeting**

**Monday, 15 June 2020**

**Minutes of Timaru District Council  
Downlands Water Supply Committee Meeting  
Held in the Meeting Room 1, District Council Building, King George Place, Timaru  
on Monday, 15 June 2020 1.00pm**

**Present:** Cr Richard Lyon, Mr John McDonald, Cr Sally Parker, Mayor Nigel Bowen, Cr Paddy O'Reilly, Cr Sandy McAlwee, Cr Stuart Barwood, Cr Bill Wright

**In Attendance:** Drainage & Water Manager (Grant Hall), Chief Financial Officer (David Codyre), Communications Manager (Stephen Doran) and Downlands Secretary (Kate Walkinshaw)

**1 Apologies**

Nil

**2 Identification of Items of Urgent Business**

There were no matters of urgent business identified.

**3 Identification of Matters of a Minor Nature**

There were no matters of a minor nature identified.

**4 Declaration of Conflicts of Interest**

Nil

**5 Chairperson's Report**

The Chairperson had nothing substantial to report.

**6 Confirmation of Minutes**

**6.1 Minutes of the Downlands Water Supply Committee Meeting held on 2 December 2019**

**Resolution 2020/1**

Moved: Mayor Nigel Bowen

Seconded: Cr Sally Parker

That the Minutes of the Downlands Water Supply Committee Meeting held on 2 December 2019 be confirmed as a true and correct record of that meeting.

**Carried**



## **7 Reports**

### **7.1 Water Infrastructure Asset Revaluation**

The Committee considered a report on the proposed change to the method of valuating the Downlands Water scheme infrastructure from Deemed Cost to Fair Value.

The Chief Financial Officer explained the difference between the deemed cost method and the fair value measurement method. The Committee agreed to adopt the fair value method but wanted to discuss the program and frequency of the valuation at the November meeting. The Chief Financial Officer will provide the Committee with a recommendation.

#### **Resolution 2020/2**

Moved: Cr Sally Parker

Seconded: Cr Bill Wright

That the Committee

1. Notes and receive the report, and
2. Adopts the fair value method of measuring assets for water infrastructure assets from 1 July 2019.

**Carried**

### **7.2 Draft Budget 20/21**

The Committee considered a report by the Drainage & Water Manager in regards to the draft budget for 2020/21.

The draft budget is very much in line with year 3 of the Long Term Plan. There is a significant increase from last year's budget, due to an increase of unit and service charges, of 21%. The operational cost difference between the current and proposed years is due to a new water sampling program being implemented as required by the updated drinking water standards. There is also an increase in regards to operational electricity. Everything else is generally the same.

Total capital is correct. The interest may change if government funding comes through for shovel ready projects. The Te Ana Wai project is currently in the list of 800 projects in line for funding. If not, a loan will be required.

#### **Resolution 2020/3**

Moved: Mayor Nigel Bowen

Seconded: Mr John McDonald

That the Downlands Joint Standing Committee adopt the 2020/2021 draft budget.

**Carried**

### **7.3 Verbal Report on Te Ana Wai Water Supply Upgrade**

A verbal report was given on the Te Ana Wai Water Supply Upgrade.

The Drainage & Water Manager provided a verbal update on the Te Ana Wai Water supply. Timaru District Council has applied for the government shovel ready programme for funding.

Trunk main renewal – Davidson Road to Cave – the contract has been let to Hadlee & Brunton. Sanitary liner to that section of pipe. Programmed to commence work in July. They will use fabricated steel as opposed to cast iron due to major delays caused by Covid-19 and international shipping and supply.

Cave to Water Treatment Plant – Richardson Road – is in final design stage. Working with Mayor of Mackenzie in regards to the location of pipe. Proposal to progress to Stage 2 to tender in August/September.

Intake – site visit with Arowhenua and they are fine with proposed works. The final documents are currently under review. Proposing to go to tender within the month. Construction commencement date is unsure at this stage due to lambing and fish movement, as discussed with Arowhenua.

Raw water reservoir contract been awarded to Rooney Earthmoving Limited. The site is fenced and the contractor is ready to go. There are issues around the designation of the site. Some land owners are refusing to sign the affected parties paperwork. Mackenzie District Council have been asked to confirm, via commissioner, whether they are an affected party or not. If they are, a limited notification hearing would need to proceed and their concerns heard, via commissioner. The Drainage & Water Manager tabled some visuals in regards to the effect on the party which is very minimal.

Water Treatment Plant – negotiations underway with Marshall Projects Consortium with the final proposal due this week. Review will commence the following week. Report to Tender & Procurement with design and build in next month.

Treated water reservoir – ready to be tendered next month.

Communications Manager discussed communications around Downlands. Now is the time to increase communication with the scheme users around the projects commencing and 21% rates increase. There was talk of a newsletter drop to all Downlands consumers with an option of signing up to an e-newsletter. All communications to be sent to the Downlands Joint Standing Committee prior to being sent to the consumers.

#### **Resolution 2020/4**

Moved: Mr John McDonald

Seconded: Cr Stuart Barwood

That the update be received.

**Carried**

## **8 Consideration of Urgent Business Items**

There were no matters of urgent business.

**9 Consideration of Minor Nature Matters**

There were no matters of a minor nature.

**The Meeting closed at 2:33pm.**

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**Chairperson**

Unconfirmed

**6.2 Minutes of the Downlands Water Supply Committee Meeting held on 22 February 2021**

**Author: Michelle Heal, Executive Assistant Infrastructure**

**Recommendation**

That the Minutes of the Downlands Water Supply Committee Meeting held on 22 February 2021 be confirmed as a true and correct record of that meeting and that the Chairperson's electronic signature be attached.

**Attachments**

- 1. Minutes of the Downlands Water Supply Committee Meeting held on 22 February 2021**

# **MINUTES**

## **Downlands Water Supply Committee Meeting**

**Monday, 22 February 2021**

**Minutes of Timaru District Council  
Downlands Water Supply Committee Meeting  
Held in the Meeting Room 1, District Council Building, King George Place, Timaru  
on Monday, 22 February 2021 12.30pm**

**Present:** Cr Richard Lyon (Chairperson), John McDonald, Cr Sally Parker, Mayor Nigel Bowen, Cr Paddy O'Reilly, Cr Sandy McAlwee, Cr Stuart Barwood, Bill Wright

**In Attendance:** Chief Executive (Bede Carran), Group Manager Infrastructure (Andrew Dixon), Group Manager Commercial and Strategy (Donna Cross), Corporate Services Communications Manager (Stephen Doran), Drainage and Water Manager (Grant Hall), Water Services Stimulus Package Technical Specialist (Judy Blakemore), Executive Assistant Infrastructure (Michelle Heal)

**1 Apologies**

There were no apologies.

**2 Identification of Items of Urgent Business**

There was no urgent business.

**3 Identification of Matters of a Minor Nature**

- Regular information updates
- 3 Waters Reform
- 10 Year Budgets – form and format

**4 Declaration of Conflicts of Interest**

There were no declarations of conflicts of interest.

**5 Chairperson's Report**

The Chairperson advised he has received no contact from consumers in complaint so the scheme appears to have held up well over the summer period in relation to supply of water. The Committee agreed generally consumers have expressed they are excited by the expansion and growth of the scheme.

**Resolution 2021/1**

Moved: Cr Richard Lyon

Seconded: Cr Sally Parker

That the Committee receive the verbal Chairperson Report.

**Carried**

## 6 Reports

### 6.1 Application for Variation of Policy for Water Allocation

The committee was presented with a report to consider an application for the increased allocation of water units from the Ministry of Education (MoE), due to the proposed expansion of the Arowhenua Maori School.

The committee discussed the information as provided with Grant Hall clarifying points of supply and unit allocation.

#### Resolution 2021/2

Moved: Cr Paddy O'Reilly

Seconded: Cr Bill Wright

1. That the Downlands Water Supply Joint Standing Committee approved the allocation for one additional water supply unit to the Arowhenua Maori School, to be delivered before December 2021;
2. That the Downlands Water Supply Joint Standing Committee approved the allocation for a further two additional water supply units to the Arowhenua Maori School, to be delivered once additional water allocations are generally available for consumers.

**Carried**

### 6.2 Verbal Update on Scheme Upgrade

The committee was presented with a verbal update from the Drainage and Water Manager on the Scheme Upgrade.

A waiting list for additional Downlands allocation is maintained by Council in anticipation of the water being available following completion of the project.

The Drainage and Water Manager tabled and spoke to a project report update received from OCTA as **attached**.

When these project updates are received by Council they will be circulated to the Committee as and when they are available.

The Communications Manager provided an update on the communication methods being used to encourage communication mail list sign up in relation to the Downlands Water Supply. To date 287 people having signed up to the mailing list for updates. While compiling the mailing list the Communications team are also gathering interest in allocation and additional allocation interest. The Communications team intends to undertake a second round of advertising to generate interest in sign up to the mailing list.

The Drainage and Water Manager also advised the two 3 Waters Stimulus projects progressing

- Davidson Road extension – works begin on Tuesday 23 February 2021 with valve installation
- Totara Valley and Kokohu – Capacity improvements – the design progress is occurring

#### Resolution 2021/3

Moved: Cr Richard Lyon

Seconded: Cr Sally Parker

That the Committee receive the verbal update from the Drainage and Water Manager

**Carried**

### **Attachments**

1 OCTA Progress Report - 19 February 2021

### **7 Consideration of Urgent Business Items**

There was no urgent business.

### **8 Consideration of Minor Nature Matters**

#### **Regular information updates**

The Committee agreed regular information and progress updates need to be circulated. Council Officers advised as the project is now entering the construction phase communication will be circulated to the Committee on a regular basis as and when available.

#### **3 Waters Reform**

It was agreed the 3 Waters Reform topic would be discussed and traversed at the workshop following this meeting.

#### **8.3 10 Year Budget - Form and Format**

The Drainage and Water Manager tabled an example of the 2018 LTP budget form and format (operation including variation and capital works) and sort the Committee guidance. The Committee considered and discussed the most suitable Budget form and format that would be beneficial for their information. The Committee provided an indication to use the format as presented. It was agreed this was a verbal indication only and would be presented formally by Council's Finance Department to the Committee at a later meeting.

### **Attachments**

1 2018 LTP Budget Example Form and Format

**The Meeting closed at 1.51pm.**

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**Cr Richard Lyon**  
**Chairperson**



## 7 Reports

### 7.1 Downlands Water Scheme: Joint Committee Agreement

**Author:** Ashley Harper, Acting Group Manager Commercial and Strategy

**Authoriser:** Andrew Dixon, Group Manager Infrastructure

#### Recommendation

That the Downlands Joint Standing Committee supports and recommends to the Mackenzie, Timaru and Waimate District Councils that the proposed new Joint Committee Agreement be approved.

#### Purpose of Report

- 1 The purpose of this report is to appraise the Downlands Joint Standing Committee of the proposed new Joint Committee Agreement and to seek endorsement of the agreement by recommending approval to each District Council.

#### Assessment of Significance

- 2 This matter is considered to be of low significance because it involves a single activity covering only a part of the area of each district.

#### Background

- 3 In April and May 2021 each of the Mackenzie, Timaru and Waimate District Councils considered a report on the issues and options for the governance of the Downlands Water Scheme. This comprehensive report is included as Attachment 3 and provides details of the accounting concerns and possible solutions. The reason for this report was that AuditNZ had previously raised equity, debt and borrowing concerns with each stakeholder Council.
- 4 Each Council agreed with the report with Mackenzie District Council also resolving "That council requests that staff continues negotiations around the expectation that water will be available for growth in the Mackenzie".
- 5 Subsequently Anderson Lloyd, Solicitors, have prepared a new draft Agreement which has been workshopped by staff of the three Councils. The result of this work is that a final draft Joint Committee Agreement has been prepared and is included as Attachment 1. The previous agreement is also included as Attachment 2.
- 6 This final draft has also been provided to PriceWaterhouseCoopers (PWC) who have been engaged to provide a formal assessment as to whether the agreement will comply with International Accounting Standards, particularly around equity accounting and debt responsibilities. This is the key item that AuditNZ have identified as a concern and requires resolution.

## Discussion

- 7 The main changes and differences between the current agreement for the Downlands Joint Standing Committee and the new Joint Committee Agreement are;
- The Downlands Water Scheme boundaries are defined via a map of the scheme.
  - The Te Ana Wai Water Treatment enhancement project is described because this project represents significant expenditure which results in significant borrowing requirements.
  - Content is added to both the Governance role of the Joint Standing Committee and the role of the Downlands Water Scheme Managers, being the Timaru District Council.
  - Defines arrangements with respect to contracts, debt and borrowing.
  - In Schedule 2 the quorum for meetings is now 1 member representing each Council, as opposed to a nominated elected member representing each Council. This means that for Mackenzie and Waimate District Councils their 'jointly appointed' member can now be counted to make a quorum.

## Options and Preferred Option

- 8 The options for the Downlands Joint Standing Committee are to support the proposed changes, oppose the proposed changes or be neutral. Once the Committee has determined its preferred position then this decision can be conveyed to each of the three constituent Councils for their consideration. The option to support the changes is recommended.

## Consultation

- 9 There is no specific requirement to carry out any formal consultation but it could be considered that the Downlands Joint Standing Committee is an affected party and therefore consideration of this report is considered to be consultation.

## Relevant Legislation, Council Policy and Plans

- 10 The relevant enabling legislation is the Local Government Act 2002
- 11 There are also International Accounting Standards that apply to this matter.

## Financial and Funding Implications

- 12 There are no specific financial implications of this new agreement, however due to the primary issue being compliance with accounting standards a formal review of the new agreement has been commissioned from PWC. If this review raises any issues then amendments to the proposed agreement will need to be formulated and agreed by each District Council.

## Other Considerations

- 13 There are no other considerations at this time.

## Attachments

1. **Joint Committee Agreement Downlands Water Scheme** [!\[\]\(5a0d662075632df1b39c9e3427a70093\_img.jpg\) !\[\]\(b9aaeddcca3b0cfd727d0e19f8b22e6b\_img.jpg\)](#)
2. **Agreement and Terms of Reference - Downlands Water Supply Scheme** [!\[\]\(7985cfc9ac20c5a67d1a49b8edd9370c\_img.jpg\) !\[\]\(c3dc9c5d8504b4ff44583fa2a53f68d3\_img.jpg\)](#)
3. **Infrastructure Committee Report 20 April 2021 - Downlands Water Scheme** [!\[\]\(dcc90d5dff4daebc8e015e38f89e1f01\_img.jpg\) !\[\]\(5a7dbb8a52a41ee78efaae6ec4edbab9\_img.jpg\)](#)

## Joint Committee Agreement–Downlands Water Scheme

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Date: 2021

### Parties

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- (1) Timaru District Council
- (2) Waimate District Council
- (3) Mackenzie District Council

### Background

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- A. The Downlands Water Scheme is a joint water scheme between Timaru District Council, Waimate District Council and Mackenzie District Council, jointly owned by the Councils in the following proportions:
- (i) Timaru District Council: 82%;
  - (ii) Waimate District Council: 14%; and
  - (iii) Mackenzie District Council: 4%.
- B. The Councils have appointed a joint committee in relation to the Downlands Water Scheme in accordance with clause 30A of Schedule 7 of the Local Government Act 2002 and are parties to a Joint Committee Agreement regarding the Downlands Water Scheme (**2015 Joint Committee Agreement**).
- C. Under the 2015 Joint Committee Agreement management of the Downlands Water Scheme has been delegated to Timaru District Council.
- D. The parties wish to enter into this Agreement to provide greater certainty on matters such as:
- a. the ownership of the Downlands Water Scheme;
  - b. the scope of, and limits to, the powers that are delegated by the Councils to the Joint Committee; and
  - c. the scope of, and limits to, the powers that are delegated to Timaru District Council as manager of the Downlands Water Scheme,

and to record agreements they have reached regarding the current \$26m Te Ana Wai upgrade of the Downlands Water Scheme (**Te Ana Wai Project**) and the loan funding required for that and other capital works projects.

### By this Deed

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#### 1. Definitions

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- 1.1 In this Agreement, the following terms have the following meanings:

**2015 Joint Committee Agreement** means the 2015 'Agreement in Relation to Joint Standing Committee for Governance of the Downlands Water Supply Scheme' entered into between the Councils under clause 5 of Schedule 1AA and clause 30A of Schedule 7 of the Local Government Act 2002.

**Agreement** means this agreement including its Schedules, as amended from time to time.

**Councils** means Timaru District Council, Waimate District Council and Mackenzie District Council (each a **Council**).

**Downlands Water Scheme** means the joint water scheme between the Councils known as the Downlands Water Scheme, as renewed, upgraded, extended and amended from time to time. An overview of the Downlands Water Scheme as at February 2021 is set out in Schedule 1.

**Joint Committee** means the joint committee appointed by the Councils in accordance with clause 30(1)(b) of Schedule 7 of the Local Government Act 2002 known as the Downlands Water Scheme Joint Committee.

**Management Services** means the services to be provided by Timaru District Council under this Agreement as Manager of the Downlands Water Scheme.

**Manager** means Timaru District Council, in its role as manager of the Downlands Water Scheme.

**Ownership Proportions** means each Councils' joint ownership proportion of the Downlands Water Scheme set out in clause 3.1 as amended from time to time in accordance with clause 3.3.

**Te Ana Wai Project** means the \$26m Te Ana Wai upgrade of the Downlands Water Scheme being undertaken (project managed by Timaru District Council) to provide rural consumers with a more secure, dependable, high quality water supply. The upgrade will facilitate the supply of additional water to existing consumers and water for new consumers within the scheme area. There will also be an additional water treatment process which will ensure compliance with Drinking Water Standards. The project involves the following components:

- (a) pipeline Upgrade from Davison Road to Cave;
- (b) pipeline replacement from Cave to Richardson Road;
- (c) construction of a raw water reservoir and a treated water reservoir at Richardson Road;
- (d) upgrading the existing water supply intake infiltration gallery within the Te Ana Wai River;  
and
- (e) construction of a new Water Treatment Plant at Richardson Road.

Contracts for all the above components have been awarded and commissioning of the new treatment and storage facilities is planned to occur in 2022.

**Terms of Reference** means the Terms of Reference for the Downlands Water Scheme Joint Committee set out in Schedule 2.

**Timaru's Water Services Bylaw** means Chapter 15 (Water Services) of Timaru District Council's Consolidated Bylaw 2018 (as amended from time to time).

## **2. Effect of this Agreement**

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- 2.1 In accordance with clause 7 of the 2015 Joint Committee Agreement, the parties agree to vary the 2015 Joint Committee Agreement with effect from the date of this Agreement by replacing it with this Agreement.
- 2.2 This Agreement is a joint committee agreement between the Councils under clause 30A(1) of Schedule 7 of the Local Government Act 2002.

## **3. Ownership of the Downlands Water Scheme**

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- 3.1 The Downlands Water Scheme is jointly owned by the Councils in the following proportions:
  - (i) Timaru District Council: 82%;
  - (ii) Waimate District Council: 14%; and
  - (iii) Mackenzie District Council: 4%.
- 3.2 For the avoidance of doubt, all of the assets that from time to time comprise the Downlands Water Scheme (as renewed, extended, upgraded and amended from time to time) are jointly owned in those Ownership Proportions and all the Councils are jointly liable in their Ownership Proportions for any Downlands Water Scheme liabilities. For example if land is acquired for the purposes of the Downlands Water Scheme, the registered owner shall be the 3 Councils jointly, each in their Ownership Proportions.
- 3.3 The Ownership Proportions set out in clause 3.1 shall continue to apply throughout the term of this Agreement unless the Councils agree otherwise in writing.

## **4. Governance of the Downlands Water Scheme**

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- 4.1 The Downlands Water Scheme Joint Committee appointed by the Councils in accordance with clause 30(1)(b) of Schedule 7 of the Local Government Act 2002 shall continue, but from the date of this Agreement shall be subject to the Terms of Reference set out in Schedule 2 (instead of the Terms of Reference set out in Schedule 1 of the 2015 Joint Committee Agreement). Each Council acknowledges it is bound by the Terms of Reference and shall comply with them, including by amending its standing orders as soon as possible to the extent that they are inconsistent with the Terms of Reference.
- 4.2 Each Council shall resolve under clause 30(7) of the Local Government Act 2002 that the Downlands Water Scheme Joint Committee will not be discharged on the coming into office of the members of the local authority elected or appointed at, or following, the triennial general elections of members. If a Council has not passed such a resolution, it shall appoint a joint committee, to be known as the Downlands Joint Standing Committee, following each triennial local authority election.
- 4.3 The role of the Joint Committee is to manage, and direct and supervise the management of, the business and affairs of the Downlands Water Scheme, including (without limitation):
  - (a) considering the asset management plan, long term plan, annual plan budgets and work programme (operational and capital works) prepared by the Manager under clause 5, and making recommendations to the Councils each year for adoption within each Council's respective Long Term Plans and Annual Plan (in their respective Ownership Proportions);
  - (b) directing and supervising the management and operation of the Downlands Water Scheme by the Manager, including ensuring compliance with the adopted asset management plan, long term plan, annual plan budgets, work programme and budgets;

- (c) considering the financial statements and budgets, prepared by the Manager under clause 5 and providing these to the Councils (noting the implications for each Council given its Ownership Proportion), together with a recommendation of the rates and charges to be struck and levied to meet the Downlands Water Scheme's financial requirements;
  - (d) ensuring that the Councils' Downlands Water Scheme reserves and other funds (which, for the avoidance of doubt are owned in accordance with the Ownership Proportions) are accessed and applied appropriately in accordance with clause 5.2(g);
  - (e) considering and approving the Manager's recommendations regarding:
    - (i) viable means of improving and extending all works comprising the Downlands Water Scheme; and
    - (ii) viable means of water treatment and conservation, and any means of obtaining additional water for the Downlands Water Scheme;
  - (f) providing advice and recommending strategies, policies and procedures necessary to assist the Manager in fulfilling its responsibilities as the Downlands Water Scheme Manager; and
  - (g) undertaking any other matters that will assist in the efficient, cost effective and productive management of the Downlands Water Scheme.
- 4.4 Subject to clause 4.5 (setting out decisions that are reserved to the Councils) each Council delegates to the Joint Committee all powers as are necessary for managing, and for directing and supervising the management of, the business and affairs of the Downlands Water Scheme. All decisions made by the Joint Committee under its delegated powers, or by the Manager under the powers that have been subdelegated to it, shall, without confirmation of the Councils, bind each Council as if that decision had been made by that Council.
- 4.5 Subject to clause 4.6, decisions on the following matters require the unanimous approval of the Councils. The Manager may make recommendations to the Joint Committee, and the Joint Committee may make recommendations to the Councils on these matters, but decisions on these matters need to be made by the Councils:
- (a) each Council adopting the long term plan and annual plan budget for the Downlands Water Scheme, including any loan funding required to be raised, as part of their Long Term plan and Annual Plan (each in their respective Ownership Proportion);
  - (b) doing any of the following, except to the extent it is contemplated by the long term plan or annual plan budget for the Downlands Water Scheme adopted by the Councils:
    - (i) sell or purchase land held or required for the Downlands Water Scheme; or
    - (ii) to sell, transfer or otherwise dispose of all or part of the Downlands Water Scheme's assets, other than a sale when the assets are at the end of their useful life; and
  - (c) each Council setting the targeted rate to be charged to their respective ratepayers who are on the Downlands Water Scheme (noting that the Manager will make recommendations to the Joint Committee, and the Joint Committee will make recommendations to the Councils, of the targeted rates to be struck to meet the Downlands Water Scheme's financial requirements).
- 4.6 In order to give certainty over the budget and work program, each Council agrees that if the Manager reasonably considers that work, expenditure or a decision is required for the prudent management of the Downlands Water Scheme assets, to maintain existing levels of service or

to meet any regulatory requirement, it will provide any approvals required for that work, expenditure or decision.

- 4.7 Nothing in this Agreement prevents the Manager from carrying out action without the Councils' unanimous approval in an emergency situation or to protect the health or safety of persons or to prevent damage to property. The Manager shall promptly advise the Councils of the details of any action carried out under this clause 4.7.
- 4.8 The Joint Committee and the Manager shall each operate within budgets approved by the Councils. In the event that over expenditure is anticipated or incurred the Joint Committee shall immediately report that to the Councils.

## **5. Management of Downlands Water Scheme**

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- 5.1 The Councils contract Timaru District Council to manage the Downlands Water Scheme. From the date of this Agreement, Timaru District Council shall manage the Downlands Water Scheme on the terms set out in this Agreement, instead of the terms set out in the 2015 Joint Committee Agreement.
- 5.2 Timaru District Council shall provide the following management services in relation to the Downlands Water Scheme:
- (a) preparing an asset management plan, long term plan, annual plan budgets and work programme (operational and capital works) for the Downlands Water Scheme, providing these to the Joint Committee for consideration, and updating them to reflect any comments received from the Joint Committee before recommendations are made to the Councils each year for adoption within each Council's respective Long Term Plans and Annual Plan (in their respective Ownership Proportions);
  - (b) managing and operating the Downlands Water Scheme in accordance with the adopted asset management plan, long term plan, annual plan budgets, work programme and budgets, including carrying out ongoing inspection and maintenance of all works comprising the Downlands Water Scheme;
  - (c) preparing financial statements and budgets for the Downlands Water Scheme, including recommending the targeted rates and the charges to be struck and levied to meet the Downlands Water Scheme's financial requirements, providing these to Joint Committee for consideration, and updating them to reflect any comments received from the Joint Committee before they are provided to the Councils;
  - (d) receiving and processing of applications from the Downlands Water Scheme's consumers and prospective consumers, in respect of water to be supplied by the Downlands Water Scheme;
  - (e) setting and collecting connection fees (tank and unit);
  - (f) procuring and project managing, on behalf of the Councils, the capital works programme (renewals and extensions to the Downlands Water Scheme), in accordance with the approved long term plan and annual work programs for the Downlands Water Scheme. Typically renewals will be funded using Downlands Water Scheme reserves/retained earnings and extensions will be funded from reserves/retained earnings and/or borrowings;
  - (g) accessing and applying Downlands Water Scheme reserves and other funds for the purpose of implementing the long term plan and annual work program for the Downlands Water Scheme;
  - (h) investigating and promoting:

- (i) viable means of improving and extending all works comprising the Downlands Water Scheme; and
    - (ii) viable means of water treatment and conservation, and any means of obtaining additional water for the Downlands Water Scheme; and
  - (i) undertaking any other matters that will assist in the efficient, cost effective and productive management of the Downlands Water Scheme.
- 5.3 Although the Manager is engaged by the Councils jointly (as owners of the Downlands Water Scheme), the Manager shall report to, and be directed and supervised by, the Joint Committee. The Manager shall report to the Joint Committee annually (or more frequently as required by the Joint Committee).
- 5.4 Subject to clause 4.6 (setting out decisions that are reserved to the Councils), the Joint Committee sub-delegates to the Manager all the powers necessary for managing the business and affairs of the Downlands Water Scheme.
- 5.5 The Manager will carry out the Management Services:
- (a) with all reasonable care and skill.
  - (b) using personnel with appropriate skill and experience; and
  - (c) in compliance with all relevant laws and bylaws.
- 5.6 To the extent permitted by law, all other express or implied warranties or representations of the Manager (and its officers and employees) in relation to the Management Services are excluded. The parties contract out of sections 9, 12A, 13 and 14(1) of the Fair Trading Act.
- 5.7 The Joint Committee shall:
- (a) promptly respond to all requests made by the Manager for instructions, and promptly do all things which may reasonably be necessary to enable the Manager to provide the Management Services fully and effectively in the manner contemplated by this Agreement;
  - (b) ensure that there are sufficient funds available in the Downlands Water Scheme bank account to make payments as they fall due; and
  - (c) promptly provide all information, directions, assistance, approvals and co-operation reasonably required by the Manager for the provision of the Management Services under this Agreement.
- 5.8 In exchange for providing the Management Services, the Councils, in their Ownership Proportions, will reimburse all outgoings, costs, losses or liabilities properly incurred by the Manager in relation to, arising from or in connection, with its performance of the Management Services (including an engineering charge, a corporate overhead and project staff time at rates set by the Manager from time to time).
- 5.9 The Manager will not be liable for any delay or failure to perform any of its obligations that is caused or contributed to by any event beyond its reasonable control (including but not limited to an act of nature, fire, discontinuity in power supply, court order, riot, war, strike or labour disturbance) provided it:
- (a) could not have avoided or overcome the event by exercising a standard of reasonable care at a reasonable cost;



- (b) notifies the Joint Committee in writing of the event on becoming aware of it; and
- (c) uses its best endeavours to mitigate the effects of the event and to perform its obligations not affected by the event.

## **6. Rates, bylaws and enforcement**

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- 6.1 Each Council shall collect all rates in relation to water supplied from the Downlands Water Scheme within its district, which will be accounted for and paid to the Manager for payment to a nominated bank account operated in accordance with any local authority accounting regulations in force. For clarity, connection fees (tank and unit), as distinct from rates, will generally be collected directly by the Manager as user fees and charges.
- 6.2 Waimate District Council and Mackenzie District Council shall each:
  - (a) enact a water services bylaw which has enforcement provisions that are consistent with the enforcement provisions contained in Timaru's Water Services Bylaw; and
  - (b) delegate the powers of enforcement, inspection and administration vested in it in relation to the provision of water services (and any other regulatory matter required to assist in the efficient management of the Downlands Water Scheme) shall be delegated to the Manager;
  - (c) under the provisions of the Local Government Act 2002, appoint officers, employees, contractors or agents of Timaru District Council (as notified by Timaru District Council from time to time) to be the enforcement officers for its District and issue warrants, as required by the Local Government Act 2002, to those selected enforcement officers stipulating their powers in relation to the administration of the Downlands Water Scheme.

## **7. Contracting and borrowing**

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- 7.1 The Downlands Water Scheme is not a separate legal entity. As set out in clause 3.2 the Downlands Water Scheme assets are owned, and liabilities are incurred, by the Councils jointly in their Ownership Proportions.
- 7.2 Contracts should generally be entered into in the names of the three Councils jointly, and each Council appoints the Manager as its agent for the purpose of executing Downlands Water Scheme contracts on its behalf, and doing all such other things, as may be necessary or desirable in order to implement, give effect to or perform Downlands Water Scheme contracts. However if one Council agrees to enter into a Downlands Water Scheme contract or to incur a Downlands Water Scheme liability in its own name alone, then:
  - (a) from the perspective of the other party to that contract, that Council alone would be fully liable to meet all of the obligations under the contract; but
  - (b) as between, the Councils, they are jointly liable for the costs and borrowings of the Downlands Water Scheme (including under any service, construction contract or loan), in their Ownership Proportions.
- 7.3 If Timaru District Council enters into a contract or takes out a loan to fund the development, extension or modification of the Downlands Water Scheme in its own name:
  - (a) Waimate District Council and Mackenzie District Council shall each (at Timaru District Council's request):
    - (i) provide an indemnity to cover a proportion of the contract or loan (principal, interest and any charges) equal to that Council's Ownership Proportion; and

- (ii) grant a power of attorney to Timaru District Council to allow it to recover rates arrears from users in that Council's district (without releasing the other Councils from their collection and payment obligations); and
- (b) if ownership of the Downlands Water Scheme (or any part thereof) is transferred to another entity as a result of the proposed Central/Local Government Three Waters Reform Programme, each Council's proportionate share of that contract/loan (principal, interest and any charges) shall not remain with Timaru District Council following the effective date of the Reform. Each Council shall do all acts, matters or things as may be reasonably required to ensure Timaru District Council is not in worse financial position from funding the development, extension or modification in its own name than if that Council had directly funded its proportionate share of the liability/loan itself (e.g. Waimate District Council and Mackenzie District Council shall each include a mechanism as part of its long term plan process to ensure that if the Reform proceeds, its proportionate share of the liability/loan (including principal, interest and any charges) shall not remain with Timaru District Council following the effective date of the Reform). That Council shall procure that its proportionate share of the loan be transferred to it or the new entity.

## **8. Te Ana Wai Project**

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- 8.1 The Councils have agreed to undertake and commission the Te Ana Wai Project (consistent with prior approvals) including loan funding arrangements.
- 8.2 The Te Ana Wai Project is being commissioned and managed by Timaru District Council, on behalf of the Councils, in its roles as Manager of the Downlands Water Scheme. It is being funded:
  - (a) retained earnings; and
  - (b) the balance (up to approximately \$20,000,400 including an additional \$1.3m to be borrowed for other capital works).
- 8.3 The parties agree that the loan referred to in clause 8.2(b) is to be taken out in the name of Timaru District Council on behalf of the three Councils in their Ownership Proportions (i.e. 14% of the loan is attributable to Waimate District Council and 4% of the loan is attributable to Mackenzie District Council).
- 8.4 The loan referred to in clause 8.2(b) is to be repaid via revenue received from targeted rates charged by each Council (with the targeted rates collected by Waimate District Council and Mackenzie District Council to be on-paid to the Manager).
- 8.5 In consideration of Timaru District Council agreeing to enter the loan in its name, Waimate District Council and Mackenzie District Council each hereby:
  - (a) indemnify Timaru District Council for a proportion of the contract or loan (principal, interest and any charges) equal to that Council's Ownership Proportion; and
  - (b) grant a power of attorney to Timaru District Council to allow it to recover rates arrears from users in that Council's district (without releasing that Council from its responsibility to collect the rates and pay them to the Manager); and
  - (c) agree that clause 7.3(b) shall apply to that loan.
- 8.6 All improvements to the Downlands Water Scheme arising from the Te Ana Wai Project will be owned by the parties in the Ownership Proportions.

## 9. General

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- 9.1 **Variations:** No amendments to this Agreement will be effective unless made in writing and signed by each Council.
- 9.2 **Confidentiality:** The parties acknowledge that some information provided by or to them under or in connection with this Agreement may be commercially sensitive or otherwise confidential. Where this is the case, the party providing the information should specify which information they provide is confidential, and the party receiving the information agrees not to use or disclose it without the discloser's prior consent. It will not be a breach of this clause for a party to use or disclose confidential information to the extent required to perform its obligations under this Agreement or to disclose confidential information to the extent required by Local Government Official Information and Meetings Act 1987 or any other law. This clause does not apply to information which is, or becomes, publicly available without breach of the obligations under this clause or which a party can prove it independently created or acquired.
- 9.3 **Further acts:** The parties will take all actions and sign all documents reasonably required to give effect to the provisions of this Agreement.
- 9.4 **Entire agreement:** This Agreement replaces any earlier representations, warranties, understandings and agreements (whether oral or written) between the parties and sets out the entire agreement between them relating to its subject matter.
- 9.5 **Health and Safety:** Nothing in this Agreement shall be taken to limit the duties owed by either party under the Health and Safety at Work Act 2015 (**HSWA**) (e.g. where each party has duties in relation to the same matter imposed by or under the HSWA, to, so far as is reasonably practicable, consult, cooperate, and coordinate activities with each other to the extent required to ensure they comply with their respective obligations under the HSWA).
- 9.6 **No agency:** Nothing in this Agreement will be deemed to create a partnership, joint venture or agency between the parties. No party has any authority to bind another party, unless expressly permitted to in this Agreement.
- 9.7 **No waiver:** No failure or delay by a party in insisting on the strict performance of this Agreement or to exercise any right under this Agreement will operate as a waiver of those matters. A waiver will not be effective unless it is in writing. A waiver of any breach will not be a waiver of any other breach.
- 9.8 **Counterparts:** This Agreement may be executed in counterparts (including by copy sent via email in PDF format and including by electronic signature). Each counterpart will be deemed to be an original and all counterparts together are to constitute one agreement.

## Executed as a Deed

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Signed by **Timaru District Council** by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Councillor's full name

\_\_\_\_\_  
Councillor's full name

Signed by **Waimate District Council** by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Councillor's full name

\_\_\_\_\_  
Councillor's full name

Signed by **Mackenzie District Council** by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Councillor's full name

\_\_\_\_\_  
Councillor's full name

Draft

### Schedule 1 – Downlands Water Scheme Overview



## Schedule 2 – Terms of Reference

### TERMS OF REFERENCE - DOWNLANDS WATER SCHEME JOINT COMMITTEE

Terms of Reference for the Downlands Water Scheme Joint Committee, a joint committee appointed by Timaru District Council, Waimate District Council and Mackenzie District Council in accordance with clause 30(1)(b) of Schedule 7 of the Local Government Act 2002 known as the Downlands Water Scheme Joint Committee:

1.	Name	Downlands Water Scheme Joint Committee
2.	Structure	Appointed by the Timaru District Council, Waimate District Council and Mackenzie District Council in accordance with clause 30(1)(b) of Schedule 7 of the Local Government Act 2002.
3.	Purpose	To ensure the ongoing effective governance and management of the Downlands Water Scheme.
4.	Functions	<p>To manage, and direct and supervise the management of, the business and affairs of the Downlands Water Scheme, including (without limitation):</p> <ul style="list-style-type: none"> <li>(a) considering the asset management plan, long term plan, annual plan budgets and work programme (operational and capital works) prepared by the Manager, and making recommendations to the Councils each year for adoption within each Council's respective Long Term Plans and Annual Plan (in their respective Ownership Proportions);</li> <li>(b) considering the financial statements and budgets, prepared by the Manager and providing these to the Councils, together with a recommendation of the rates and charges to be struck and levied to meet the Downlands Water Scheme's financial requirements;</li> <li>(c) directing and supervising the management and operation of the Downlands Water Scheme by the Manager, including ensuring compliance with the adopted asset management plan, long term plan, annual plan budgets, work programme and budgets;</li> <li>(d) ensuring that the Councils' Downlands Water Scheme reserves and other funds are accessed and applied appropriately in accordance with the Agreement between the Councils;</li> <li>(e) considering and approving the Manager's recommendations regarding: <ul style="list-style-type: none"> <li>(i) viable means of improving and extending all works comprising the Downlands Water Scheme; and</li> <li>(ii) viable means of water treatment and conservation, and any means of obtaining</li> </ul> </li> </ul>

		<p>additional water for the Downlands Water Scheme;</p> <p>(f) providing advice and recommending strategies, policies and procedures necessary to assist the Manager in fulfilling its responsibilities as the Downlands Water Scheme Manager; and</p> <p>(g) undertaking any other matters that will assist in the efficient, cost effective and productive management of the Downlands Water Scheme.</p>
5.	Membership	<p>There shall be up to 8 members of the Downlands Water Scheme Joint Committee, appointed as follows:</p> <ul style="list-style-type: none"> <li>• each Council shall appoint 1 of its elected members as a Member;</li> <li>• Timaru District Council may appoint up to 4 additional Members; and</li> <li>• Waimate District Council and Mackenzie District Council may jointly appoint 1 additional Member.</li> </ul> <p>Under the Local Government Act an additional member who is not an elected member must, in the opinion of the appointing Council, have the skills, attributes, or knowledge that will assist the work of the Joint Committee.</p> <p>Appointments shall be made by notice in writing to Timaru District Council (as Manager of the Downlands Water Scheme).</p>
6.	Chairperson	<p>The Joint Committee shall elect one of its members as Chairperson and one of its members as Deputy Chairperson.</p> <p>The Joint Committee member elected as Chairperson and as Deputy Chairperson each holds that office for 3 years, unless he or she dies or resigns or the Joint Committee elect a Chairperson/ Deputy Chairperson in his or her place sooner.</p> <p>If, at a meeting of the Joint Committee, neither the Chairperson nor Deputy Chairperson is present within 5 minutes after the time appointed for the commencement of the meeting, the Joint Committee members present may choose one of their number to chair that meeting.</p>
7.	Method of holding meetings	<p>A meeting of the Joint Committee may be held either:</p> <ul style="list-style-type: none"> <li>• by a number of the Joint Committee members who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or</li> <li>• by means of audio, or audio and visual, communication by which all Joint Committee members participating and constituting a quorum can simultaneously hear each other throughout the meeting.</li> </ul>
8.	Quorum	<p>Quorum for a Joint Committee meeting is:</p> <ul style="list-style-type: none"> <li>• half of the Joint Committee members if there is an even number of members; or</li> <li>• a majority of the Joint Committee members if there is an odd number of members.</li> </ul> <p>However a quorum will not be present unless:</p>

		<ul style="list-style-type: none"> <li>the Joint Committee member that is an elected member of Waimate District Council and the Joint Committee member that is an elected member of Mackenzie District Council are both present; or</li> <li>the Joint Committee member that is jointly appointed by Waimate District Council and Mackenzie District Council is present.</li> </ul> <p>No business may be transacted at a Joint Committee meeting if a quorum is not present.</p> <p>(This quorum is prescribed by clause 30A of Schedule 7 of the Local Government Act. That clause also specifies that a Mayor who is a member of the Joint Committee solely by operation of section 41A(5) of the Local Government Act is not to be counted as a member for the purposes of determining the number of members required to constitute a quorum or whether a quorum exists at a meeting.)</p>
9.	Voting	<p>Every member of the Joint Committee has 1 vote.</p> <p>The chairperson does not have a casting vote.</p> <p>A resolution of the Joint Committee is passed if it is agreed to by all Joint Committee members present without dissent or if a majority of the votes cast on it are in favour of it.</p> <p>A Joint Committee member present at a Joint Committee meeting is presumed to have agreed to, and to have voted in favour of, a resolution unless he or she expressly dissents from or votes against the resolution at the meeting.</p>
10.	Minutes	<p>The Joint Committee must ensure that minutes are kept of all proceedings at meetings of the Joint Committee.</p> <p>A copy of the minutes are to be provided to each Council.</p>
11.	Written resolution in lieu of meeting	<p>A resolution in writing, signed or assented to by all Joint Committee members, is as valid and effective as if it had been passed at a meeting of the Joint Committee duly convened and held.</p> <p>Any such resolution may consist of several documents (including electronic means of communication) in like form each signed or assented to by 1 or more members.</p> <p>A copy of any such resolution must be entered in the Joint Committee's minute book.</p>
12.	Remuneration of members	<p>Members of the Joint Committee may be remunerated by their appointing Council.</p>
13.	Other proceedings	<p>Except as provided in these Terms of Reference, the Joint Committee may regulate its own procedure.</p>
14.	Definition	<p>In these Terms of Reference:</p> <p><b>Downlands Water Scheme</b> means the joint water scheme between Timaru District Council, Waimate District Council and Mackenzie District Council known as the Downlands Water Scheme, as renewed, upgraded, extended and amended from time to time; and</p> <p><b>Manager</b> means Timaru District Council, in its role as manager of the Downlands Water Scheme.</p>



**AGREEMENT IN RELATION TO THE JOINT  
STANDING COMMITTEE FOR  
GOVERNANCE OF THE DOWNLANDS WATER  
SUPPLY SCHEME**

#950752

**AGREEMENT IN RELATION TO JOINT COMMITTEE**

Dated this                    day of                    20

**BETWEEN**    **TIMARU DISTRICT COUNCIL** a territorial authority duly constituted pursuant to the Local Government Act 2002.

**AND**                **WAIMATE DISTRICT COUNCIL** a territorial authority duly constituted pursuant to the Local Government Act 2002.

**AND**                **MACKENZIE DISTRICT COUNCIL** a territorial authority duly constituted pursuant to the Local Government Act 2002.

(collectively referred to as "the Councils")

**BACKGROUND:**

- A. By an Order in Council dated 8 December 1937 the Minister of Works was authorised to construct and maintain the Downlands Water Supply Scheme ("the Downlands Scheme").
- B. By operation of a Memorandum of Agreement dated 29 November 1960 the Minister of Works vested ownership and control of the Downlands Scheme to the Levels, Geraldine, Mackenzie and Waimate County Councils.
- C. By processes of local authority amalgamation, the present owners of the Downlands Scheme (and the proportion within each territorial authority's jurisdiction), are the Timaru District Council (82%), Waimate District Council (14%) and Mackenzie District Council (4%).
- D. To ensure ongoing effective governance of the Downlands Scheme the Councils agree to form a joint standing committee, pursuant to the Local Government Act 2002 ("the Act"), to be known as "The Downlands Joint Standing Committee".
- E. Clause 30A of Schedule 7 of the Act and Clause 5 of Schedule 1AA of the Act require that before 8 August 2015 an agreement must be entered into by the Councils specifying membership of its joint committee, the election of chairpersons and deputy chairpersons, the terms of reference for the joint committee, the delegated responsibilities and the means of varying the agreement relating to the joint committee. This Agreement sets out each of these matters as required by the Act.

**IT IS HEREBY AGREED:**

1. The Councils shall following each triennial local authority election, appoint a joint standing committee to be known as the Downlands Joint Standing Committee ("the Downlands Committee").
2. Membership of the Downlands Committee shall consist of one (1) elected member from each of the Councils, four (4) members appointed by the Timaru District Council and one (1) member appointed by the Waimate and Mackenzie District Councils (making a total of eight (8) members).

3. The Downlands Committee shall at its first meeting appoint its chairperson and deputy chairperson by simple majority vote. The term of these appointments is three (3) years.
4. The Downlands Committee shall in each and every financial year prepare estimates and receipts for that financial year and shall recommend to the Councils the rates and charges to be struck and levied to meet the full financial requirements of the management of the Downlands Scheme.
5. The Downlands Committee may provide any advice and develop and recommend any strategies, policies and procedures necessary to assist the Timaru District Council in fulfilling its responsibilities as the Downland Scheme's Manager.
6. The Terms of Reference for the Downlands Committee are set out in Schedule 1 hereto. The Councils acknowledge they are bound by the Terms of Reference and will comply with them.
7. This Agreement (including the Terms of Reference) may be varied by mutual agreement of the Councils at any time with any such mutually agreed variation to be recorded in writing, signed by the Councils and attached to a copy of this Agreement.

Signed on behalf of the	Name
<b><u>TIMARU DISTRICT COUNCIL</u></b>	Signature
In the presence of:	Witness

Signed on behalf of the	Name
<b><u>WAIMATE DISTRICT COUNCIL</u></b>	Signature
In the presence of:	Witness

Signed on behalf of the	Name
<b><u>MACKENZIE DISTRICT COUNCIL</u></b>	Signature
In the presence of:	Witness

Schedule 1

TERMS OF REFERENCE

The Downlands Joint Standing Committee ("the Downlands Committee") is a joint committee of the Timaru, Waimate and Mackenzie District Councils (collectively referred to as "the Councils") established pursuant to the provisions of the Local Government Act 2002 ("the Act").

**PURPOSE:**

To ensure the ongoing effective governance and administration of the Downlands Water Supply Scheme ("the Downlands Scheme").

To give effect to the purpose of these Terms of Reference the Councils agree:

1. The Memorandum of Agreement between the Ministry of Works and the Levels, Geraldine, Waimate and Mackenzie County Councils dated 29 November 1960, as amended by amendments dated 1 April 1979 and 28 November 1993, is revoked.
2. The Waimate District Council and Mackenzie District Council will each enact a water services bylaw which has enforcement provisions that are consistent with the enforcement provisions contained in the Timaru District Council's Chapter 7 - Water Services Bylaw.
3. The Councils agree the Timaru District Council shall be appointed as the Downlands Scheme Manager, with responsibilities including, but not limited to:
  - (i) The receiving and processing of applications from the Downlands Scheme's consumers, and prospective consumers, in respect of water to be supplied by the Downlands Scheme.
  - (ii) The ongoing inspection and maintenance of all works comprising the Downlands Scheme.
  - (iii) Investigating and promoting viable means of improving and extending all works comprising the Downlands Scheme.
  - (iv) Investigating and promoting viable means of water treatment and conservation, and any means of obtaining additional water for the Downlands Scheme.
  - (iv) Undertaking any other matters that will assist in the efficient, cost effective and productive management of the Downlands Scheme.
4. The Waimate District Council and Mackenzie District Council shall resolve the powers of enforcement, inspection and administration vested in those territorial authorities in relation to the provision of water services (and any other regulatory matter required to assist in the efficient management of the Downlands Scheme) shall be delegated to the Timaru District Council.
5. The Waimate District Council and Mackenzie District Council shall pursuant to the provisions of the Act appoint selected officers or agents of the Timaru District Council to be enforcement officers for the Waimate and Mackenzie Districts. The Waimate District Council and Mackenzie District Council shall also issue warrants, as required by the Act, to those selected enforcement officers stipulating their powers in relation to the administration of the Downlands Scheme.

6. The formation of the Downlands Committee and the means of appointing its member and office holders are set out in clause 1 and 2 of the Agreement in Relation to Joint Committee executed by the Councils.
7. The members of the Downlands Committee may meet together for the despatch of business, adjourn or otherwise regulate their meetings as they think appropriate.
8. The Downlands Committee shall supply agendas to their members detailing the business to be brought before that meeting together with relevant attachments which must be sent to every member not less than two clear working days before the day appointed for the meeting.
9. Questions arising at any meeting of the Downlands Committee shall be decided by a majority of votes of those present, each member having only one vote. In the case of an equality of votes, the chairman shall have a casting vote. If the standing orders of any of the Councils do not provide for the Downlands Committee Chairman to have a casting vote, each Council shall amend its standing orders accordingly.
10. The quorum necessary for the transaction of business of the Downlands Committee shall consist of each elected member of the Councils and two (2) other appointed members.
11. The Downlands Committee shall keep minutes recording:
  - (a) The names of the members present at each meeting; and
  - (b) All resolutions and proceedings at all meetings of the Downlands Committee.
12. The Downlands Committee may provide any advice and develop and recommend any strategies, policies and procedures necessary to assist the Timaru District Council in fulfilling its responsibilities as the Downlands Scheme Manager.
13. All members of the Downlands Committee shall be remunerated by their respective appointing Council.
14. The Councils each resolve to undertake to collect all monies in relation to water supplied by the Downlands Scheme within its district, which will be accounted for and forwarded to the Timaru District Council for payment into a nominated bank account operated in accordance with any local authority accounting regulations presently in force.

**1.1 Downlands Water Scheme**

**Author:** Ashley Harper, Acting Group Manager Commercial and Strategy  
**Authoriser:** Bede Carran, Chief Executive

<b>Section under the Act</b>	The grounds on which part of the Council or Committee may be closed to the public are listed in s48(1)(a)(i) of the <i>Local Government Official Information and Meetings Act 1987</i> .
<b>Sub-clause and Reason:</b>	s7(2)(i) - The withholding of the information is necessary to enable the Council to carry out, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)
<b>Plain English Reason:</b>	To enable commercial or industrial negotiations.

**Recommendations**

That the Infrastructure Committee, to enable negotiations with Waimate District Council and Mackenzie District Council to be progressed:

1. Support in principle the joint ownership of the Downlands Water Scheme and a Joint Committee with Waimate District Council and Mackenzie District Council continuing as the preferred ownership model for the time being (noting ultimately this is a decision of Council);
2. Approve in principle, and recommend to Council, Timaru District Council borrowing in its name (if required) the full loan requirement for the Te Ana Wai Project (up to approximately \$15m) and other capital works for the Downlands Water Scheme, subject to Waimate District Council (WDC) and Mackenzie District Council (MDC) acting at the request and direction of Timaru District Council, supported by indemnities and powers of attorney as appropriate, to collect any outstanding Downlands' rates within their respective districts.

**Purpose of Report**

- 1 To obtain the Infrastructure Committee's approval in principle to the recommendations noted above. This is to provide the guidance required to enable negotiations with Waimate District Council (WDC) and Mackenzie District Council (MDC) to be progressed. Note the final negotiated outcome (to be agreed by Council) may differ.

**Assessment of Significance**

- 2 This matter is of low significance in terms of Council's significance and engagement policy as it relates to governance and contractual arrangements between councils on the administration and operation of the Scheme.

**Background**

- 3 The Downlands Water Scheme (Scheme) is governed by a joint committee of the Timaru District Council, WDC and MDC and this joint committee is the mechanism used to administer the Scheme. Timaru District Council operates and maintains the Scheme for the benefit of all users across the 3 districts. As it is a joint committee comprising 3 councils, direction is being

- sought from the Infrastructure Committee on the proposed structure and the financial arrangements.
- 4 The Scheme is a joint water scheme between Timaru District Council, WDC and MDC (attached for ease of reference are the current terms of reference for the Downlands Committee). The three Councils have formed a Joint Committee to govern the Downlands Water Scheme and management of the Downlands Water Scheme has been delegated to Timaru District Council.
  - 5 As a result of new accounting standards, Audit New Zealand has raised questions about the ownership, governance and management of the Downlands Water Scheme. In response, Timaru District Council obtained legal advice regarding the ownership of the Water Scheme and the Joint Committee's authority to operate the Downlands Water Scheme. The legal advice determined that the Downlands Water Scheme is currently jointly owned by the Councils in the following proportions:
    - (i) Timaru District Council: 82%;
    - (ii) Waimate District Council: 14%; and
    - (iii) Mackenzie District Council: 4%,
  - 6 This was confirmed between the Councils and to Audit New Zealand as at 30 June 2020 for the purpose of the Councils completing their 2019/20 accounts.
  - 7 For the purpose of Financial Year 2020/21 and beyond, to provide greater certainty, the Councils have been reviewing and wish to agree arrangements regarding the ownership of the Downlands Water Scheme, the authority of the Joint Committee and of Timaru District Council as manager and operator of the Scheme.
  - 8 As part of this, the Councils also intend to record their agreement in relation to the current \$26m Te Ana Wai upgrade of the Downlands Water Scheme (the Te Ana Wai Project) and the loan funding required for the Te Ana Wai Project and other capital works. The Long Term Plans adopted by each party for 2018-28 were inclusive of the Te Ana Wai Project and the funding arrangements proposed at the time.

#### Discussion

- 9 Downlands Water Scheme is currently owned as set out above and is governed and managed by the Councils including through a Joint Committee established under the Local Government Act 2002, a Terms of Reference (2015), and with Timaru District Council acting as Scheme Manager.
- 10 As outlined above, Audit New Zealand has raised questions regarding the Scheme. These questions have been satisfactorily addressed in prior audits, but to satisfy future audit requirements, as a minimum the Councils need to:
  - (i) Confirm the legal status of Downlands (entity v asset ownership);
  - (ii) In the event of the Joint Committee continuing as the chosen structure:
    - (a) Confirm how the Downlands assets are owned, including any improvements or extensions. In the case of joint ownership, the parties need confirm that the assets are owned in undivided proportions (i.e. a percentage of a collective whole, rather than for example the physical assets within their respective District boundaries);

- (b) Provide greater clarity of the decisions that have been delegated to the Joint Committee or Timaru District Council, and what decisions are reserved to the Councils, if the parties wish these to be different to the current Terms of Reference;
  - (c) Provide direction on how loan finance may be raised;
  - (d) Re-confirm that the parties have agreed to renew the joint committee after each election.
- 11 The Councils have been reviewing the current arrangements in order to address the issues raised. Three options have been broadly identified in terms of the future legal structure of the Downlands Water Scheme. These are:
  - (i) Joint (proportionate) ownership and joint committee (current structure but addressing the audit concerns);
  - (ii) Separate legal entity/CCO established: Limited liability company;
  - (iii) Separate legal entity/CCO established: Limited partnership;
- 12 As noted below, while alternative options such as a CCO structure may be more optimal in the long run, it needs to be considered against a background of longstanding existing arrangements and the 3 Waters Reforms. With this in mind, a first principles approach to any immediate change to the legal structure has been identified as appropriate to future arrangements. The first principles are:
  - (i) Certainty regarding satisfying audit requirements for all 3 councils;
  - (ii) No party is disadvantaged;
  - (iii) No unintended accounting or tax implications;
  - (iv) Ease of implementation.
- 13 For completeness, an issue that requires some consideration is that of voting rights of the respective councils regarding the Scheme. While Timaru District Council has a majority on the Joint Committee, it is not certain or clear from the arrangements currently in place whether it has control, and whether that is control over the Scheme or its management and operations. This is because the matters that have been delegated to the joint committee are limited to:
  - (a) preparing estimates and receipts for each financial year;
  - (b) recommending to the Councils the rates and charges to be struck and levied for the management of the Downlands Scheme; and
  - (c) providing advice and developing and recommending strategies, policies and procedures necessary to assist Timaru District Council in fulfilling the responsibilities that have been delegated to it as Downlands Scheme Manager.
- 14 There are some matters that are not expressly delegated to the Joint Committee or Timaru District Council therefore require the approval of the Councils, an example of this would be divesting the ownership of the Scheme (an issue that could become live given the government's proposed reform of water).
- 15 Holding an 82% interest in the Scheme Timaru District Council may consider it ought to have control or at least a greater degree of influence. It is relevant to note that the accounting treatment may be impacted where there is a change in arrangements affecting control (for accounting purposes, the Councils currently treat Downlands as a Joint Operation).



**Options and Preferred Option**

## 16 Legal structure

- (i) Option 1: Joint (proportionate ownership and joint committee) – preferred option.

The Downlands Water Scheme could continue to be jointly owned by the 3 Councils, governed by the Joint Committee and its management and operation is by the Timaru District Council, but with new contracts providing greater certainty on matters such as the scope of, and limits to, the powers and responsibilities that are delegated by the Councils to the Joint Committee, and the powers and responsibilities that are delegated to Timaru District Council. Broadly, it is a formalisation of the existing arrangements that are in place. The key question is whether the Joint Committee's decisions are exercised by a simple majority of votes, or requiring unanimity for decisions. It is noted that it is potentially problematic if the Councils cannot agree on the significant matters, such as whether there should be divestment of the Scheme.

This is considered the preferred option in the circumstances. While the other options may provide benefits and optimisation over joint ownership and a joint committee structure (subject to tax and accounting advice) when considering the first principles approach (paragraph 12 above), option 1 is preferred for the time being.

- (ii) Option 2 and 3: Separate legal entity established: Company or limited partnership

The Councils could establish a separate Council Controlled Organisation (CCO) legal entity (limited liability company or limited partnership) to own and operate the Downlands Water Scheme.

This would require the Councils to transfer their ownership in the Downlands Water Scheme to the new CCO, and the Councils would become shareholders (company) or hold a partnership interest (limited partnership).

The CCO could contract other entities (eg Timaru District Council) to provide management services, project management of capital works or other services to it. The Councils would also need to enter into a contract with the CCO for the supply of water.

Some benefits of this structure include limited liability and providing an efficient and effective vehicle through which the Downlands assets can be owned, contracts entered into and loans raised.

## 17 Loan arrangements for the Te Ana Wai Project and other capital works

- (i) Option 1: Timaru District Council as borrower

Up to approximately \$15m is required to be borrowed to complete the Te Ana Wai Project, and a further \$1.3m for other capital works. The loan is repaid via revenue received from Targeted Rates charged by each Council (Targeted Rates collected by Waimate and Mackenzie District Councils are on-paid to Timaru District Council) as are user fees and charges (tank and connection fees).

One option is for Timaru District Council borrow the full amount on the basis that repayment of the loan will be recovered via Targeted Rates (including via Waimate and Mackenzie District Councils) from consumers in each District, subject to an indemnity from each of Waimate and Mackenzie District Councils for a proportionate amount relative to their ownership of the asset (Waimate 14% and Mackenzie 4%) which would apply in the event of a default by them or their ratepayers of an obligation to act at

Timaru District Council's request and direction on recovery. There are a range of mechanisms that would serve to protect our recovery rights in the event of a default.

While this would add \$2.93m of debt to Timaru District Council's balance sheet, Timaru District Council would still be able to accommodate this without exceeding its debt cap and the revenue collected is included in the total revenue/net debt calculation.

An additional consideration is the 3 waters reforms. If the Downlands Water Scheme assets transfer to another entity as a result of the reforms, there is a risk that Timaru District Council with 82% of the asset is only able to transfer 82% of the debt. While not a guarantee, to protect against this it is proposed to include a clause within the new agreement whereby Waimate District Council and Mackenzie District Council each provide assurance to Timaru District Council to do all things to ensure that if ownership of the Downlands Water Scheme is transferred to another entity as a result of the proposed Central/Local Government Three Waters Reforms, then its proportionate share of the loan (principal, interest and any charges) will not remain with Timaru District Council following the effective date of the reform. As above, there are a range of mechanisms that can be agreed to mitigate Timaru District Council's risk that it will hold the loan.

(ii) Option 2: Each party borrows for their respective proportions

The alternative is for each party to borrow in their respective proportions. This would require Waimate District Council to borrow up to \$2.28m and Mackenzie District Council up to \$652k and to pay this to Timaru District Council for the purpose of undertaking the Te Ana Wai Project. Mackenzie District Council has provisionally included \$600k of borrowing in its draft LTP budget for 2021-31, for the Te Ana Wai Project. It may be more difficult for Waimate District Council to include this in its LTP.

If this approach was taken, rather than setting a single targeted rate, each council could set 2 targeted rates, one for loans, the other for operating costs. Waimate and Mackenzie District Council would then retain the targeted rate collected for loans, and on-pay to Timaru District Council the targeted rate collected for operating costs.

There are a number of challenges with this option, such as differential interest rates, and potentially differential rates across the Scheme to recover the costs of finance, and the accounting for the back to back financial arrangements of loan funds of Waimate and Mackenzie District Councils being passed to Timaru for application to the capital works.

### Consultation

- 18 Timaru District Council is in discussions with Waimate District Council and Mackenzie District Council regarding options. Those discussions are ongoing.
- 19 Implementation of the preferred options, which are considered relatively minor and more about the 'mechanics', insofar as they affect our financial modelling or proposed targeted rate for Downlands, do not give rise to a consultation requirement, as the substantive issues regarding Downlands and its upgrade have been addressed in previous Long Term Plans.
- 20 The establishment of a separate legal entity would likely require public consultation, but this may not require a special consultative procedure. Councils are no longer required to undertake a special consultative procedure before establishing a CCO, following a 2014

amendment to the Local Government Act. Also note the exceptions in sections 130(4)(a) and 136(3) of the Local Government Act 2002 which allows a Council to transfer a water service to a CCO.

**Relevant Legislation, Council Policy and Plans**

- 21 Local Government Act 2002.
- 22 2015 Terms of Reference for the Downlands Water Scheme Joint Standing Committee.

**Financial and Funding Implications**

- 23 Cost of forming new agreement: Each Council is currently meeting its own costs associated with the review and negotiation of agreements.
- 24 CCO structure: If a CCO structure were to be established, the cost of forming the CCO would need to be agreed and provision would need to be made for any director fees.
- 25 Te Ana Wai Project and other capital works loan:
  - (i) If the option of Timaru District Council as borrower is taken, while this would add \$2.93m of debt to Timaru District Council's balance sheet, Timaru District Council would still be able to accommodate this without exceeding its debt cap (and includes the moneys collected as revenue for the purposes of its debt cap).
  - (ii) If the option of each party borrowing for their respective portions is instead progressed, the current proposed Targeted Rate would need to be split in 2 (loan and operating), with Waimate and Mackenzie District Councils retaining the targeted rates they collect for Downlands loans and paying to Timaru District Council the targeted rates they collect for Downlands operating.

**Other Considerations**

- 26 None identified.

**Attachments**

1. **Agreement and Terms of Reference in relation to the Joint Standing Committee for Governance of Downlands Water Supply Scheme**

**8 Consideration of Urgent Business Items**

**9 Consideration of Minor Nature Matters**