10.4 Waikato Waters Limited Incorporation Approval (Subject to WWDW approval as service delivery option in pervious item)

Report To:	Council
Meeting Date:	Wednesday, 25 June 2025
Author:	Gary Knighton
Author Title:	Planning and Performance Manager
Authorised by:	Planning and Performance Manager

Purpose

The purpose of this report is to seek approval for Council to become a shareholder in Waikato Waters Limited and to become a signatory to the company's associated incorporation documentation, subject to Council agreeing to proceed with the Waikato Waters Done Well water services delivery option.

Recommendation

That the Council:

a. ***RECEIVES*** *the report of Waikato Waters Limited Incorporation Approval*

b. ***NOTES that*** *'Waikato Water Done Well' was approved as Council's future water services delivery model for delivering drinking water and wastewater services, in accordance with the Local Government (Water Services Preliminary Arrangements) Act 2024* ***(WWDW Decision)*** *on 25 June 2025;*

c. ***NOTES*** *that as part of implementing the WWDW Decision, Waikato Waters Limited is required to be incorporated as a limited liability company, with Council being one of the shareholding councils*

d. ***APPROVES:***

   i. *the incorporation of Waikato Waters Limited with Council being one of the shareholders of that company; and*

   ii. *the Shareholders' Agreement and Constitution for Waikato Waters Limited, as attached respectively as appendices 1 and 2 to this Report* ***(Incorporation Documents)***

e. ***DELEGATES*** *authority to the Chief Executive on behalf of Council to:*

   i. *approve non-material amendments to the Incorporation Documents prior to Waikato Waters Limited being incorporated, and sign such documents, including the Incorporation Documents, as required, to incorporate Waikato Waters Limited and confirm Council's shareholding status of that company.*

   ii. *approve any amendments to the Incorporation Documents after Waikato Waters Limited's incorporation if necessary to reflect the final form of, and ensure compliance with, the Local Government (Water Services) Act 2025 when enacted, and to sign / execute such documents as required to give effect to such amendments;*

f. ***NOTES*** *that the Shareholders' Agreement provides for the establishment of the Shareholders Representative Forum (**SRF**) which has authority to make decisions on behalf of the applicable shareholding councils in relation to Waikato Waters Limited, as set out in more detail in the Incorporation Documents;*

g. ***APPOINTS****:*

   i. *the Mayor as Council's representative to the SRF; and*

   ii. *the Deputy Mayor as Council's alternate representative on the SRF; and*

h. ***DELEGATES*** *to the Mayor, or in the Mayor's absence, the Deputy Mayor, full authority to make decisions on behalf of Council at meetings of the SRF subject to such decisions being within scope of, and in compliance with, the functions and authority of the SRF as set out in the Incorporation Documents.*

Executive Summary

A Shareholders' Agreement and Constitution have been prepared to incorporate "Waikato Waters Limited". Approval is sought for these documents now, so that in the event that Council has approved the WWDW Option, steps can be taken as soon as possible to commence the company incorporation process. Other potential shareholding Councils are in or will hold similar meetings to confirm their agreement to such documentation.

Context

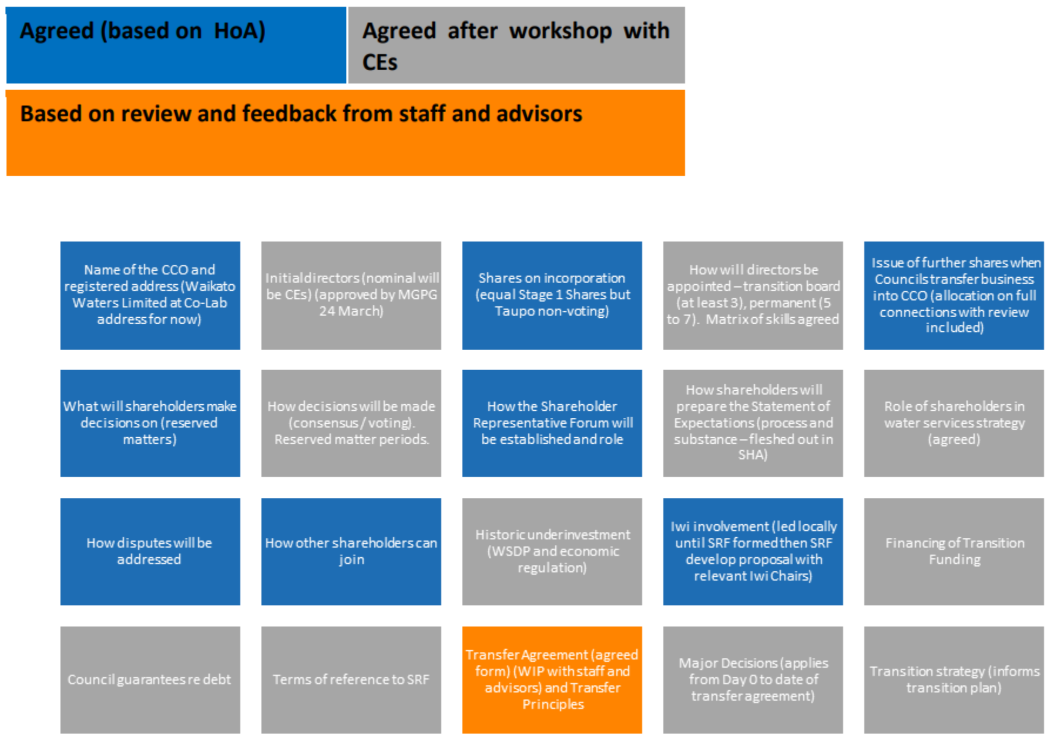
Discussion

Incorporation Documentation

In order to implement the WWDW Option (if approved), it would be necessary to establish a new limited liability company called Waikato Waters Limited. This proposed company would be the relevant water services council controlled organisation. To incorporate this CCO it is necessary to agree:

- A shareholders' agreement – setting out the arrangements between all seven shareholding councils; and
- A company constitution.
- These documents have been developed by the Waikato Waters Done Well Transition Team, under the leadership of the participating Councils' Chief Executives and oversight of the WWDW Mayors. The Heads of Agreement signed by all WWDW Councils in December 2024 provided the foundation for the development of these documents, which are attached as appendices to the report. The Shareholders Agreement and Constitution work together to:
    - set out each Council's rights and obligations in relation to the CCO;
    - the CCO's rights and obligations relating to the provision of water service, and
    - to formalise Companies Act requirements
- **Shareholders Agreement** As illustrated further in the diagram below, the Shareholders Agreement sets out:
    - Why the CCO is being established
    - Who owns the CCO
    - Who makes decisions in respect of the CCO and how they are made

- How directors are appointed
- How Shareholder Representative Forum members are appointed
- The Role of the Shareholder Representative Forum
- Financial security to be provided by Councils
- How the water services strategy is set



By signing the Shareholders Agreement, shareholders (other than Taupō DC) undertake to:

- be a Stage 1 shareholder from Day 0
- transfer water business on an Agreed Transfer Date
- complete a Transfer Agreement with the CCO

The draft Shareholders Agreement includes the template Transfer Agreement as a schedule which sets out the mechanics by which the waters business of a council will be transferred to the CCO. The Transfer Agreement is required by legislation and will be the document that, when signed, implements the transfer of water services assets and liabilities from the relevant council to the CCO.

The Shareholders Agreement also provides for a 'Shareholder Representative Forum' (SRF). The SRF has key responsibilities relating to the CCO. In particular, the SRF on behalf of shareholding councils will:

- Agree establishment funding that councils will collectively finance (up to LGFA financing commencement)
- Recruit, select and appoint the establishment Board;
- appoint and remove directors

- oversee the preparation and approval of the Statement of Expectations
- set performance indicators and measures to be used to monitor the CCO
- receive a performance evaluation report of Board on an annual basis
- receive, consider and approve any or all Reserved Matters
- receive and consider half-yearly and annual reports of the CCO
- provide council feedback on, for example, draft water services strategy

Each Mayor (or alternate) would be each Council's representative on the SRF. This report seeks authority to grant appropriate delegations and appoint the Mayor, and alternate, to the SRF, to make decisions on behalf of Council, should the WWDW option be approved.

The SRF representatives will seek to make decisions by consensus, but if this is not possible, the agreement sets out requirements for voting by the representatives, as summarised by the table below:

Reserved matter	Level of shareholder support Only Stage 2 Shareholders can vote (with one vote per Stage 2 Share)
"Major transactions", Companies Act	Special Majority Resolution
Approving Statement of Expectations	Special Resolution by Number of those Shareholding Councils who have committed to an Agreed Transfer Date that is on or before 1 July 2028.
Appointment of Directors of the Board and the Chair and Deputy Chair of the SRF	Special Resolution by Number
Five-year periodic review of Stage 2 Share allocation (decision to waive)	Special Resolution by Vote
Any material change to the Company's business	Special Majority Resolution (and in accordance with legislation)
Any alteration to, or revocation of, the Constitution	Special Majority Resolution
Any issue of Shares, or instrument that could result in issued Shares	Special Majority Resolution
Any alteration of rights, privileges or conditions attaching to the Shares	Special Majority Resolution
Any cancellation, buy-back or reduction of Shares (excluding Stage 1 shares which are cancelled in accordance with terms of issue)	Special Majority Resolution
Any consolidation, division, or subdivision of Shares	Special Majority Resolution
Any transaction by the Company relating to the Shares held by it (including giving financial assistance)	Special Majority Resolution
Any arrangement, dissolution, reorganisation, liquidation, merger or amalgamation of the Company	Special Majority Resolution
Any shareholder amending their Agreed Transfer Date so that it occurs earlier than otherwise agreed in the Transition Strategy.	Special Majority Resolution

Note:

- Special Resolution by number means all but two shareholders agree
- Special Resolution by vote means at least 75% agree
- Special Majority Resolution means no more than two shareholders disagree and 75% vote

The overall relationship between the shareholding councils, the SRF and the CCO can be summarised in the table in appendix 3.

Constitution

The proposed company constitution fulfils the requirements of the Companies Act. It sets out:

- the overall framework for the CCO
- the rights, powers and duties of the CCO, the board, each director and each shareholder

Options

Option	Advantages	Disadvantages
<u>Option 1:</u> Do nothing	• None	• *Unable to implement the WWDW decision in the event that it is approved.*
<u>Option 2:</u> Approve recommendations	• Enable Council (and other WWDW Councils) to quickly commence implementing the WWDW decision in the event that it is approved.	• None.

The recommended option is Option 2.

Linkage to Strategic Plan Priorities

Water Services underpin the adopted Growth goals and efficient and effective infrastructure provision. Growth can only occur with effective and affordable infrastructure that meets regulatory requirements. South Waikato's vision of strong economic gowth will be strengthened through ensuring that water services (which are a fundamental lifeline utility for our communities) are delivered in the most efficient and effective model, which meet all regulatory and legislative requirements, meeting public health and environmental expectations.

Consultation (Internal and External)

South Waikato is committed to, and values, its current and future relationships with Mana Whenua and Iwi and this is reflected in the Incorporation Documents. The Shareholders' Agreement sets out requirements for the Shareholder Representative Forum to engage with Iwi in relation to its decision-making. The Constitution sets out requirements for the company to consider opportunities to benefit from strategic relationships with Iwi partners and build positive relationships with co-governance entities.

Financial Considerations

Costs currently being incurred for LWDW are being funded via the Water Reform Transition funds and from the allocation of better off funding. The costs of Establishing Waikato Waters Limited, if incorporated, would be financed by the shareholding councils until the CCO can borrow in its own right from LGFA when all monies advanced by the shareholders will be repaid, including interest costs. The budget for these Establishment costs will be approved by the Shareholders Representative

Risks

Staff confirm that option 2 complies with Council’s legal and policy requirements.

Significance & Engagement Policy

Staff have considered the key considerations under the Significance and Engagement Policy and assess the decision as a low-medium level of significance. The WWDW decision is in itself a highly significant decision. It was accordingly subject to public consultation. However, the matters in this report are more of a technical nature relating to the documentation required to implement the WWDW decision, and therefore, have less significance which does not in itself necessitate any further public consultation.

Reference

Attachments

1. WWDW Constitution
2. WWDW Shareholders' Agreement