CONSTITUTION

SELWYN WATER LIMITED

CONTENTS

SELWYN WATER LIMITED
(Company)

CONSTITUTION

1. DEFINITIONS AND INTERPRETATION

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

Act means the Companies Act 1993;

Associated Person means, in relation to a person, any other person that the first person is a shareholder in, a director of, or employed in an executive capacity of;

Board means Directors who number not less than the required quorum acting together as the board of directors of the Company;

Company means **Selwyn Water Limited**;

Constitution means this constitution;

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

Director means a person appointed as director of the Company in accordance with the terms of the Act and this Constitution;

Effective Date means the date on which the Company commences providing water services (as advised by the Company to the Shareholder by notice in writing);

Independent means a person who is free from any association that could materially interfere with the exercise of their independent judgement as a director of the Company, including that the person:

(a) is not an elected member of the Shareholder;

(b) is not employed, and has not previously been employed, in an executive capacity by the Shareholder unless there has been a period of at least two years between ceasing such employment and serving on the board;

(c) is not employed, and has not previously been employed, in an executive capacity by the Company unless there has been a period of at least two years between ceasing such employment and serving on the board;

(d) does not currently hold (and has not held within the last two years) a senior role in a provider of material professional services to the Shareholder or the Company, and is not currently (and has not within the last two years been) an employee of such a service provider materially associated with the services provided;

(e) does not currently have (and has not within the last two years had) a material business or contractual relationship (for example, supplier or customer) with the Shareholder or the Company; and

(f) is not an Associated Person of any entity to which clause (e) above applies;

Local Government Acts means the Local Government Official Information and Meetings Act 1987, the Local Government Act 1974 and the Local Government Act 2002;

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

Statement of Intent means the statement of intent to be completed by the board from time to time in accordance with section 64 of the Local Government Act 2002;

Shareholder means Selwyn District Council;

Water Services Acts means the Local Government (Water Services Preliminary Arrangements) Act 2024 and the Proposed Water Services Act (when enacted).

1.2 **Interpretation:** In this Constitution, unless the context indicates otherwise:

(a) **Companies Act:** words or expressions not defined in this Constitution have the same meaning as they have in the Act;

(b) **Clauses and Schedules:** references to clauses and schedules are references to clauses of, and schedules to, this Constitution respectively;

(c) **Headings:** headings are for ease of reference only and do not form any part of the context or affect the interpretation of this Constitution;

(d) **Schedules:** the schedules to this Constitution and the provisions and conditions contained in such schedules have the same effect as if set out in the body of this Constitution;

(e) **Persons:** references to persons include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities in each case whether or not having separate legal personality;

(f) **Plural and Singular:** words importing the singular number include the plural and vice versa; and

(g) **Statutes and Regulations:** references to a statute include references to regulations, orders or notices made under or pursuant to such statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise and a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions.

2. OBJECTIVES AND FINANCIAL PRINCIPLES

2.1 **Scope of Business:** The Company has been formed to give effect to the decision of the Shareholder to create a Council-Controlled Organisation for the Selwyn region's drinking water and wastewater services, as contemplated under the Proposed Water Services Act. With effect from the Effective Date, the Company's sole business activity will be limited to providing drinking water and wastewater services in the Selwyn region, and ancillary activities in relation to these activities.

2.2 **Objectives:** In carrying out its business activities, the Company will operate consistently with the following objectives:

(a) to provide drinking water and wastewater services that:

(i) align with the Shareholder's strategies, including which may be set out in any Statement of Intent and the Waiora One Water Strategy, or any replacement strategies;

(ii) provide safe drinking water to consumers;

(iii) do not have adverse effects on the environment;

(iv) are reliable;

(v) are resilient to external factors, for example, climate change and natural hazards;

(vi) are of a quality that meets consumer expectations; and

(vii) meet all applicable regulatory standards and requirements; and

(b) to provide drinking and wastewater services in a cost effective and financially sustainable manner, including by:

(i) planning effectively to manage assets used to provide water services in the future;

(ii) sharing the benefits of efficiency gains with consumers, including when setting charges for water services;

(iii) performing its functions as a water services provider:

(a) in an open, transparent, accountable manner; and

(b) in accordance with sound business practice;

(iv) acting in the best interests of current and future consumers, including by providing for vulnerable consumers; and

(v) being a good employer.

2.3 **Expansion of Scope of Business**: The Company may explore opportunities to provide drinking water and wastewater services to other regions in the future on the basis that:

(a) the Board may explore and provide a recommendation to the Shareholder on those opportunities;

(b) the Board's recommendation will be non-binding; and

(c) any decision to expand the scope of the Company's business will be subject to the approval of the Shareholders (and any other legal requirements including consultation).

2.4 **Council-Controlled Organisation:** As at its date of incorporation, the Company is a Council-Controlled Organisation.

2.5 **Statement of Intent:** Where a Statement of Intent is required, the board must comply with its obligations under the Local Government Act 2002.

2.6 **Water organisation:** The Company is intended to be a water organisation for the purposes of the Proposed Water Services Act. Upon enactment of the Proposed Water Services Act:

(a) the Shareholder will take such steps (if any) together with the Company as may be required to procure that the Company is a water organisation (as defined in the Proposed Water Services Act, as enacted); and

(b) without limiting clause 2.5(a) above, in preparing the Company's Water Services Strategy and Water Services Annual Budget:

(i) the Shareholder will be able to provide comments on each of the draft strategy and draft budget; and

(ii) the Company will consider Shareholder comments prior to finalising the strategy and budget.

2.7 **Infrastructure:** The Company must not:

(a) use any of the assets of its water services networks as security for any purpose; or

(b) transfer its ownership of water services infrastructure or of any other interest in a water service to any third party,

2.8 **Financial Principles:** The Company must act in accordance with the following financial principles:

(a) the Company must spend the revenue it receives from providing water services on providing water services (including on maintenance, improvements, and providing for growth);

(b) the Company must ensure that the revenue it applies to the provision of water services is sufficient to sustain the Company's long-term investment in the provision of water services; and

(c) the Company's revenue (including from charges for the provision of water services) and expenditure must be transparent to the public.

3. RELATIONSHIP TO ACT, LOCAL GOVERNMENT ACTS AND WATER SERVICES ACTS

3.1 **Act:** The provisions of the Act are negated, modified, adopted and extended as provided in this Constitution.

3.2 **Local Government Acts and Water Services Acts:** The Company must comply with its obligations under the Local Government Acts and the Water Services Acts.

3.3 **Conflicts:** If there is any conflict:

(a) between a provision in this Constitution and a mandatory provision in the Act, then the mandatory provision prevails;

(b) between:

(i) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; and

(ii) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,

then the provision, word or expression in this Constitution prevails; and

(c) between a provision in this Constitution and a provision in the Local Government Acts or the Water Services Acts, then the provision in the Local Government Acts or the Water Services Acts prevails.

4. SHARES

4.1 **Shares on Issue:** The shares at the date of adoption of this Constitution will be issued to the Shareholder on incorporation at an issue price of $1 per share.

4.2 **Rights attaching to Shares:** Subject to the rights of shares which confer special rights, each share confers on the holder the right to:

(a) one vote on a poll at a meeting of the shareholders on any resolution, including any resolution to:

(i) appoint or remove a Director or auditor; or

(ii) adopt a constitution; or

(iii) alter the Company's constitution; or

(iv) approve a major transaction; or

(v) approve an amalgamation of the Company under section 221 of the Act; or

(vi) put the Company into liquidation;

(b) an equal share in dividends authorised by the Board; and

(c) an equal share in the distribution of the surplus assets of the Company.

4.3 **Shareholder Meetings:** Each shareholder has the right to receive notice of and attend every meeting of shareholders.

4.4 **Types of Shares**: Subject to this Constitution and the written approval of the Shareholder (other than in the case of the initial issue under clause 4.1), the board may:

(a) issue shares at any time to the Shareholder and in any number;

(b) issue shares in different classes which have different rights; and

(c) divide existing shares into different classes which have different rights.

4.5 **Redeemable Shares:** The Company may redeem a redeemable share:

(a) at the option of the Company; or

(b) at the option of the holder of the share; or

(c) on a date specified in this Constitution,

for a consideration that is:

(d) specified;

(e) to be calculated by reference to a formula; or

(f) required to be fixed by a suitably qualified person who is not associated with or interested in the Company.

4.6 **Share issue:** The board may only issue shares which rank equally with, or in priority to, existing shares (whether as to voting rights or distributions) if:

(a) all affected interest groups (if any) have unanimously approved the issue; or

(b) all entitled persons have agreed to the proposed share issue.

5. CALLS ON SHARES

5.1 **Company May Make Calls:** The Company may from time to time make such calls as it thinks fit on the Shareholder in respect of any amount unpaid on their shares and not by the conditions of issue made payable at a fixed time or times. The Shareholder must, subject to receiving at least 14 days' written notice specifying the time or times of payment, pay to the Company at the time or times so specified any amount so called. A call may be revoked or postponed as the Company may determine. The Shareholder shall be liable to pay, in accordance with the relevant notice, every call and shall remain liable to do so notwithstanding the subsequent transfer of the relevant shares.

5.2 **Timing of Calls:** A call may be made payable at such times and in such amount as the Company may determine.

5.3 **Terms of Issue:** Money payable in accordance with the terms of issue of a share will be deemed to be a call made and payable in accordance with the terms of issue.

5.4 **Interest:** If an amount called in respect of a share is not paid before or on the time appointed for payment, the person from whom the amount is due must pay:

(a) interest on that amount from the time appointed for payment to the time of actual payment at such rate as the Company, acting reasonably, may determine; and

(b) all expenses which the Company has incurred or may incur because of non-payment.

The Company may waive payment of any such interest wholly or in part.

6. TRANSFERS OF SHARES

No transfers of shares will be registered by the Company without the approval of the Shareholder.

7. SUSPENSION OF RIGHT TO DISTRIBUTIONS, LIEN AND FORFEITURE

7.1 **Suspension of Distributions:** If the Shareholder has defaulted in paying any money due to the Company, the board may suspend payment of any distribution to the Shareholder until the default is remedied.

7.2 **Satisfaction of Money Due:** The Company may apply any suspended payment in full or part satisfaction of the money due by the Shareholder to the Company.

7.3 **Liability Not Extinguished:** The Shareholder's liability for all money owing under a call is not extinguished by a transfer of the share in respect of which the money is owed.

7.4 **End of Suspension:** When the total distributions withheld and applied under clause 7.2 equal the amount due by the Shareholder, any suspension of the rights will end.

7.5 **Lien:** The Company has a first lien on the proceeds of sale and all distributions declared in respect of every share registered in the name of a Shareholder, for:

(a) all money payable in respect of shares held by the Shareholder; and

(b) all other money payable by the Shareholder to the Company; and

(c) any money the Company may be required to pay under any statute or regulation in respect of the Shareholder's shares, whether or not the time for the payment has arrived.

7.6 **Company may Sell Shares:** The Company may sell any share on which the Company has a lien. The Company may not make such a sale:

(a) unless money in respect of which the lien exists is due for payment; and

(b) until it has given notice to the registered Shareholder requiring payment of the money in respect of which the lien exists within 20 Working Days of the notice.

7.7 **Director's Certificate:** A certificate signed by a Director stating that the power of sale in clause 7.6 has arisen and is exercisable by the Company is conclusive evidence of the facts stated in the certificate.

7.8 **Authority to Complete Transfer:** The board may authorise any person to complete a transfer of shares to a purchaser to give effect to any sale exercising a lien.

8. DISTRIBUTIONS TO SHAREHOLDER

The Company must not pay any dividend or distribute any surplus in any way, directly or indirectly, to the Shareholder.

9. NEW ISSUES OF SHARES

9.1 **Consent to New Issues:** The board must not issue any shares, securities that are convertible into or exchangeable for shares or options to acquire shares without the written approval of the Shareholder.

9.2 **Permitted Issues:** Subject to clause 9.1, the board may issue shares (including redeemable shares) ranking equally with or in priority to existing shares. Any issue of shares made in accordance with this clause will be deemed not to be an action affecting the rights attached to the existing shares in the Company. The Company is expressly authorised to issue redeemable shares for the purposes of section 68 of the Act.

9.3 **Section 107(2) Issue:** Nothing in clause 9.1 applies to any issue of shares made with the agreement or concurrence of all entitled persons as provided in section 107(2) of the Act.

10. ACQUISITION OF COMPANY'S OWN SHARES

10.1 **Authority to Acquire Own Shares:** The Company may purchase or otherwise acquire its own shares. Subject to clause 10.2, these shares will be deemed to be cancelled immediately on acquisition.

10.2 **Authority to Hold Own Shares:** The Company may hold its own shares uncancelled but only in accordance with section 67A, 67B and 67C of the Act.

10.3 **Reissue of Shares:** Any shares reissued by the Company must be treated as the issue of new shares.

10.4 **Compliance:** The Company must comply with the Act when it purchases or acquires shares issued by it.

11. DIRECTORS

11.1 **Number of Directors:** The maximum number of Directors will be six and, from the Effective Date, the minimum number of Directors will be three.

11.2 **Present Directors:** The first Director of the Company is Murray Warren Strong who will be deemed to have been appointed under clause 11.3.

11.3 **Appointment and Removal of Directors:**

(a) **Appointment:** The Directors of the Company will be such person or persons as may from time to time be appointed by the Shareholder, in accordance with the Shareholder's Appointment and Remuneration of Directors and Trustees Policy, by notice in writing to the Company, provided that the total number of Directors will not at any time exceed the maximum number set out in clause 11.1. The Shareholder will ensure that each Director is appointed on the basis of their competency to perform the role, and so that the Board collectively has an appropriate mix of skills, knowledge, and experience in relation to providing water services.

(b) **Removal:** Every Director will hold office subject to the provisions of this Constitution and may at any time be removed by the Shareholder by notice in writing to the Company. Section 156 of the Act will not apply to the Company.

11.4 **Temporary Vacancy:**

(a) In addition to the appointment or removal of directors under clause 11.3, the board may:

(i) appoint any person to be a Director to fill a temporary vacancy in (and only in) circumstances where the number of Directors falls below the minimum number set out in clause 11.1 and with written approval of the Shareholder; and/or

(ii) at any time during the three-month period prior to the Company's next annual general meeting (but not otherwise) appoint up to two persons to be Directors.

(b) Subject to their earlier resignation, retirement, disqualification or removal in accordance with this Constitution, any Director appointed under clause 11.4(a) will cease to hold office at the commencement of the next annual meeting of the Company or at the next special meeting of the Company, whichever is earlier.

(c) Subject to the Act and this Constitution, any Director appointed under clause 11.4(a) will be eligible for re-appointment as a Director.

11.5 Term of Appointment and Rotation:

(a) A Director may serve a maximum period of 9 years, unless determined otherwise by the Shareholder.

(b) Subject to clause 11.5(c), a Director must not hold office (without re-appointment) past the third annual meeting following the Director's appointment (or re-appointment), or 3 years, whichever is longer. A retiring Director will hold office until the dissolution or adjournment of the annual meeting. A retiring Director is eligible for re-appointment unless he or she is disqualified under this Constitution (including by operation of clause 11.5(a)).

(c) The Shareholder may, by way of a notice in writing to the Company, direct that the retirement procedure set out in clauses 11.5(a) be varied in respect of one or more annual meetings (for example, by directing that a particular Director is required to retire, or will not be required to retire, by rotation at a particular annual meeting) and such notice is effective and binding upon the Company and its Directors notwithstanding clause 11.5(a).

11.6 Disqualification: In addition to the qualifications under section 151 of the Act and section 57 of the Local Government Act 2002, a person may not be appointed or hold office as a Director of the Company unless the person is and remains Independent.

11.7 Tenure of Office: Each Director will hold office until:

(a) **Removal:** removal in accordance with this Constitution;

(b) **Vacation of Office:** vacation of office pursuant to section 157 of the Act; or

(c) **Absence from Meetings:** vacation of office resulting automatically from being absent without permission of the board from three consecutive meetings of the board.

11.8 Best Interests: In accordance with section 131(1) of the Act, a Director must act in good faith and in a manner which that director believes to be in the best interests of the Company.

11.9 Indemnity and Insurance of Directors and Employees:

(a) the Company may indemnify and effect insurance in accordance with any part or all of section 162 of the Act;

(b) the board must immediately enter in the interests register the particulars of any indemnity given to, or insurance taken out for, any Director, former Director, employee, or former employee of the Company or any related company; and

(c) the board may impose any condition in relation to any indemnity or insurance if the condition does not contravene the Act.

11.10 Professional Directors: Any Director may act by himself or herself or his or her firm in a professional capacity for the Company, and a director or firm will be entitled to remuneration for professional services as if he or she were not a Director, provided that nothing in this clause will authorise a director or his or her firm to act as auditor of the Company.

11.11 Directors' Remuneration: The board must not exercise any of its powers under section 161 of the Act without the sanction of a resolution of the Shareholder.

12. PROCEEDINGS OF THE BOARD

The provisions of the Schedule to this Constitution govern proceedings of the board. The provisions of the third schedule to the Act will not apply to the Company.

13. NOTICES

13.1 Service: A notice may be served by the Company on any Director or on the Shareholder either personally or by email to the email address of such Director or the Shareholder.

13.2 Service by Email: A notice served by email will be deemed to have been served on the day following completion of its transmission or, if such day is a Saturday or a Sunday or a day on which major trading banks are closed for usual business in the place of intended receipt, then on the next day (not being a Saturday or a Sunday) on which such banks are open for usual business. In proving service by email, it will be sufficient to prove confirmation of delivery to the recipient's email address from the transmitting system.

14. LIQUIDATION

14.1 Distribution of Surplus Assets: Subject to clause 14.2, on the liquidation of the Company the assets, if any, remaining after payment of the debts and liabilities of the Company and the costs of winding up will be distributed to the Shareholder.

14.2 Distribution In Specie: On a liquidation of the Company, the liquidator, with the approval of the Shareholder and subject to and any other sanction required by law, may distribute some or all of the assets of the Company in specie to the Shareholder.

15. REMOVAL FROM THE NEW ZEALAND REGISTER

In the event that:

15.1 Cessation of Business: the Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Act; or

15.2 **No Surplus Assets:** the Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the court under section 241 of the Act for an order putting the Company into liquidation, the board may in the prescribed form request the Registrar to remove the Company from the New Zealand register.

16. AUDIT

The auditor of the Company shall be the Auditor-General. In accordance with the Local Government Act 2002 or the Water Services Acts (as applicable), the Company's relevant financial or annual report will contain a report of the Auditor-General.

17. DEEDS

A deed which is to be entered into by the Company may be signed on behalf of the Company, by:

(a) two or more Directors;

(b) if there is only one Director, by that Director whose signature must be witnessed;

(c) one or more attorneys appointed by the Company; or

(d) any Director, or any other person authorised by the Board, whose signature must be witnessed.

18. AMENDMENT

This Constitution may only be amended by written approval of the Shareholder.

SCHEDULE

PROCEEDINGS OF THE BOARD

(Clause 12)

1. REGULATION OF MEETINGS, QUORUM AND CONVENING

1.1 Meetings As Directors See Fit: The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.

1.2 Quorum: The quorum necessary for the transaction of business by the board will be a majority of the Directors. No business will be transacted when a quorum is not present.

1.3 Summoning Meetings: A Director may, and an employee at the request of a Director must, at any time, summon a meeting of the board by notice to each of the Directors given by any means of communication.

2. VOTING

2.1 Majority Rule: At every meeting of the board each Director will have one vote. Questions arising at any meeting of the board must be decided by a majority of votes.

2.2 Casting Vote: In cases of an equality of votes the chairperson will not have a second or casting vote.

2.3 Interested Directors: A Director must not vote on a Board resolution for, or be counted in the quorum for the consideration of, any matter in which that Director is interested. For this purpose, the term interested bears the meaning assigned in section 139 of the Act.

3. CHAIRPERSON

The board may elect a chairperson of its meetings and determine the period for which he or she is to hold office. If no chairperson has been elected or if at any meeting the chairperson is not present within five minutes after the time appointed for the meeting the Directors present may choose one of their number to be chairperson of the meeting.

4. RESOLUTION IN WRITING

A resolution in writing, signed or assented to by all the Directors for the time being entitled to receive notice of a meeting of the board will be as valid and effectual as if it had been passed at a meeting of the board duly convened and held. Any such resolution may consist of several documents in like form, each signed or assented to by one or more Directors. A signed resolution that is received via email in PDF or other document reproduction format will be as valid and effectual as the original signed document with effect from completion of its transmission.

5. METHOD OF MEETING

A meeting of the board may be held either:

5.1 **Physical Meeting:** by a number of the Directors who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or

5.2 **Other Means:** by means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

6. MINUTES

The board will ensure that minutes are kept of all proceedings at meetings of the board.