

DEED RELATING TO JOINT WASTEWATER WORKS

PORIRUA CITY COUNCIL

WELLINGTON CITY COUNCIL

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PARTIES

1. **PORIRUA CITY COUNCIL** a local authority under the Local Government Act 2002 (Porirua)
2. **WELLINGTON CITY COUNCIL** a local authority under the Local Government Act 2002 (Wellington)

BACKGROUND

- A. Her Majesty the Queen (acting by and through the Minister of Works) and Porirua, were parties to the Original Deed which was made under Section 31 of the Finance Act (No. 3) 1944 (now repealed). Under the Original Deed, Porirua, Tawa Borough Council and Hutt County Council agreed to acquire from the Minister a pumping station and sewer and to become responsible for the maintenance, operation costs, and management of such works.
- B. The Original Deed was varied by the 1968 Deed and the 1974 Deed which were made between the Minister and Porirua, Tawa Borough Council and Hutt County Council.
- C. By virtue of the 1986 Deed the parties recorded the basis of the joint control and management of the Joint Wastewater Works and the ownership of the assets acquired in connection with those Joint Wastewater Works.
- D. Pursuant to the Hutt County Abolition Order 1986, the assets of the Hutt County Council in relation to the Joint Wastewater Works were vested in Porirua.
- E. Pursuant to the Local Government (Wellington Region) Reorganisation Order 1989, Wellington is the successor to Tawa Borough Council.
- F. Porirua and Wellington have reviewed the basis of the joint control and management of the Joint Wastewater Works, and have agreed to adopt a new structure.
- G. Furthermore, because of the dissolution of Hutt County Council and the incorporation of the Borough of Tawa in Wellington, and because of the enactment of the Act, certain references in the 1986 Deed are no longer appropriate.
- H. The parties wish to record their agreement in respect of the future operation of the Joint Wastewater Works and enter into this Deed and revoke the 1986 Deed.

THIS DEED RECORDS THAT:

1. DEFINITIONS AND INTERPRETATION

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

Act means the Local Government Act 2002.

Existing Land means the land described in Schedule 2.

Financial Year means a period of 12 months ending on 30 June.

Flow means total sewerage discharge originating from within each respective Council's district.

Joint Committee means the Wastewater Treatment Plant Joint Committee appointed by Porirua and Wellington in accordance with this Deed.

Joint Wastewater Works means the Joint Wastewater Works described in Schedule 1 and agreed to be carried out, operated and maintained pursuant to this Deed.

Measurement Year means a period of 12 months ending on 31 December.

Operating Costs means all costs incurred in the operation, maintenance and administration of the Joint Wastewater Works and includes (without limitation) such fair and reasonable charges as will recompense Porirua for its administration of the Joint Wastewater Works by its officers and servants as provided for in clauses 6.1 and 6.2.

Original Deed means a Deed dated 15 May 1964 and made between Her Majesty the Queen (acting by and through the Minister of Works) Porirua, Tawa Borough Council and Hutt County Council where Porirua, Tawa Borough Council and Hutt County Council agreed to acquire from the Minister of Works a pumping station and sewer and related works and to become responsible for the maintenance, operation costs and management of such works.

1968 Deed means a Deed dated 5 July 1968 made between the Minister of Works and Porirua, Tawa Borough Council and Hutt County Council, varying the Original Deed.

1974 Deed means a Deed dated 15 March 1974 made between the Minister and Porirua, Tawa Borough Council and Hutt County Council varying the Original Deed.

1986 Deed means a Deed dated 22 December 1986 made between the Minister and Porirua, Tawa Borough Council, Hutt County Council and Wellington City Council varying the Original Deed.

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

- (a) **Defined Expressions:** expressions defined in the main body of this deed have the defined meaning throughout this deed, including the background;

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

2. GENERAL

- 2.1 The Parties agreed to unite pursuant to section 239 of the Local Government Act 1974 in the acquisition, construction, management, control and maintenance of the Joint Wastewater Works and for that purpose united in the exercise of the powers conferred by Parts – XXVI and XXVIII of the Local Government Act 1974 (relating to sewage drainage works and trade waste disposal) and in the exercise of such of the powers conferred by the Public Works Act 1981 and other enabling enactments as required or necessary for the purposes of the Joint Wastewater Works.
- 2.2 The Parties made such applications and carried out such procedures as were required or necessary for the purposes of the Joint Wastewater Works by virtue of the Water and Soil Conservation Act 1967, the Town And Country Planning Act 1977, the Local Authorities Loans Act 1956 and any other relevant statutory enactments at that time.

3. OWNERSHIP OF LAND AND OTHER ASSETS HELD IN CONNECTION WITH THE JOINT WASTEWATER WORKS

- 3.1** The Existing Land and any further land acquired for the purpose of the Joint Wastewater Works must be held by Porirua as registered proprietor on trust for Porirua and Wellington for the purpose of the Joint Wastewater Works as tenants in common in shares determined in accordance with the allocation on percentage basis set out in Schedule 3.
- 3.2** All other assets acquired by Porirua and Wellington or one of them for the purposes of the Joint Wastewater Works or held by Porirua and Wellington or one of them for such purposes must be held beneficially by Porirua and Wellington as tenants in common in shares determined in accordance with the allocation on percentage basis set out in Schedule 3.
- 3.3** Notwithstanding clauses 6.1 and 8.2, any proposed additions to the joint works shall be considered and agreed to by both parties nominated representatives stated in clause 15.1.

4. APPORTIONMENT OF CAPITAL COSTS AND SALE PROCEEDS

- 4.1** The cost of the acquisition of the Existing Land and any further land acquired or taken for the purposes of the Joint Wastewater Works, and any compensation payable under the Public Works Act 1981 to any person (whether in respect of any injurious affection or the exercise of statutory powers arising out of the Joint Wastewater Works or otherwise howsoever) and the proceeds of the sale or other disposition of any land no longer required for the Joint Wastewater Works, must be apportioned as between Porirua and Wellington in accordance with clause 11.1.
- 4.2** All other capital costs of the Joint Wastewater Works including site works, construction costs, consultants and professional fees, plant, equipment and ancillary works and the proceeds of sale or other disposition of such items must be apportioned between Porirua and Wellington in accordance with clause 11.1.

5. APPORTIONMENT OF OPERATING COSTS AND REVENUE

- 5.1 In respect of each Financial Year or part Financial Year, the net Operating Costs in respect of the Joint Wastewater Works must be apportioned between Porirua and Wellington in accordance with the following formula:

$$A = B + C$$

And

$$B = A \times (D - E)/D$$

And

$$C = A \times E/D$$

Where

A = the operational costs to be met by Porirua and Wellington during a Financial Year; and

B = is the operational costs to be met by Porirua during a Financial Year; and

C = is the operational costs to be met by Wellington during a Financial Year; and

D = is the total volume of wastewater measured at the outlet flume at the Wastewater Treatment Plant during the immediately previous Measurement Year; and

E = is the volume of wastewater measured at Wall Place that is attributable to Wellington during the immediately previous Measurement Year.

- 5.2 In respect of each Financial Year or part Financial Year the revenue arising from the Joint Wastewater Works (excluding trade waste charges) must be apportioned between Porirua and Wellington in accordance with the respective flows originating in each council's District as at 1 January immediately preceding the commencement of that Financial Year.

Comment: Trade waste charges are payable to the respective Council as per their bylaws.

- 5.3 Calibration of flow measurement devices used to determine wastewater volumes in clause 5.1 must be carried out by an approved independent professional agreed to by both parties. Calibration is to be repeated on a minimum of a 12 month basis or every six months if a subsequent calibration differs by more than 10%

- 5.4 To obtain the certified annual volume of wastewater as in clause 5.1 D and E, Porirua and Wellington shall sum the daily wastewater volumes for certified days of record from the outlet flume at the Wastewater Treatment Plant and from Wall Place respectively. For a daily wastewater volume to be certified and included in the total, the volume for each Council's flow shall be certified as sufficiently accurate. Certification criteria shall be developed and agreed by officers of the two Councils and signed off by the Porirua and Wellington representatives specified in clause 15.1.

6. MANAGEMENT OF JOINT WASTEWATER WORKS

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- 6.1** Porirua and Wellington agree to appoint Porirua to manage the Joint Wastewater Works which includes –
- (a)** Subject to clause 6.2, undertaking the general control and management of the Joint Wastewater Works on an ongoing basis including the compilation of estimates and the assessment and notification of contributions under clause 12;
 - (b)** engaging consultants and professional advisers;
 - (c)** investigating future extensions or alterations to the Joint Wastewater Works;
 - (d)** supervising on behalf of Porirua and Wellington the design, construction and completion of additions or alterations to the Joint Wastewater Works;
 - (e)** undertaking any functions expressly conferred upon it by this Deed;
 - (f)** subject to clause 9, entering into contracts for the purposes of the above or generally for the purposes of the Joint Wastewater Works.
- 6.2** For the purpose of managing the Joint Wastewater Works under clause 6.1, the management and day to day operation of the Joint Wastewater Works may be undertaken by Porirua's officers and staff or agents as Porirua thinks fit and Porirua may, pursuant to clause 30 of Schedule 7 of the Act, make such delegations as it thinks fit.
- 6.3** Porirua must provide and be responsible for the due performance of all administrative, secretarial and accounting services required for the purposes of the Joint Wastewater Works and the Joint Committee.
- 6.4** Nothing in this clause limits any delegation which Wellington may make to such of its officers and staff or agents as is necessary for the purpose of Wellington carrying out any activity or exercising any of its powers in relation to the Joint Wastewater Works.

7. BYLAWS

- 7.1** Porirua, after consultation with the Joint Committee, must make trade waste bylaws under the Act and may make any other bylaws necessary for the proper operation and management of the Joint Wastewater Works.
- 7.2** Wellington agrees to establish and enforce in respect of all direct or indirect Connections to the Joint Wastewater Works, trade waste controls of no lesser standard than that adopted by Porirua in any trade waste bylaw made by it at Wellington City Council's appropriate convenience.

8. APPOINTMENT AND MEMBERSHIP OF JOINT COMMITTEE

- 8.1** Porirua and Wellington must appoint a Joint Committee under the Act.
- 8.2** The purpose of the Joint Committee is to undertake a governance function by overseeing the general control and management of the Joint Wastewater Works,

and by considering and making recommendations to Porirua and Wellington regarding –

- (a) overview, input and policy formulation in the areas of management of the Joint Wastewater Works, including development of *complementary Trade Waste Bylaws by Porirua and Wellington*;
- (b) proposals for infrastructural development relating to the joint venture;
- (c) new initiatives relating to the joint venture;
- (d) the budget for operation of the joint venture for inclusion in the Councils' Annual Plans / Long Term Council Community Plans;
- (e) receipt of the Annual Report of the joint venture for inclusion in the Councils' Annual Reports;
- (f) any proposed service changes.

8.3 Porirua must, pursuant to clause 30 of Schedule 7 of the Act, delegate to the Joint Committee the following powers:

- (a) the governance function set out in clause 8.2:
- (b) in accordance with any applicable Bylaw, the power to recommend to Porirua the basis on which the fees and charges for the conveyance, treatment and disposal of trade wastes at the Wastewater Treatment Plant should be set;
- (c) the power to accept or not accept, as the case may be, wastes into the Wastewater Treatment Plant.

8.4 Wellington must, pursuant to clause 30 of Schedule 7 of the Act, delegate to the Joint Committee the following powers:

- (a) the governance function set out in clause 8.2;
- (b) in accordance with any applicable Bylaw, the power to recommend to Wellington the basis on which the fees and charges for the conveyance, treatment and disposal of trade wastes at the Wastewater Treatment Plant should be set;
- (c) the power to accept or not accept, as the case may be, wastes into the Wastewater Treatment Plant.

8.5 The membership of the Joint Committee shall initially consist of –

- (a) Three members appointed by Porirua; and
- (b) One member appointed by Wellington.

8.6 At the request of either of the parties, the membership of the Joint Committee shall be reviewed to reflect the allocation of sewage drainage capacity in clause 10 and the apportionment of capital costs and shares in ownership of land and

other assets as per clause 11. Such a review shall be done only once per triennium.

- 8.7** In accordance with clause 30(7) of Schedule 7 of the Act, Porirua and Wellington agree to resolve that the Joint Committee will not be discharged on the coming into office of the members of the councils elected or appointed at, or following, the triennial general election of members next after the appointment of the committee.
- 8.8** Without creating any legal or binding obligation, Porirua and Wellington recognise the desirability for the Chairperson of the Joint Committee to be one of the members of the Joint Committee appointed by Porirua.

9. CONTRACTS FOR THE PURPOSE OF THE JOINT WASTEWATER WORKS

- 9.1** Porirua and Wellington authorise Porirua to enter into on behalf of them, all contracts which are necessary or expedient for the purpose of the Joint Wastewater Works and which have been approved by Porirua and Wellington through the Annual Plan or Long Term Council Community Plan process, as the case may be.
- 9.2** All contracts referred to in clause 9.1 must be let in accordance with agreed purchasing and contract procedures.
- 9.3** If Porirua and Wellington are unable to agree on a proposal for new major capital works, the matters in dispute must be referred to dispute resolution in accordance with clause 15.
- 9.4** Porirua City Council can initiate immediate actions not approved as per clause 9.1 to contain the impact arising from urgent operational issues and notify the joint committee members as soon as practical and appropriate. Such actions shall be authorised by the Porirua Representative specified in clause 15.1.

10. ALLOCATION OF SEWAGE DRAINAGE CAPACITY

- 10.1** The sewage drainage capacity of the Joint Wastewater Works must be allocated between Porirua and Wellington in accordance with the table set out in Schedule 3.
- 10.2** If the sewage drainage capacity of the Joint Wastewater Works exceeds allocated percentage flows, (being the total sewage drainage capacity as specified in Schedule 3) then that additional capacity must be allocated between Porirua and Wellington on the same percentage basis as that specified in Schedule 3 in respect of the allocation of the existing total sewage drainage capacity.
- 10.3** Porirua and Wellington are not entitled as of right to have their respective allocations of the total sewage drainage capacity (as per Schedule 3) reviewed or adjusted, provided however that if either Council at any time determines that the sewage drainage capacity allocated to them exceeds its requirements, then either Council may negotiate with the other for the re-allocation of the excess capacity on a rental fee basis.
- 10.4** If Wellington or Porirua utilises more than its stated entitlement, it must pay a rental fee to the other council to cover its costs of capital. The rental fee is determined by the parties by subsequent agreement and will be based on a fair and equitable cost attributed to the creating and holding of that capacity.

11. APPORTIONMENT OF CAPITAL COSTS AND SHARES IN OWNERSHIP OF LAND AND OTHER ASSETS

- 11.1** All capital costs of the Joint Wastewater Works (as specified in clauses 4.1 and 4.2) must be apportioned between Porirua and Wellington in the ratio which their respective allocations of sewage drainage capacity as provided for in clause 10.1 bears to the total sewage drainage capacity, for the time being, of the Joint Wastewater Works.

12. ESTIMATES TO BE PREPARED IN RESPECT OF OPERATING COSTS

- 12.1** Porirua must on or before 28 February in each year, for the purposes of preparing the Annual Plan or Long Term Council Community Plan, as the case may be in the next Financial Year –
- (a)** prepare estimates of the gross Operating Costs and revenue of the Joint Wastewater Works in the next Financial Year; and
 - (b)** make assessments of the estimated net Operating Costs of the Joint Wastewater Works and the respective contributions of Porirua and Wellington towards such net Operating Costs as apportioned between the Councils in accordance with clause 5.1, in the next Financial Year.
- 12.2** Any deficiency or surplus at the end of each Financial Year as between the estimated net Operating Costs and actual net Operating Costs for that Financial Year must be carried forward as a debit or credit as the case may be and must be allowed for in preparing estimates and making further assessments pursuant to clause 12.1
- 12.3** Porirua may consult with Wellington as the case requires on the estimates and assessments but must provide the estimates and assessments to the Joint Committee and to Wellington no later than 31 March.
- 12.4** If Wellington is dissatisfied with the estimates and assessments, or the amount of their respective contributions, as provided to them under clause 12.3, Wellington may, no later than 30 April, refer to matter to dispute resolution in accordance with clause 15.

13. PAYMENT OF CONTRIBUTIONS TOWARDS OPERATING COSTS

- 13.1** No later than the 28th of each month, Porirua must give an invoice to Wellington stating the amount of Wellington's contributions towards the net Operating Costs of the Joint Wastewater Works for that month.
- 13.2** Subject to clauses 13.4 and 13.5, Wellington must pay to Porirua, the invoiced amount no later than the last day of the following month.
- 13.3** If any instalment is not paid in accordance with clause 13.2, Wellington will be in default and will be liable for and must pay interest on any and every amount so remaining unpaid, until that amount is paid, at the rate which is for the time being

charged by Porirua's bankers for money owing on overdraft by Porirua to it or which would be chargeable if money were owing, as the case may be.

- 13.4** Nothing in clause 12.4 absolves Wellington from liability to pay any instalment for the time being falling due after it has been invoiced and before the dispute has been settled under clause 15 and, if any such instalment is not paid in accordance with clause 13.2, interest will accrue in accordance with clause 13.3.
- 13.5** If as a result of a dispute being settled, an adjustment is made in respect of the contribution of Wellington and accordingly in respect of any corresponding instalments, –
- (a)** the relevant assessment must be immediately adjusted and credit must be given to Wellington for any amount so overpaid on any instalment, together with interest on that amount at a rate determined in accordance with clause 13.3; or
 - (b)** Wellington must be required to pay the amount of any increase of any such contributions or instalment of such contributions payable in accordance with settlement of the dispute, together with interest thereon at the rate determined in accordance with clause 13.3 on the amount of any such adjustment which is unpaid within two weeks of the settlement.
- 13.6** If at any time during any Financial Year it appears to the Joint Committee that the net actual Operating Costs for that Financial Year vary from the net estimated Operating Costs by more than 10%, the Joint Committee may by notice in writing amend the respective contributions of the Councils towards such net Operating Costs and further may make all necessary adjustments to any instalments not yet due for payment pursuant to clause 13.1 of this Deed.

14. PAYMENTS ON ACCOUNT OF CAPITAL COSTS

- 14.1** No later than the 28th of each month, Porirua must give an invoice to Wellington stating the amount of Wellington's contributions towards the capital costs of the Joint Wastewater Works for that month.
- 14.2** Wellington must pay to Porirua, the invoiced amount no later than the last day of the following month.
- 14.3** If any payment is not made in accordance with clause 14.2, Wellington is in default and will be liable for and must pay interest on each and every amount remaining unpaid, until that amount is paid, at the rate of interest determined in accordance with clause 13.3.

15. DISPUTE RESOLUTION

- 15.1** Any dispute arising between Porirua and Wellington concerning the subject matter of this Deed or its construction or interpretation or anything to be done under it must be resolved in the following manner:
- (a)** In the first instance, the dispute will be discussed and, if possible, resolved by the agreement of the following representatives of Porirua and Wellington

Porirua Representative: **General Manager: Asset Management and Operations** (or their nominated representative)

Wellington Representative: **Director: Infrastructure** (or their nominated representative)

- (b) If the foregoing representatives are unable to resolve the dispute by agreement or consider for any reason that it should be dealt with at a higher level, then the dispute will be referred to the Chief Executives of Porirua and Wellington to be resolved by agreement:
- (c) If in the event any dispute cannot be resolved through the measures outlined above in (a) and (b) above, then the matter in dispute must be referred to mediation. In the event of a difference or dispute being referred to mediation the parties agree to share equally the costs of mediation:
- (d) If in the event any dispute cannot be resolved through mediation, then the matter in dispute must be referred to arbitration in accordance with the Arbitration Act 1996 or its amendments. In the event of a difference or dispute being referred to arbitration the parties agree to share equally the costs of arbitration subject to any award or order which may be made as a result of arbitration.

16. REVOCATION OF 1986 DEED

- 16.1** Porirua and Wellington agree that the 1986 Deed is revoked on the date this Deed comes into force and no longer applies to either Council.
- 16.2** This Deed comes into force on the date that it is signed.

EXECUTED AS A DEED

SCHEDULE 1

Definition of Joint Wastewater Works

- (a) All sewage drains conveying sewage from the junction of the sewer from Tawa Valley with the Porirua East Sewer to the treatment plant constructed on the Existing Land near Old Man Point, the treatment plant itself and effluent drains from the treatment plant to the outfall in Cook Strait; and
- (b) All sewage drains and necessary pumping stations conveying the residual flow from a point near the existing outfall to the treatment plant constructed on the Existing Land near Old Man Point;
- (c) All land, other treatment plants, pump stations, tunnels, drains and pipes, buildings, machinery and appliances and other things of any kind, acquired or constructed, operated or maintained pursuant to or for the purposes of this Deed.

SCHEDULE 2

The Existing Land

- 1. 50.6630 hectares more or less being Lot 1 on Deposited Plan 62407 and being the land comprised and described in Computer Freehold Register WN 33A/853 (Wellington Registry).**
- 2. 50.7780 hectares more or less being Lot 2 on Deposited Plan 62407 and being the land comprised and described in Computer Freehold Register WN 33A/854 (Wellington Registry).**
- 3. Part Takapuwahia A North 2B Block being the land comprised and described in Computer Freehold Register WN 275/249 (Wellington Registry).**

SCHEDULE 3**ALLOCATION OF SEWAGE DRAINAGE
CAPACITY**

<u>Constituent Authority</u>	<u>Total Sewage Drainage Capacity in terms of Flow</u>	<u>Allocation on Percentage Basis</u>
<u>Porirua</u>		<u>72.4</u>
<u>Wellington</u>		<u>27.6</u>