



**CENTRAL
HAWKE'S BAY**
DISTRICT COUNCIL



Extraordinary Council Meeting Agenda

Thursday, 20 August 2020

9:00am

Council Chamber / Zoom

28-32 Ruataniwha Street, Waipawa

Together we Thrive! E ora ngātahi ana!

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- 1 **KARAKIA**
- 2 **APOLOGIES**
- 3 **DECLARATIONS OF CONFLICTS OF INTEREST**
- 4 **STANDING ORDERS**

RECOMMENDATION

THAT THE FOLLOWING STANDING ORDERS ARE SUSPENDED FOR THE DURATION OF THE MEETING:

- 20.2 TIME LIMITS ON SPEAKERS
- 20.5 MEMBERS MAY SPEAK ONLY ONCE
- 20.6 LIMITS ON NUMBER OF SPEAKERS
- THAT 21.4 OPTION C UNDER SECTION 21 GENERAL PROCEDURES FOR SPEAKING AND MOVING MOTIONS BE USED FOR THE MEETING.

5 REPORT SECTION

5.1 THREE WATERS REFORM - SIGNING THE MEMORANDUM OF UNDERSTANDING

File Number:

Author: Monique Davidson, Chief Executive

Authoriser: Monique Davidson, Chief Executive

Attachments:

1. Three Waters Reform Memorandum of Understanding [↓](#)
2. Three Waters Reform Funding Plan [↓](#)
3. Three Waters Reform Delivery Plan [↓](#)
4. Legal Advice related to Significance and Engagement [↓](#)
5. National Funding allocation of 3 Waters Reform stimulus [↓](#)
6. FAQ's on funding allocation and stimulus package [↓](#)

PURPOSE

The purpose of this report is to provide information and advice to Council in order to seek Central Hawke's Bay District Council to do the following:

- sign a Memorandum of Understanding (MoU) with the Crown, agreeing to participate in the initial stage of a central/local government three waters service delivery reform programme (Appendix A); and
- authorise the Chief Executive to enter into the Funding Agreement, to accept a grant from the Crown to spend on operating and/or capital expenditure relating to three waters infrastructure and service delivery (Appendix B).

RECOMMENDATION FOR CONSIDERATION

That having considered all matters raised in the report:

a) Note that:

- a. in July 2020, the Government announced an initial funding package of \$761 million to provide a post COVID-19 stimulus to maintain and improve water networks infrastructure, and to support a three-year programme of reform of local government water services delivery arrangements; and
- b. initial funding will be made available to those councils that agree to participate in the initial stage of the reform programme, through a Memorandum of Understanding (MoU), Funding Agreement, and approved Delivery Plan.
- c. this initial funding will be provided in two parts: a direct allocation to individual territorial authorities, and a regional allocation. The participating individual authorities in each region will need to agree an approach to distributing the regional allocation
- d. the Steering Committee has recommended a preferred approach to the allocation of regional funding, being the same formula as was used to determine the direct allocations to territorial authorities
- e. Minister Mahuta had directed the Regional Hawke's Bay allocation to be equally divided as an acknowledgement of the leadership of the 4 Hawke's Bay Councils, and note that this is different to other regions allocations.

b) That Council agree to sign the MoU at Appendix A and Funding Agreement at Appendix B.

c) That Council agree to nominate Monique Davidson, the Chief Executive of the Council as the primary point of communication for the purposes of the MoU and reform programme – as referred to on page 6 of the MoU.

d) That Council agree to delegate decisions about the final delivery plan to the Chief Executive including the delegations to ensure the funding is released, but in doing that note their support for the general approach to the allocation as presented.

e) That Council note that the MoU and Funding Agreement cannot be amended or modified by either party, and doing so would void these documents.

f) That Council note that participation in this initial stage is to be undertaken in good faith, but this is a non-binding approach, and the Council can opt out of the reform process at the end of the term of the agreement (as provided for on page 5 of the MoU).

g) That Council note that the Council has been allocated \$11.09 million of funding, which will be received as a grant as soon as practicable once the signed MoU and Funding Agreement are returned to the Department of Internal Affairs, and a Delivery Plan has been supplied and approved (as described on page 5 of the MoU).

h) That Council note that the Delivery Plan must show that the funding is to be applied to operating and/or capital expenditure relating to three waters infrastructure and service delivery, and which:

- a. supports economic recovery through job creation; and
- b. maintains, increases, and/or accelerates investment in core water infrastructure renewal and maintenance.

EXECUTIVE SUMMARY

In July 2020, the Government announced a \$761 million funding package to provide post COVID-19 stimulus to maintain, improve three waters infrastructure, support a three-year programme of reform of local government water service delivery arrangements (reform programme), and support the establishment of Taumata Arowai, the new Waters Services Regulator.

A Joint Central/Local Government Three Waters Steering Committee has been established to provide oversight and guidance to support progress towards reform, and to assist in engaging with local government, iwi/Māori, and other water sector stakeholders on options and proposals.

The reform programme is designed to support economic recovery, and address persistent systemic issues facing the three waters sector, through a combination of:

- stimulating investment, to assist economic recovery through job creation, and maintain investment in water infrastructure renewals and maintenance; and
- reforming current water service delivery, into larger scale providers, to realise significant economic, public health, environmental, and other benefits over the medium to long term.

Initial funding from the stimulus package will be made available to those councils that agree to participate in the first stage of the reform programme, through a Memorandum of Understanding (MoU), Funding Agreement, and approved Delivery Plan. The MoU must be signed by the end of August 2020, with the Funding Agreement and Delivery Plan submitted and approved by the end of September 2020.

BACKGROUND

Central Hawke's Bay District Council committed to a bold investment in three waters, through the #thebigwaterstory as part of the Long Term Plan 2017-2027, and recognises the significant infrastructure investment required in order to achieve the environmentally responsible and durable infrastructure goals set during Project Thrive. The ability for Central Hawke's Bay to financially afford the investment required is challenging, and through the Long Term Plan 2021-2031 will require Council to make some significant decisions about future levels of service and community outcomes.

Central Hawke's Bay District Council is not alone in its challenges related to three waters infrastructure and service delivery. Over the past three years, central and local government have been considering the issues and opportunities facing the system for regulating and managing the three waters (drinking water, wastewater, and stormwater).

- The Government Inquiry into Havelock North Drinking Water – set up following the serious campylobacter outbreak in 2016 – identified widespread, systemic failure of suppliers to meet the standards required for the safe supply of drinking water to the public. It made a number of urgent and longer-term recommendations to address these significant systemic and regulatory failures.
- The Government's Three Waters Review highlighted that, in many parts of the country, communities cannot be confident that drinking water is safe, or that good environmental outcomes are being achieved. This work also raised concerns about the regulation, sustainability, capacity and capability of a system with a large number of localised providers, many of which are funded by relatively small populations.
- The local government sector's own work has highlighted similar issues. For example, in 2014, LGNZ identified an information gap relating to three waters infrastructure. A 2015 position paper, argued for a refresh of the regulatory framework to ensure delivery of quality drinking water and wastewater services, and outlined what stronger performance in the three waters sector would look like.
- Both central and local government acknowledge that there are many challenges facing the delivery of water services and infrastructure, and the communities that fund and rely on these services. These challenges include:
 - Underinvestment in three waters infrastructure in parts of the country, and substantial infrastructure deficits. For example, it is estimated that between \$300 to \$570 million is required to upgrade networked drinking water treatment plants to meet drinking water standards; and up to \$4 billion is required to upgrade wastewater plants to meet new consent requirements. These deficits are likely to be underestimates, given the variable quality of asset management data.

- Persistent funding and affordability challenges, particularly for communities with small rating bases, or high-growth areas that have reached their prudential borrowing limits.
- Additional investment required to increase public confidence in the safety of drinking water, improve freshwater outcomes, and as a critical component of a collective response to climate change and increasing resilience of local communities.
- COVID-19 has made the situation even more challenging. Prior to COVID-19, territorial authorities were planning on spending \$8.3 billion in capital over the next five years on water infrastructure. However, COVID-19 is likely to cause significant decreases in revenue in the short term. As a result, borrowing will be constrained due to lower debt limits that flow from lower revenues, and opportunities to raise revenue through rates, fees and charges will be limited.

Progress with three waters regulatory reforms

- Good progress is already being made to address the regulatory issues that were raised by the Havelock North Inquiry and Three Waters Review. The Government is implementing a package of reforms to the three waters regulatory system, which are designed to:
 - improve national-level leadership, oversight, and support relating to the three waters – through the creation of Taumata Arowai, a new, dedicated Water Services Regulator;
 - significantly strengthen compliance, monitoring, and enforcement relating to drinking water regulation;
 - manage risks to drinking water safety and ensure sources of drinking water are protected;
 - improve the environmental performance and transparency of wastewater and stormwater networks.
- Legislation to create Taumata Arowai had its third reading on 22 July 2020 and should be enacted shortly. This new Crown entity is currently being built, and will become responsible for drinking water regulation once a separate Water Services Bill is passed (anticipated mid 2021).
- However, both central and local government acknowledge that regulatory reforms alone will not be sufficient to address many of the persistent issues facing the three waters system. Reforms to service delivery and funding arrangements also need to be explored.
- Hawke's Bay as a region we have been working on our Three Waters Review, which assesses current and potential service delivery options for drinking, waste and stormwater for all of Hawke's Bay. Through this, the intention was that we would form a collective view on how we can use this opportunity to find the best long-term solution for three waters service delivery in Hawke's Bay, meeting the needs of all our communities. We are nearing the final stages of this review. As part of this, workshops are currently being held with all Council's to ensure that you are across the detail of the review, including options, costs, risks and benefits.
- As a region and district, our communities will be in a very good position to consider the Government's offer of co-design of multi-region three waters service delivery entities. Together, we will form a collective view on how we can use this opportunity to find the best long-term solution for three waters service delivery in Hawke's Bay, meeting the needs of all our communities.

DISCUSSION

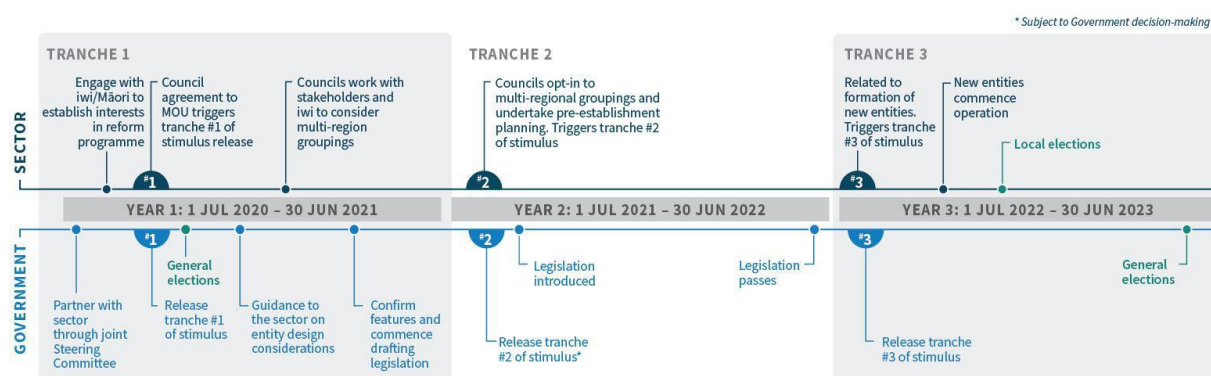
Overview of proposed approach to three waters investment and service delivery reform

- At the recent Central/Local Government Forum, central and local government leadership discussed the challenges facing New Zealand's water service delivery and infrastructure, and committed to working jointly on reform. A Joint Central/Local Government Three Waters Steering Committee has been established to provide oversight and guidance to support this work.

- Central and local government consider it is timely to apply targeted infrastructure stimulus investment to enable improvements to water service delivery, progress service delivery reform in partnership, and ensure the period of economic recovery following COVID-19 supports a transition to a productive, sustainable economy.
- In July 2020, the Government announced an initial funding package of \$761 million to provide post COVID-19 stimulus, support a three-year programme of reform of local government water service delivery arrangements, and support the establishment and operation of Taumata Arowai.
- The reform programme is designed to support economic recovery, and address persistent systemic issues facing the three waters sector, through a combination of:
 - stimulating investment, to assist economic recovery through job creation, and maintain investment in water infrastructure renewals and maintenance; and
 - reforming current water service delivery, into larger scale providers, to realise significant economic, public health, environmental, and other benefits over the medium to long term.
- While the Government's starting intention is for publicly-owned multi-regional models for water service delivery (with a preference for local authority ownership), final decisions on a service delivery model will be informed by discussion with the local government sector and the work of the Joint Steering Committee.
- Further information on the reform objectives, and the core design features of any new service delivery model, are provided in pages 3 to 4 of the MoU at Appendix A.

Reform process and indicative timetable

- As noted above, this is a three-year programme to reform three waters service delivery arrangements, which is being delivered in conjunction with an economic stimulus package of Crown investment in water infrastructure. The reform programme will be undertaken in stages.
- The initial stage is an opt in, non-binding approach, which involves councils taking the actions and signing the documents described below (MoU, Funding Agreement, and Delivery Plan).
- Councils that agree to opt in by the end of August 2020 will receive a share of the initial funding package.
- Any further tranches of funding will be at the discretion of the Government and may depend on progress against reform objectives.
- An indicative timetable for the full reform programme is provided below. While this is subject to change as the reforms progress, and subject to future Government budget decisions, it provides an overview of the longer-term reform pathway.



Allocation of the investment package

- The Government has determined a notional allocation framework based on a nationally-consistent formula.

- The general approach to determining each authority's notional allocation is based on a formula that gives weight to two main factors:
 - The population in the relevant council area, as a proxy for the number of water connections serviced by a territorial authority (75 per cent weighting)
 - The land area covered by a local authority excluding national parks, as a proxy for the higher costs per connection of providing water services in areas with low population density (25 per cent weighting).
- The investment package is structured into two components:
 - A direct allocation to each territorial authority, comprising 50% of that territorial authority's notional allocation; and
 - A regional allocation, comprising the sum of the remaining 50% of the notional allocations for each territorial authority in the relevant region
- The purpose of the Government's regional allocation is to establish collective participation by councils in the reform programme. Each regional group of councils has until 30 September to agree on how best to apportion the regional funds to the individual territorial authorities that make up the region. Appendix F includes a hypothetical example of how a regional allocation decision-making process could work
- The Steering Committee has recommended a preferred approach to the allocation of regional funding, being the same formula that is used to determine the direct allocations to territorial authorities.
- In the case of Central Hawke's Bay District Council, the above regional allocation criteria does not apply.
- \$50 million for the Hawke's Bay region was announced by the Prime Minister and the Minister of Local Government. This supplements the formula-based allocation with a top-up in recognition of the leadership and progress that the Hawke's Bay region has demonstrated in exploring reform of three waters service delivery arrangements. As part of this, the Minister of Local Government determined that the regional allocation for the Hawke's Bay region should be shared equally between the four participating councils. This grant represents a higher allocation than would apply under the national formula described above. This additional funding is a reflection of the leadership and progress the Councils across Hawke's Bay have shown through the regional three waters review programme.

What actions are the Council being asked to take at this point?

- The initial stage of the reform programme involves three core elements:
 - Memorandum of Understanding (Appendix A);
 - Funding Agreement (Appendix B);
 - Delivery Plan (Appendix C).
- Initial funding will be made available to those councils that sign the MoU, and associated Funding Agreement, and provide a Delivery Plan.
- This initial funding will be provided in two components: a direct allocation to individual councils, and a regional allocation. The participating councils in each region are required to agree an approach to distributing the regional allocation.
- The MoU is the 'opt in' to the first stage of the reform and stimulus programme. The MoU needs to be signed and submitted by the end of August 2020. The Funding Agreement and Delivery Plan need to be submitted by the end of September 2020, to access the stimulus funding,
- Councils that do not opt in by the end August 2020 deadline will not receive a share of the stimulus funding. Councils will still be able to opt in to the reform programme at a later date, but will not have access to the initial funding package, retrospectively.

Memorandum of Understanding

- A MoU has been developed by the Steering Group, for each council to enter into with the Crown. This is a standardised document, which cannot be amended or modified by either party.
- Signing the MoU commits councils to:
 - engage in the first stage of the reform programme – including a willingness to accept the reform objectives and the core design features set out in the MoU;
 - the principles of working together with central government and the Steering Committee;
 - work with neighbouring councils to consider the creation of multi-regional entities;
 - share information and analysis on their three waters assets and service delivery arrangements.
- At this point, this is a voluntary, non-binding commitment. It **does not** require councils to commit to future phases of the reform programme, to transfer their assets and/or liabilities, or establish new water entities.
- The MoU is effective from the date of agreement until 30 June 2021, unless terminated by agreement or by replacement with another document relating to the reform programme.
- A legal opinion by Simpson Grierson, commissioned by SOLGM on behalf of the Steering Committee, advises that the MoU **does not** contain any explicit triggers for consultation under the Local Government Act 2002. Therefore, the advice is that agreement to sign the Memorandum of Understanding and associated documentation does not trigger significance and engagement.

Funding Agreement

- Central Hawke's Bay District Council has been allocated \$11.09 million by the Crown, if it opts in to the reform programme. This funding will be provided as a grant, which does not need to be repaid if the Council does not ultimately commit to reform at later stages of the process.
- The Funding Agreement is one of the mechanisms for accessing the funding package. Like the MoU, it is a standardised document, for agreement between each council and the Crown. It cannot be amended.
- The Funding Agreement guides the release and use of funding. It sets out:
 - the funding amount allocated to the Council;
 - funding conditions;
 - public accountability requirements, including the Public Finance Act;
 - reporting milestones.
- While there is some local flexibility around how the funding can be applied, the Government has indicated that this investment is intended to support economic recovery, enable improvements in water service delivery, and progress the service delivery reform programme.
- The Funding Agreement will be supplemented by a Delivery Plan, which is the document that sets out how the grant funding is to be applied by the Council.

Delivery Plan

- The Delivery Plan is the other mechanism for accessing the funding package.
- This Delivery Plan must show that the funding allocation is to be applied to operating and/or capital expenditure relating to three waters infrastructure and service delivery, and which:
 - supports economic recovery through job creation; and
 - maintains, increases, and/or accelerates investment in core water infrastructure renewal and maintenance.
- The Delivery Plan is a short-form template, which sets out:

- a summary of the works to be funded, including location, estimated associated costs, and expected benefits/outcomes;
 - the number of people to be employed in these works;
 - an assessment of how the works support the reform objectives in the MoU;
 - reporting obligations.
- The Delivery Plan will be supplied to Crown Infrastructure Partners (and other organisations as agreed between the Council and Crown), for review and approval. Crown Infrastructure Partners will monitor progress against the Delivery Plan, to ensure spending has been undertaken with public sector financial management requirements.

Below are listed projects that Council consider to be appropriate candidates for investment using the available funding. These projects live within Council's existing work programmes and plans over the Long Term Plan, but the funding allows us to expedite and enhance the projects while contributing to the economic recovery.

Project	2020/21 CHBDC Investment	2020/21 Central Govt Tranche #1 Funding	Benefit
Assistance to deliver the programme		\$ 240,000.00	Funding to support the delivery of this programme of work including detailed engineering, project management and coordination - e.g Project Manager or Engineer
Trade Waste Review and Improvements + Resourcing		\$160,000.00	Funding to further investigate trade waste improvements and build relationships to support future upgrades including consent reviews, billing and improvements at our trade waste customer sites
Bylaw Reviews Drinking Water, Stormwater, Wastewater + Trade Waste		\$100,000.00	To support the programme to update water demand management, stormwater and wastewater actions and trade waste activities – we need to review and refresh our bylaw – and ideally time this to be delivered through the early 2021 LTP engagement
Date/ Business Analyst to build systems and tools across capex/ opex		\$150,000.00	An analyst and data resource complimented with systems to be used across the 3 waters programme and operational programme to improve project visibility, and operational performance
Community Water Supply (including Marae and Rural Schemes) Support and Upgrade		\$500,000.00	Stocktake and investigation of non-council water supplies and establishing a support fund to provide financial support for the upgrade of drinking water supplies at Marae or Community schemes.
Wastewater Projects Other Stages <ul style="list-style-type: none"> Otane to Waipawa (Stage 3) Walker Rd RIB Pipeline Walker Rd – Waipawa WWTP 		\$500,000.00	Commence further stages proposed in the wider wastewater programme to mitigate
Waipukurau Second Water Supply	\$ 5,760,000.00	\$ 3,300,000.00 ¹	This funding allows CHBDC to progress Option 4 to link the Waipawa and Waipukurau water supplies - but will require additional funding (~\$2.5m) through Tranche #2 to complete the overall project

¹ Project expected to extend over 2 financial years (into 2021/22) and receive an additional ~\$1M from Tranche 2 funding

Otane to Waipawa Pipeline (Stage 2)	\$ -	\$ 2,400,000.00	A key project in the wider #thebigwastewaterstory and will show CHBDC's commitment to moving to a land based discharge for Waipawa and Otane - the programme will require additional funding through Tranche #2 but will allow a reduction in loan required in Y1 of LTP 2021.
Wastewater Plant Improvements	\$ -	\$ 1,000,000.00	This funding will allow CHBDC to implement short term but robust minor improvements like the introduction of a DAF like system reduce TSS and CBOD5 and in turn improve the effectiveness of the UV systems and reduce E-Coli levels – expect to implement this at Otane, Porangahau, Waipawa and Waipukurau - this is aligned with the phases in #thebigwastewaterstory
Water Renewals	\$ 168,000.00	\$ 1,290,000.00	Aligns with the water demand management plan and CHBDC commitment to reducing water loss - this will also reduce operational expenses incurred in the reactive water leaks space
Wastewater Renewals	\$ 350,000.00	\$ 500,000.00	Benefits our CHB Wastewater Strategy that commits to proactively reducing volume of unnecessary wastewater to the ponds, it also aligns with recommendations in our design of wastewater plants and supports the I&I improvement programme
Dump Station for Campervans	\$ -	\$ 150,000.00	Installing a site to allow campervans the ability to dispose of wastewater – supports our tourism needs assessment and ability to promote tourism to the district
Desludging Wastewater Ponds	\$ -	\$ 750,000.00	A key commitment to the operational management of our wastewater ponds and ensuring CHBDC improve performance
TOTAL		\$11.09m	

Description of Works

The above-listed projects include large and small works to address known and confirmed issues with the performance of Councils existing water and wastewater networks. The list is punctuated by two flagship projects – The Waipukurau Second Water Supply and the Otane to Waipawa wastewater pipeline. All identified works are ready for investment with pre-planning work already completed. Due to the expediting of the investment, additional support is being provisioned within the list of works at a value of \$300,000 (~3%). This provision will allow for the effective management and delivery of the works without compromising other work programmes.

Council technical staff in the 3-waters teams and project delivery teams are confident in the ability to deliver the works within specified timeframes and are confident in the value that completing these works now will add to our communities.

Expected Benefits and Outcomes

The benefits are outlined for each project in the table above but overarching the benefit for CHBDC is minimising the direct and immediate impact on ratepayers by utilising the external funding and improving the performance of our water and wastewater schemes by expediting critical projects. This programme of work will also allow sustainable and social procurement outcomes along with environmental, cultural and economic outcomes.

Because the projects identified to benefit from the funding already live within existing plans, a complete network-wide asset management planning process is not required to identify and prioritise work. That process has already been completed and the identified projects are ready for construction meaning that Council are able to capitalise on funding availability now.

Funding Considerations as Part of LTP 2021

Once implemented, this funding injection will allow the budgets proposed in LTP 2021 to be reviewed and in some cases reduced or deferred to mitigate and minimise impact on CHB ratepayers.

Ability to Deliver

The ability to deliver the expedited programme of works will be challenging given a tight contract market but given the relationships CHBDC has built with the contract market, this places us in a good position.

The internal resourcing within council will need to continue to be up scaled and upskilled to deliver on our capital works programme and ensuring the delivery is enduring and can be proactive and ensure the greatest public value is achieved. Provisioned within the works is additional resource to support project delivery. This resource will include planning, design, engineering and project management.

Delivery Constraints

Current procurement policy constraints will need to be managed to minimise time delays – it is expected some direct sourcing will need to be undertaken to deliver on this programme.

Engineers estimates are to be produced to allow contractor pricing to be compared and to ensure that council receives value and mitigates the commercial risk of procuring through a direct or limited contractor procurement.

NEXT STEPS

Should Council agree to the recommended resolutions, the Chief Executive will keep Council abreast of the progress of the three waters reform programme. Those projects identified as part of the approved Delivery Plan will be incorporated into the key project status report for #thebigwaterstory and reported to the Finance and Infrastructure Committee in its usual way.

RECOMMENDATION FOR CONSIDERATION

That having considered all matters raised in the report:

a) Note that:

- a. in July 2020, the Government announced an initial funding package of \$761 million to provide a post COVID-19 stimulus to maintain and improve water networks infrastructure, and to support a three-year programme of reform of local government water services delivery arrangements; and
- b. initial funding will be made available to those councils that agree to participate in the initial stage of the reform programme, through a Memorandum of Understanding (MoU), Funding Agreement, and approved Delivery Plan.
- c. this initial funding will be provided in two parts: a direct allocation to individual territorial authorities, and a regional allocation. The participating individual authorities in each region will need to agree an approach to distributing the regional allocation
- d. the Steering Committee has recommended a preferred approach to the allocation of regional funding, being the same formula as was used to determine the direct allocations to territorial authorities
- e. Minister Mahuta had directed the Regional Hawke's Bay allocation to be equally divided as an acknowledgement of the leadership of the 4 Hawke's Bay Councils, and note that this is different to other regions allocations.

b) That Council agree to sign the MoU at Appendix A and Funding Agreement at Appendix B.**c) That Council agree to nominate Monique Davidson, the Chief Executive of the Council as the primary point of communication for the purposes of the MoU and reform programme – as referred to on page 6 of the MoU.****d) That Council agree to delegate decisions about the final delivery plan to the Chief Executive including the delegations to ensure the funding is released, but in doing that note their support for the general approach to the allocation as presented.****e) That Council note that the MoU and Funding Agreement cannot be amended or modified by either party, and doing so would void these documents.****f) That Council note that participation in this initial stage is to be undertaken in good faith, but this is a non-binding approach, and the Council can opt out of the reform process at the end of the term of the agreement (as provided for on page 5 of the MoU).****g) That Council note that the Council has been allocated \$11.09 million of funding, which will be received as a grant as soon as practicable once the signed MoU and Funding Agreement are returned to the Department of Internal Affairs, and a Delivery Plan has been supplied and approved (as described on page 5 of the MoU).****h) That Council note that the Delivery Plan must show that the funding is to be applied to operating and/or capital expenditure relating to three waters infrastructure and service delivery, and which:**

- a. supports economic recovery through job creation; and
- b. maintains, increases, and/or accelerates investment in core water infrastructure renewal and maintenance.

MODEL

Memorandum of Understanding Three Waters Services Reform

Between the [Sovereign in right of New
Zealand acting by and through the Minister of
Local Government] and

[Territorial Authority]

Date

PURPOSE

This Memorandum of Understanding (Memorandum) sets out the principles and objectives that the Parties agree will underpin their ongoing relationship to support the improvement in three waters service delivery for communities with the aim of realising significant public health, environmental, economic, and other benefits over the medium to long term. It describes, in general terms, the key features of the proposed reform programme and the Government funding arrangements that will support investment in three waters infrastructure as part of the COVID 19 economic recovery.

BACKGROUND

Over the past three years central and local government have been considering solutions to challenges facing the regulation and delivery of three water services. This has seen the development of new legislation to create Taumata Arowai, the new Water Services Regulator, to oversee and enforce a new drinking water regulatory framework, with an additional oversight role for wastewater and stormwater networks.

While addressing the regulatory issues, both central and local government acknowledge that there are broader challenges facing the delivery of water services and infrastructure, and the communities that fund and rely on these services. There has been regulatory failure, underinvestment in three waters infrastructure in parts of the country, and persistent affordability challenges, and additional investment is required to increase public confidence in the safety of drinking water and to improve freshwater outcomes. Furthermore, investment in water service delivery infrastructure is a critical component of a collective response to climate change and increasing resilience of local communities.

The Parties to this Memorandum consider it is timely to apply targeted infrastructure stimulus investment to enable improvements to water service delivery, progress reform in partnership, and ensure the period of economic recovery following COVID-19 supports a transition to a productive, sustainable economy. Additional funding will be subject to Government decision-making and reliant on the Parties demonstrating substantive progress against the reform objectives. The quantum, timing, conditions, and any other information relating to future funding will be advised at the appropriate time but will likely comprise additional tranches of funding and more specific agreement to key reform milestones.

The reform process and stimulus funding, proposed by Government, is designed to support economic recovery post COVID-19 and address persistent systemic issues facing the three waters sector, through a combination of:

- stimulating investment, to assist economic recovery through job creation, and maintain investment in water infrastructure renewals and maintenance; and
- reforming current water service delivery, into larger scale providers, to realise significant economic, public health, environmental, and other benefits over the medium to long term.

There is a shared understanding that a partnership approach will best support the wider community and ensure that the transition to any eventual new arrangements is well managed and as smooth as possible. This requires undertaking the reform in a manner that enables local government to continue and, where possible, enhance delivery of its broad “wellbeing mandates” under the Local Government Act 2002, while recognising the potential impacts that changes to three waters service delivery may have on the role and functions of territorial authorities.

PRINCIPLES FOR WORKING TOGETHER

The Parties shall promote a relationship in their dealings with each other, and other Parties related to the three waters services reform, based on:

- mutual trust and respect; and
- openness, promptness, consistency and fairness in all dealings and communication including through adopting a no-surprises approach to any matters or dealings related to the reform programme; and
- non-adversarial dealings and constructive problem-solving approaches; and
- working co-operatively and helpfully to facilitate the other Parties perform their roles; and
- openly sharing information and analysis undertaken to date on the state of the system for delivering three waters services and the quality of the asset base.

This Memorandum is intended to be non-binding in so far as it does not give rise to legally enforceable obligations between the Parties.

REFORM OBJECTIVES AND CORE DESIGN FEATURES

By agreeing to this Memorandum, the Parties agree to work constructively together to support the objectives of the three waters service delivery reform programme.

The Parties agree that the following objectives will underpin the reform programme and inform the development of reform options/proposals:

- significantly improving the safety and quality of drinking water services, and the environmental performance of drinking water and wastewater systems (which are crucial to good public health and wellbeing, and achieving good environmental outcomes);
- ensuring all New Zealanders have equitable access to affordable three waters services;
- improving the coordination of resources, planning, and unlocking strategic opportunities to consider New Zealand's infrastructure and environmental needs at a larger scale;
- increasing the resilience of three waters service provision to both short- and long-term risks and events, particularly climate change and natural hazards;
- moving the supply of three waters services to a more financially sustainable footing, and addressing the affordability and capability challenges faced by small suppliers and councils;
- improving transparency about, and accountability for, the delivery and costs of three waters services, including the ability to benchmark the performance of service providers; and
- undertaking the reform in a manner that enables local government to further enhance the way in which it can deliver on its broader "wellbeing mandates" as set out in the Local Government Act 2002.

In addition to these objectives, the Parties recognise that any consideration of changes to, or new models for, water service delivery arrangements must include the following fundamental requirements and safeguards:

- mechanisms that provide for continued public ownership of water service delivery infrastructure, and protect against privatisation; and
- mechanisms that provide for the exercise of ownership rights in water services entities that consider the interests and wellbeing of local communities, and which provide for local service delivery.

The Parties also recognise the reform programme will give rise to rights and interests under the Treaty of Waitangi and both Parties acknowledge the role of the Treaty partner. This includes maintaining Treaty settlement obligations and other statutory rights including under the Resource Management Act 1991 and the Local Government Act 2002. The outcome of discussions with iwi/Māori will inform design of appropriate mechanisms to reflect Treaty interests. This will include clarity of roles and responsibilities.

The Parties agree to work together to identify an approach to service delivery reform that incorporates the objectives and safeguards noted above, and considers the following design features as a minimum:

- water service delivery entities, that are:
 - of significant scale (most likely multi-regional) to enable benefits from aggregation to be achieved over the medium to long-term;
 - asset owning entities, with balance sheet separation to support improved access to capital, alternative funding instruments and improved balance sheet strength; and
 - structured as statutory entities with appropriate and relevant commercial disciplines and competency-based boards;
- delivery of drinking water and wastewater services as a priority, with the ability to extend to stormwater service provision only where effective and efficient to do so; and
- publicly owned entities, with a preference for collective council ownership;
- mechanisms for enabling communities to provide input in relation to the new entities.

The Parties acknowledge that work will also be undertaken to develop a regulatory framework, including mechanisms to protect the interests of consumers.

FUNDING ARRANGEMENTS

The Government has indicated its intention to provide funding to stimulate investment to enable improvements in water service delivery, support economic recovery and progress Three Waters Services Reform. The quantum of funding available for the Council (and each participating Council) will be notified by Government prior to signing this Memorandum.

Funding will be provided as soon as practicable following agreement to this Memorandum and the associated Funding Agreement and Delivery Plan. The Delivery Plan will need to show that the funding is to be applied to operating or capital expenditure on three waters service delivery (with the mix to be determined by the Council) that:

- supports economic recovery through job creation; and
- maintains, increases and/or accelerates investment in core water infrastructure renewals and maintenance.¹

The Delivery Plan will be based on a simple template and will include a summary of projects, relevant milestones, costs, location of physical works, number of people employed in works, reporting milestones and an assessment of how it supports the reform objectives set out in this Memorandum.

The Delivery Plan will be supplied to Crown Infrastructure Partners, and other organisations as agreed between the Parties, who will monitor progress of application of funding against the Delivery Plan to ensure spending has been undertaken consistent with public sector financial management requirements.

Agreement to this Memorandum and associated Funding Agreement and Delivery Plan are required prior to the release of Government funding. The Council will have the right to choose whether or not they wish to continue to participate in the reform programme beyond the term of the Memorandum.

FUTURE AGREEMENTS

The Parties may choose to enter other agreements that support the reform programme. These agreements will be expected to set out the terms on which the Council will partner with other councils to deliver on the reform objectives and core design features, and will include key reform milestones and detailed plans for transition to and establishment of new three waters service delivery entities.

PROGRAMME MANAGEMENT

The Government will establish a programme management office and the Council will be able to access funding support to participate in the reform process.

The Government will provide further guidance on the approach to programme support, central and regional support functions and activities and criteria for determining eligibility for funding support. This guidance will also include the specifics of any information required to progress the reform that may be related to asset quality, asset value, costs, and funding arrangements.

TERM

This Memorandum is effective from the date of agreement until 30 June 2021 unless terminated by agreement or by replacement with another agreement related to the reform programme.

¹ Maintains previously planned investment that may have otherwise deferred as a result of COVID-19.

INTERACTIONS, MONITORING, INFORMATION AND RECORDS

The Parties nominate the following representatives to act as the primary point of communication for the purposes of this Memorandum and any other purpose related to the reform programme.

Government's representative	Council
[As delegated]	[Chief Executive of the Council]

It is the responsibility of these representatives to:

- work collaboratively to support the reform objectives;
- keep both Parties fully informed;
- act as a first point of reference between Parties and as liaison persons for external contacts; and
- communicate between Parties on matters that arise that may be of interest to either party.

If the contact person changes in either organisation, the other party's contact person must be informed of the new contact person immediately and there should be an efficient transition to ensure the momentum of the reform process is not undermined.

CONFIDENTIALITY

Neither of the Parties is to disclose, directly or indirectly, any confidential information received from the other party to any third party without written consent from the other party, unless required by processes under the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987 (whichever applies), or under a Parliamentary process- such as following a Parliamentary question, in which case the relevant party is to inform the other party prior to disclosure. Protocols will be established to enable exchange information between Councils where that is consistent with progressing reform objectives.

DISPUTE RESOLUTION

Any dispute concerning the subject matter of this document is to be settled by full and frank discussion and negotiation between the Parties.

.....
SIGNED on behalf of the Crown
by [insert name - DELETE TEXT]

[Sovereign in right of New Zealand acting by
and through the Minister of Local
Government]:

.....
SIGNED by [insert name of the Mayor of the
Territorial Authority signing - DELETE TEXT] on
behalf of [Territorial Authority]

.....
SIGNED by [insert name of the Chief Executive
of the Territorial Authority signing - DELETE
TEXT] on behalf of [Territorial Authority]

.....
Witness signature

Witness name [insert name - DELETE TEXT]
Witness occupation [insert occupation -
DELETE TEXT]

Witness address [insert address - DELETE
TEXT]

.....
Witness signature

Witness name [insert name - DELETE TEXT]
Witness occupation [insert occupation
-DELETE TEXT]

Witness address [insert address - DELETE
TEXT]



FUNDING AGREEMENT

BETWEEN

DEPARTMENT OF INTERNAL AFFAIRS

AND

[NAME OF RECIPIENT]

FOR

THREE WATERS SERVICES REFORMS

AGREEMENT

The parties (identified below in Part 1) agree to be bound by the terms and conditions of this Agreement, as set out below in Part 1 (Key Details), Part 2 (General Terms), Part 3 (Definitions and Construction) and the Schedule (Payment Request).

PART 1: KEY DETAILS

Parties	The Sovereign in right of New Zealand, acting by and through the Chief Executive of the Department of Internal Affairs (DIA)
Background	<p>[NAME OF RECIPIENT] (Recipient)</p> <p>The New Zealand Government is undertaking a reform programme for “Three Waters” (drinking water, wastewater and stormwater) service delivery for communities (Three Waters Reform Programme). In conjunction with the Three Waters Reform Programme, the New Zealand Government is investing in water service delivery. The investment’s objectives are to:</p> <p>improve the safety and quality of drinking water services, and the environmental performance of drinking water and wastewater systems, by maintaining, increasing or accelerating investment in core water infrastructure renewals and maintenance; and</p> <p>support New Zealand’s economic recovery from the COVID-19 pandemic through job creation, by enabling investment to continue at a time when council revenues are uncertain and they face immediate cashflow challenges.</p> <p>The New Zealand Government has mandated DIA to manage the provision of Government funding to local authorities to support investment in water infrastructure that supports its public health and environmental management objectives. Provision of such funding supports the objectives of the reform programme, by creating positive momentum toward reform of delivery arrangements for drinking water and wastewater services and infrastructure (with stormwater as a secondary priority).</p> <p>The New Zealand Government has also mandated Crown Infrastructure Partners Limited (CIP) to assist in managing such funding by undertaking a monitoring role.</p> <p>The Recipient is a territorial authority with statutory responsibility for delivering Three Waters services within its own district or city. The Recipient will work collaboratively with the New Zealand Government in connection with the Three Waters Reform Programme.</p> <p>DIA has agreed to contribute funding to the Recipient on the terms and conditions of this Agreement (Agreement).</p> <p>Key details of this Agreement are set out in this Part 1. The full terms and conditions are set out in Part 2. Defined terms and rules of interpretation are set out in Part 3.</p>
Conditions Precedent	<p>No Funding is payable under this Agreement until DIA has confirmed to the Recipient in writing that it has received, and found, in its sole discretion, to be satisfactory to it in form and substance, the following documents and evidence:</p> <p>This Agreement, duly executed by the Recipient by 30 September 2020.</p> <p>The Memorandum of Understanding, duly executed by the Recipient by 31 August 2020.</p>

The final Delivery Plan prepared by the Recipient, in a form approved by DIA and duly executed by the Recipient by 31 October 2020.

A draft of the Delivery Plan must be submitted by no later than 30 September 2020 to threewaters@dia.govt.nz (copied to the Monitor) for review and comment by DIA (and/or the Monitor as its nominee).

Once DIA (or the Monitor) responds to the draft Delivery Plan, the Recipient must promptly engage with DIA (or the Monitor), seek to resolve such comments, and submit a final Delivery Plan for DIA's approval.

The Recipient is responsible for the content of the Delivery Plan and approval by DIA for the purposes of this Agreement shall not impose any obligations on DIA in respect of the Delivery Plan other than as expressly set out in this Agreement.

These conditions precedent must either be satisfied (in the opinion of DIA) or waived by DIA (at its sole discretion) by 31 October 2020, unless a later date is agreed otherwise in writing with DIA. In the event that they are not satisfied or waived within that time, DIA may notify the Recipient that this Agreement has not come into effect and is null and void.

Expenditure Programme(s)

The Recipient may only use the Funding to complete the expenditure programme(s) described in the Delivery Plan (each an **Expenditure Programme**).

Expenditure Programme Milestones and Completion Dates

The Recipient is to complete the Expenditure Programme Milestones set out in the Delivery Plan to the satisfaction of DIA by the Completion Dates set out therein.

End Date

The End Date is 31 March 2022, or such later date determined by DIA in its discretion.

Funding

The total Funding available under this Agreement is up to **NZ\$[INSERT HERE]** plus GST (if any). This is the Total Maximum Amount Payable.

The first instalment of Funding under this Agreement is subject to satisfaction of the Conditions Precedent set out in Item 3 above and receipt of a duly completed Payment Request in accordance with clause 1 of Part 2.

The balance of the Funding under this Agreement will be paid in instalments as specified in the Delivery Plan, subject to satisfaction of the conditions set out below and the other terms and conditions of this Agreement.

Each instalment of Funding under this Agreement, following payment of the first instalment, is subject to:

Receipt of a duly completed Payment Request in accordance with clause 1 of Part 2.

The Expenditure Programme(s) having commenced no later than 31 March 2021.

DIA receiving and being satisfied with the quarterly reports specified in the Key Details, together with the other information required in this Agreement.

No Termination Event, or event entitling DIA to suspend funding under this Agreement, subsisting.

Any further conditions relating to that instalment of Funding as specified in the

Delivery Plan.

The first Payment Request may be submitted upon the Commencement Date occurring. Each subsequent Payment Request may only be submitted at the same time as submission of a quarterly report in accordance with item 8 (Reporting) of the Key Details, and no more than one such Payment Request may be submitted in any Quarter, except (in each case) to the extent agreed by DIA in its sole discretion.

Reporting

The Recipient will provide DIA (copied to the Monitor) with quarterly reports by the 10th Business Day following the end of each Quarter, with effect from the Commencement Date. Each quarterly report must include the information set out below, in the standard reporting form specified by DIA.

The Recipient will also provide DIA (copied to the Monitor) with a final report by the 10th Business Day following the date on which the Expenditure Programme(s) are completed. The final report must include the information set out below, in the standard reporting form specified by DIA.

Each report is to be in form and substance satisfactory to DIA in its sole discretion.

Each quarterly report must include the following information:

Description and analysis of actual progress of the Expenditure Programme(s) against planned progress for the relevant Quarter;

A summary of expenditure, actual against budgeted (including underspend and cash float), for the relevant Quarter;

Plans for the next Quarter;

Forecast cashflows and forecast of the costs to complete the Expenditure Programme(s);

Any major risks arising or expected to arise with the Expenditure Programme(s), costs or performance of this Agreement, together with actual or proposed mitigations for those risks (including, where the actual Expenditure Programme(s) costs are forecast to exceed budgeted costs, how the shortfall is to be funded);

A summary of the number of jobs created, actual against expected, through people employed in the Expenditure Programme(s);

Any specific reporting requirements set out in the Delivery Plan; and

Any other information that is notified by DIA in writing to the Recipient.

The final report must include the following information:

Description and analysis of completion of the Expenditure Programme(s) against the original programme;

A summary of expenditure, actual against budgeted (including underspend), for the full Expenditure Programme(s);

Detail of the Recipient's proposed next steps;

An update on media, marketing and communication activities for the Expenditure Programme(s);

A summary of the number of jobs created, actual against expected, through people employed in the Expenditure Programme(s);

Any specific reporting requirements set out in the Delivery Plan; and

(g) Any other information that is notified by DIA in writing to the

	Recipient.	
Special Terms	[None] / [<i>Special terms to be added</i>]	
Recipient's Bank Account	[xx-xxxx-xxxxxxxx-xxx]	
Representative	DIA's Representative:	Recipient's Representative:
	Name: Allan Prangnell	Name: [name]
	Email: threewaters@dia.govt.nz	Email: [email]
Address for Notices	To DIA:	To the Recipient:
	Three Waters Reform Level 7, 45 Pipitea Street Wellington 6011	[address]
	Attention: Allan Prangnell	Attention: [name]
	Email: threewaters@dia.govt.nz , with a copy to legalnotices@dia.govt.nz	Email: [email]
	To the Monitor:	
	Attention: Anthony Wilson	
	Email: 3waters@crowininfrastructure.govt.nz	
SIGNATURES	SIGNED by the SOVEREIGN IN RIGHT OF NEW ZEALAND acting by and through the Chief Executive of the Department of Internal Affairs or his or her authorised delegate:	SIGNED for and on behalf of [RECIPIENT NAME] by the person(s) named below, being a person(s) duly authorised to enter into obligations on behalf of the Recipient:
	_____	_____
	Name:	Name:
	Position:	Position:
	Date:	Date:

		Name:
		Position:
		Date:
		<i>END OF PART 1</i>

PART 2: GENERAL TERMS

1 FUNDING

- 1.1 DIA must pay the Funding (up to the "Total Maximum Amount Payable" specified in the Key Details) to the Recipient, subject to the terms of this Agreement. Unless stated otherwise in this Agreement, the Recipient may only claim the Funding to the extent necessary to cover Eligible Costs that have been or will be incurred by the Recipient, and the Recipient must use the Funding solely on Eligible Costs.
- 1.2 The Recipient must submit a Payment Request to threewaters@dia.govt.nz and copying in DIA's Representative and the Monitor on completion of one or more Expenditure Programme Milestones specified in the Delivery Plan. Such Payment Request must be submitted at the time specified in, and otherwise in accordance with, item 7 (Funding) in the Key Details.
- 1.3 Each Payment Request is to be signed by the Chief Executive and an authorised signatory of the Recipient and must be in the form set out in the Schedule and include the confirmations set out therein, and must include:
 - (a) the amount of Funding requested, which must not exceed the aggregate maximum Funding instalment amounts set out in the Delivery Plan for the Expenditure Programme Milestone(s) to which that Payment Request relates; and
 - (b) contain any other information required by DIA.
- 1.4 Once DIA has reviewed the Payment Request and the information enclosed with it, it will request the Recipient to provide (and the Recipient will provide) a valid GST invoice complying with the Goods and Services Tax Act 1985.
- 1.5 DIA is not required to pay any Funding in respect of a Payment Request:
 - (a) if any Expenditure Programme Milestone(s) have not been completed by the relevant "Completion Date" specified in the Delivery Plan;
 - (b) if any reports specified in the Key Details have not been provided or are not in form and substance satisfactory to DIA in its sole discretion;
 - (c) if the Conditions specified in Item 7 of the Key Details relating to that instalment have not been satisfied;
 - (d) if payment will result in the Funding exceeding the "Total Maximum Amount Payable" specified in the Key Details;
 - (e) if this Agreement has expired or been terminated; and/or
 - (f) while the Recipient is in breach of this Agreement.

For the avoidance of doubt, DIA's obligation to make Funding available under this Agreement is strictly subject to clause 6.2.
- 1.6 Subject to the terms of this Agreement, DIA must pay each valid Payment Request by the 20th day of the month after the month the GST invoice referred to in clause 1.4 is dated, and if such day is not a Business Day, on the next Business Day. DIA will pay the Funding to the Bank Account of the Recipient specified in Item 10 of the Key Details.

- 1.7 The Funding made available under this Agreement comprises grant funding and does not comprise an equity investment or loan. It is only repayable in the specific circumstances set out in this Agreement.
- 1.8 DIA may, at its discretion, notify the Recipient in writing that it wishes to enter into a GST Offset Agreement in connection with the payment of GST on any Funding. The Recipient must, where applicable, take all such steps as are reasonably required to achieve that GST offset in accordance with the Goods and Services Tax Act 1985.

2 RECIPIENT'S RESPONSIBILITIES

Standards and compliance with laws

- 2.1 The Recipient must comply with all applicable laws, regulations, rules and professional codes of conduct or practice.

Expenditure Programme(s) and Contractors

- 2.2 The Recipient must not, without DIA's prior written consent, make any Material Variation to the Expenditure Programme(s) (including its description and scope) as set out in the Delivery Plan.
- 2.3 The Recipient must ensure that the Expenditure Programme(s) are carried out:
 - (a) promptly with due diligence, care and skill, and in a manner that meets or exceeds Best Industry Practice;
 - (b) by appropriately trained, qualified, experienced and supervised persons; and
 - (c) in accordance with any directions of DIA, notified by DIA in writing from time to time.
- 2.4 The Recipient must use reasonable endeavours to ensure that the Expenditure Programme Milestones are completed by the relevant "Completion Date" specified in the Delivery Plan.
- 2.5 The Recipient is responsible for the acts and omissions of any contractors and subcontractors.
- 2.6 The Recipient must ensure (and will procure that the head contractor when engaging with any other contractor ensures) that all agreements it enters into with any contractors or any other party in connection with the Expenditure Programme(s) are on an "arm's length" basis, provide value-for-money and do not give rise to any Conflict of Interest. The Recipient must provide DIA with reasonable evidence of compliance with this clause 2.6 in response to any request by DIA from time to time.

Information Undertakings

- 2.7 The Recipient must provide DIA with the reports specified in the Key Details, in accordance with the timeframes and reporting requirements set out in the Key Details.
- 2.8 The Recipient must provide DIA with any other information about the Expenditure Programme(s) requested by DIA within the timeframe set out in the request.
- 2.9 The Recipient must promptly notify DIA if:

- (a) the Recipient (or any of its personnel or contractors) becomes aware of, or subject to, a Conflict of Interest; or
- (b) the Recipient becomes aware of any matter that could reasonably be expected to have an adverse effect on an Expenditure Programme and any related programme, or result in a Termination Event or a breach of any term of this Agreement by the Recipient,

and if requested by DIA must promptly provide DIA with its plan to mitigate and manage such Conflict of Interest or such matter.

2.10 The Recipient must not at any time do anything that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of DIA or the New Zealand Government. The Recipient must keep DIA informed of any matter known to the Recipient which could reasonably be expected to have such an effect.

2.11 The parties acknowledge and agree that CIP (or any other Monitor) may, to the extent directed by DIA, undertake a reviewing and monitoring role under this Agreement, including by:

- (a) reviewing and confirming satisfaction with the Delivery Plan and with the reports specified in the Key Details;
- (b) seeking, reviewing and confirming satisfaction with further information from the Recipient; and
- (c) making recommendations to DIA and the New Zealand Government in respect of the Funding and the Agreement.

The Recipient agrees that all its communications and correspondence under this Agreement may be made with DIA or, to the extent directed by DIA, the Monitor.

Funding, records and auditors

2.12 The Recipient must receive and manage all Funding in accordance with good financial management and accounting practices and to a high standard that demonstrates appropriate use of public funds.

2.13 The Recipient must keep full and accurate records (including accounting records) of the Expenditure Programme(s) and retain them for at least 7 years after the last payment of Funding under this Agreement. The Recipient must permit DIA (or any auditor nominated by DIA) to inspect all records relating to the Expenditure Programme(s) and must allow DIA and/or the auditor access to the Recipient's premises, systems and personnel for the purposes of this inspection. DIA shall bear any third party costs arising from such inspection, unless the inspection reveals a breach of this Agreement, in which case the Recipient shall bear such costs.

Reform

2.14 The Recipient agrees to work constructively together with DIA and the New Zealand Government to support the objectives of the Three Waters Reform Programme pursuant to the Memorandum of Understanding. The parties acknowledge that the undertaking set out in this clause 2.14 is intended to be non-binding.

3 INTELLECTUAL PROPERTY

- 3.1 DIA acknowledges that the Recipient and its licensors own all pre-existing intellectual property which they contribute to the Expenditure Programme(s), and all new intellectual property which they create in the course of the Expenditure Programme(s).
- 3.2 The Recipient grants an irrevocable, perpetual, royalty-free, sub-licensable licence to DIA and the Monitor to use all reports, documents, information and other materials created or provided by the Recipient to DIA or the Monitor under or in connection with the Expenditure Programme(s) and this Agreement.
- 3.3 The Recipient warrants that it has obtained (or will obtain, prior to creation of each relevant work) all rights and permissions necessary to enable the grant and exercise of the licence in clause 3.2 without infringing the intellectual property rights of any third party.

4 TERM AND TERMINATION

- 4.1 This Agreement will be effective on and from the Commencement Date, which will be the latest to occur of:
- (a) the date this Agreement has been signed by both parties; and
 - (b) the date on which DIA has provided written notice to the Recipient that the Conditions Precedent specified in the Key Details have either been satisfied (in the opinion of DIA) or waived by DIA (at its sole discretion).
- 4.2 This Agreement will remain in force until the End Date, unless terminated in accordance with this Agreement.
- 4.3 DIA can terminate this Agreement with immediate effect, by giving notice to the Recipient, at any time:
- (a) while DIA reasonably considers that the Recipient has become or is likely to become insolvent;
 - (b) while the Recipient is subject to the appointment of a liquidator, receiver, manager or similar person in respect of any of its assets or a Crown Manager or Commission is appointed in respect of the Recipient under Part 10 of the Local Government Act 2002;
 - (c) if the Expenditure Programme(s) have not commenced by 31 March 2021; or
 - (d) while any one or more of the follow events or circumstances remains unremedied:
 - (i) the Recipient is materially in breach of any obligation, or a condition or warranty, under this Agreement;
 - (ii) the Recipient has provided DIA with information in connection with or under this Agreement that (whether intentionally or not) is materially incorrect or misleading, and/or omits material information;
 - (iii) DIA reasonably considers that this Agreement or an Expenditure Programme has caused, or may cause, DIA and/or the New Zealand Government to breach any legal obligations (including its international trade obligations);

- (iv) the Recipient abandons an Expenditure Programme;
 - (v) the Recipient is involved in any intentional or reckless conduct which, in the opinion of DIA, has damaged or could damage the reputation, good standing or goodwill of DIA or the New Zealand Government, or is involved in any material misrepresentation or any fraud;
 - (vi) the Recipient (or any of its personnel or contractors) is subject to a Conflict of Interest which cannot be managed to DIA's satisfaction; or
 - (vii) any change in law, regulations or other circumstances materially affects DIA's ability to perform its obligations under this Agreement.
- 4.4 However, where DIA considers that a Termination Event set out in clause 4.3(d) can be remedied, DIA must give notice to the Recipient requesting a remedy, and must not exercise its right of termination unless the relevant event remains unremedied for at least 14 days (or any longer period agreed with the Recipient) after that notice has been provided by DIA.
- 4.5 On expiry or termination of this Agreement, where the aggregate of (a) the total Funding paid under this Agreement and (b) any other money received or allocated by the Recipient, in each case to carry out an Expenditure Programme, exceeds the amount required to perform the Expenditure Programme, the Recipient must upon request refund to DIA the excess amount.
- 4.6 At any time DIA may recover the amount of any Funding that has been spent or used other than in accordance with this Agreement, or not applied to Eligible Costs by the End Date, together with interest on all such amounts calculated at 10% per annum from the date of the mispending to the date the money is repaid.
- 4.7 Clauses 1.5, 2.1, 2.12, 2.13, 3, 4, 5, 6, 7, 8, 9, 10 and 11 survive expiry or termination of this Agreement, along with any other parts of this Agreement necessary to give effect to those provisions. Expiry or termination of this Agreement does not affect any accrued rights, including any rights in respect of a breach of this Agreement or Termination Event that occurred before expiry or termination.

5 WARRANTIES AND UNDERTAKINGS

- 5.1 The Recipient warrants that, in the course of its activities in connection with the Expenditure Programme(s), it will not infringe any intellectual property or other rights of any contractor or any other third party.
- 5.2 The Recipient warrants that, as at the date of this Agreement:
- (a) It has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms, and it has complied with the Local Government Act 2002 in entering into this Agreement;
 - (b) the Recipient is solvent and is not subject to the appointment of a liquidator, receiver, manager or similar person in respect of any of its assets or to the appointment of a Crown Manager or Commission under Part 10 of the Local Government Act 2002;

- (c) all information and representations disclosed or made to DIA by the Recipient in connection with this Agreement are true and correct, do not omit any material matter, and are not likely to mislead or deceive DIA as to any material matter;
- (d) it has disclosed to DIA all matters known to the Recipient (relating to the Expenditure Programme(s), the Recipient or its personnel) that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of DIA or the New Zealand Government; and
- (e) it is not aware of any material information that has not been disclosed to DIA which may, if disclosed, materially adversely affect the decision of DIA whether to provide the Funding.

5.3 The Recipient warrants that:

- (a) the Funding has been or will be applied solely to Eligible Costs; and
- (b) the Expenditure Programme(s) will take into account the parties' shared intention to:
 - (i) support economic recovery through job creation; and
 - (ii) maintain, increase and/or accelerate investment in core water infrastructure renewals and maintenance,

and such warranty will be deemed to be repeated continuously so long as this Agreement remains in effect by reference to the facts and circumstances then existing.

- 5.4 DIA warrants that, as at the date of this Agreement, it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.
- 5.5 The Recipient acknowledges that DIA has entered into this Agreement in reliance on these warranties and undertakings.
- 5.6 The Recipient acknowledges and agrees that DIA has made no warranty or representation that any funding or financial support is or will be available to the Recipient in respect of the Expenditure Programme(s), other than the Funding.

6 **LIABILITY**

- 6.1 The maximum liability of DIA under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, is limited to the total amount of Funding paid or payable under this Agreement.
- 6.2 The Recipient undertakes to pay any and all cost overruns of the Expenditure Programme(s) and any funding shortfall, and DIA and the New Zealand Government have no obligations or responsibility whatsoever in respect of such cost overruns and funding shortfall and accept no financial risk in the Expenditure Programme(s).
- 6.3 DIA is not liable for any claim under or in connection with this Agreement or the Expenditure Programme(s), whether arising in contract, tort (including negligence) or otherwise, where such claim is or relates to any loss of profit, loss of revenue, loss of use, loss of reputation, loss of goodwill, loss of opportunity (in each case whether direct, indirect

or consequential) or any other indirect, consequential or incidental loss or damages of any kind whatsoever.

7 CONFIDENTIALITY

- 7.1 Subject to clause 7.2 and 7.3, each party must keep the other party's Confidential Information in confidence, and must use or disclose that Confidential Information only to the extent necessary to perform its obligations, and/or take the intended benefit of its rights, under this Agreement. However, this will not prohibit:
- (a) either party from using or disclosing any information with the written prior consent of the other party;
 - (b) use or disclosure of information that has become generally known to the public other than through a breach of this Agreement;
 - (c) either party from disclosing information to its personnel, contractors or advisors with a need to know, so long as the relevant personnel, contractors and advisors use the information solely to enable that party to perform its obligations and/or take the intended benefit of its rights under this Agreement, and so long as they are informed of the confidential nature of the information and, in the case of the Recipient, the Recipient receives an acknowledgement from its personnel, contractors or advisors that they acknowledge, and must comply with, the confidentiality obligations in this Agreement as if they were party to it;
 - (d) disclosure required by any law, or any compulsory order or requirement issued pursuant to any law; or
 - (e) DIA from using or disclosing to any party any documents, reports or information received in relation to this Agreement, provided that prior to any such disclosure DIA removes all information that is commercially sensitive to the Recipient from the relevant work.
- 7.2 The Recipient acknowledges and agrees that nothing in this Agreement restricts DIA's ability to:
- (a) discuss, and provide all information in respect of, any matters concerning the Recipient, the Expenditure Programme(s) or this Agreement with any Minister of the Crown, the Monitor, any other government agency or any of their respective advisors;
 - (b) meet its obligations under any constitutional or parliamentary convention (or other obligation at law) of or in relation to the New Zealand Parliament, the New Zealand House of Representatives or any of its Committees, any Minister of the Crown, or the New Zealand Auditor-General, including any obligations under the Cabinet Manual including the "no surprises" principle; and
 - (c) publicise and report on the awarding of the Funding, including the Recipient's and any of its contractor's names, the amount and duration of the Funding and a brief description of the Expenditure Programme(s), on websites; in media releases; general announcements and annual reports.
- 7.3 The Recipient acknowledges that:
- (a) the contents of this Agreement (including the Delivery Plan); and

- (b) information provided to DIA and the Monitor (including the reports specified in the Key Details),

may be official information in terms of the Official Information Act 1982 and, in line with the purpose and principles of the Official Information Act 1982, this Agreement and such information may be released to the public unless there is good reason under the Official Information Act 1982 to withhold it.

- 7.4 DIA acknowledges that the Recipient is subject to the Local Government Official Information and Meetings Act 1987 and that its confidentiality obligations under this clause 7 are subject to its compliance with that Act.

8 MEDIA AND COMMUNICATIONS

- 8.1 Before making any media statements or press releases (including social media posts) regarding this Agreement and/or DIA's involvement with the Expenditure Programme(s), the Recipient will consult with DIA, and will obtain DIA's prior approval to any such statements or releases.
- 8.2 The Recipient will refer any enquiries from the media or any other person about the terms or performance of this Agreement to DIA's Representative.
- 8.3 The Recipient will acknowledge the New Zealand Government as a source of funding in all publications (including any digital presence) and publicity regarding the Expenditure Programme(s) in accordance with funding acknowledgement guidelines agreed with DIA. The Recipient must obtain DIA's approval of the form and wording of the acknowledgement prior to including the acknowledgement in the publication or publicity (as the case may be).
- 8.4 The Recipient does not have the right to enter into any commitment, contract or agreement on behalf of DIA or any associated body, or to make any public statement or comment on behalf of DIA or the New Zealand Government.
- 8.5 All correspondence with DIA under this clause 8 must be directed to DIA's Representative and copied to threewaters@dia.govt.nz and the Monitor.

9 DISPUTES

- 9.1 In the event of any dispute, controversy or claim arising out of or in connection with this Agreement, or in relation to any question regarding its existence, breach, termination or invalidity (in each case, a **Dispute**), either party may give written notice to the other specifying the nature of the Dispute and requesting discussions under this clause 9 (**Dispute Notice**). As soon as reasonably practicable following receipt of a Dispute Notice, the parties must meet (in person, or by audio or video conference) and endeavour to resolve the Dispute by discussion, negotiation and agreement.
- 9.2 If the matter cannot be amicably settled within 20 Business Days after the date of the Dispute Notice then, at the request in writing of either party, the matter in respect of which the Dispute has arisen must be submitted, together with a report describing the nature of such matter, to the Representatives (or, if no such Representatives have been appointed, the respective Chief Executives of the parties) (together the **Dispute Representatives**).
- 9.3 Within 20 Business Days after the receipt of a request under clause 9.2, one individual (who does not act in his or her professional capacity as legal counsel for either party) selected by each of the Dispute Representatives, must make a presentation of no longer than 30 minutes to each of the Dispute Representatives (which may be by telephone or remotely),

who will then attempt in good faith to reach a common decision within a half-day. The decision of the Dispute Representatives is binding on the parties.

- 9.4 In the case of a Dispute, if the Dispute Representatives have not met within 20 Business Days of receiving a request in accordance with clause 9.2, or if they fail to reach a common decision within the stated time period, either party may by notice in writing to the other party refer the Dispute to be referred to mediation before a single mediator appointed by the parties. Each party will bear its own costs of mediation and the costs of the mediator will be divided evenly between the parties.
- 9.5 If the parties are unable to agree on the appointment of a mediator within 5 Business Days of the notice requiring the Dispute to be referred to mediation, a mediator may be appointed at the request of any party by the Arbitrators' and Mediators' Institute of New Zealand Inc.
- 9.6 If the Dispute is not resolved within 20 Business Days of referral to mediation, the parties may commence court proceedings without further participation in any mediation.
- 9.7 Nothing in this clause 9 will prevent either party from seeking urgent interim relief from a court (or other tribunal) of competent jurisdiction.

10 REPRESENTATIVES

- 10.1 All matters or enquiries regarding this Agreement must be directed to each party's Representative (set out in the Key Details).
- 10.2 Each party may from time to time change the person designated as its Representative on 10 Business Days' written notice to the other Party. Any such change will also take effect as a change of the relevant Representative for the purposes of the Memorandum of Understanding.

11 GENERAL

- 11.1 Each notice or other communication given under this Agreement (each a **notice**) must be in writing and delivered personally or sent by post or email to the address of the relevant party set out in the Key Details or to any other address from time to time designated for that purpose by at least 10 Business Days' prior written notice to the other party. A notice under this Agreement is deemed to be received if:

- (a) **Delivery:** delivered personally, when delivered;
- (b) **Post:** posted, 5 Business Days after posting or, in the case of international post, 7 Business Days after posting; and
- (c) **Email:** sent by email:
 - (i) If sent between the hours of 9am and 5pm (local time) on a Business Day, at the time of transmission; or
 - (ii) If subclause (i) does not apply, at 9am (local time) on the Business Day most immediately after the time of sending,

provided that an email is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.

- 11.2 The Recipient agrees to execute and deliver any documents and to do all things as may be required by DIA to obtain the full benefit of this Agreement according to its true intent.
- 11.3 No legal partnership, employer-employee, principal-agent or joint venture relationship is created or evidenced by this Agreement.
- 11.4 This Agreement constitutes the sole and entire understanding with respect to the subject matter hereof and supersedes all prior discussions, representations and understandings, written or oral.
- 11.5 No amendment to this Agreement will be effective unless agreed in writing and signed by both parties.
- 11.6 The Recipient may not assign or transfer any of its contractual rights or obligations under this Agreement, except with DIA's prior written approval.
- 11.7 DIA may assign or transfer any of its contractual rights or obligations under this Agreement without the Recipient's prior approval. DIA may at any time disclose to a proposed assignee or transferee any information which relates to, or was provided in connection with, the Recipient, the Expenditure Programme(s) or this Agreement.
- 11.8 No failure, delay or indulgence by any party in exercising any power or right conferred on that party by this Agreement shall operate as a waiver. A single exercise of any of those powers or rights does not preclude further exercises of those powers or rights or the exercise of any other powers or rights.
- 11.9 The exercise by a party of any express right set out in this Agreement is without prejudice to any other rights, powers or remedies available to a party in contract, at law or in equity, including any rights, powers or remedies which would be available if the express rights were not set out in this Agreement.
- 11.10 This Agreement is not intended to confer any benefit on or create any obligation enforceable at the suit of any person not a party to this Agreement.
- 11.11 Any provision of this Agreement that is invalid or unenforceable will be deemed deleted, and will not affect the other provisions of this Agreement, all of which remain in force to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- 11.12 This Agreement is to be governed by the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 11.13 This Agreement may be executed in any number of counterparts (including duly electronically signed, scanned and emailed copies). So long as each party has received a counterpart signed by each of the other parties, the counterparts together shall constitute a binding and enforceable agreement. This Agreement is intended to constitute a binding and enforceable agreement in accordance with its terms.

END OF PART 2

Part 3: Definitions and Construction

Defined terms

In this Agreement, unless the context requires otherwise, terms defined in the Agreement have the meaning set out therein and:

Authorisation means:

- (a) any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a governmental agency or required by any law (including any consent under the Resource Management Act 1991); or
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if a governmental agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

Best Industry Practice means that degree of skill, care and foresight and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of services engaged in the same type of undertaking as that of the Recipient or any contractors (as applicable) under the same or similar circumstances as those contemplated by this Agreement.

Business Day means any day other than a Saturday, Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003.

Commencement Date has the meaning given in clause 4.1 of Part 2.

Completion Date is the date that the relevant Expenditure Programme Milestone is to be completed by the Recipient, described in the Delivery Plan, and includes any amendment to the date which may be agreed in writing (including by email but only when DIA's Representative expressly confirms in writing that they have received approval of the change from the correct DIA delegation holder) between the parties from time to time.

Conditions means the conditions to the payment of a Funding instalment as specified in Item 7 of the Key Details.

Confidential Information of a party (Owner), means any information in the possession or control of another party (Holder) that:

- (a) was originally acquired by the Holder in connection with this Agreement through disclosures made by or at the request of the Owner; and/or
- (b) was originally acquired by the Holder in connection with this Agreement through any access to, or viewing, inspection or evaluation of, the premises, facilities, documents, systems or other assets owned or controlled by the Owner; and/or
- (c) is derived from information of a kind described in paragraph (a) or (b) above;

but excludes any information which the Holder can show:

- (d) was lawfully acquired by the Holder, entirely independently of its activities in connection with this Agreement, and is free of any other obligation of confidence owed to the Owner; and/or

- (e) has been independently developed by the Holder without reference to the Owner's Confidential Information, and without breaching any other obligation of confidence owed to the Owner.

Notwithstanding the foregoing, the terms of this Agreement (excluding the Delivery Plan) are not Confidential Information.

Conflict of Interest means any matter, circumstance, interest or activity of the Recipient, its personnel or contractors, or any other person with whom the Recipient has a relationship that:

- (a) conflicts with:
 - (i) the obligations of the Recipient (or its personnel or contractors) to DIA under this Agreement; or
 - (ii) the interests of the Recipient in relation to this Agreement and/or the procuring of the Expenditure Programme(s); or
- (b) otherwise impairs or might appear to impair the ability of the Recipient (or any of its personnel or contractors) to diligently and independently carry out the Expenditure Programme(s) in accordance with this Agreement.

Delivery Plan means the delivery plan setting out the scope of the Expenditure Programme(s) to which Funding is to be applied, based on the template provided by and in the form approved by DIA and executed by DIA and the Recipient.

Eligible Costs means the actual costs that have been or will be reasonably incurred by the Recipient on or after the Commencement Date and no later than the End Date to deliver an Expenditure Programme in accordance with the Delivery Plan.

Expenditure Programme Milestone means, in respect of an Expenditure Programme, a milestone for that Expenditure Programme, as set out in the Delivery Plan.

Funding means the funding or any part of the funding (as the context requires) payable by DIA to the Recipient in accordance with the terms of this Agreement, as described in the Key Details.

GST Offset Agreement means a deed of assignment between DIA as Assignor and the Recipient as Assignee providing for the offset of the amount of GST in accordance with the Goods and Services Tax Act 1985.

Key Details means Part 1 of this Agreement.

Memorandum of Understanding means the memorandum of understanding relating to Three Waters Services Reform between DIA and the Recipient, in the form provided by DIA.

Material Variation means, in respect of an Expenditure Programme, any variation which on its own or together with any other variation or variations results in, or is likely to result in the budgeted expenditure (taking into account all variations) being exceeded or an Expenditure Programme being materially delayed, or any variation that materially amends the scope, specifications or function of an Expenditure Programme.

Monitor means CIP, or any other entity appointed by DIA in its sole discretion to assist in managing the Funding by undertaking a monitoring role.

Payment Request means a request submitted to DIA by the Recipient seeking payment of Funding substantially in the form set out in the Schedule to this Agreement.

Quarter means a financial quarter, being a three monthly period ending on 30 June, 30 September, 31 December or 31 March.

Termination Event means any one or more of the events or circumstances set out in clause 4.3.

Construction

In the construction of this Agreement, unless the context requires otherwise:

Currency: a reference to any monetary amount is to New Zealand currency;

Defined Terms: words or phrases appearing in this Agreement with capitalised initial letters are defined terms and have the meanings given to them in this Agreement;

Documents: a reference to any document, including this Agreement, includes a reference to that document as amended or replaced from time to time;

Inclusions: a reference to “includes” is a reference to “includes without limitation”, and “include”, “included” and “including” have corresponding meanings;

Joint and Several Liability: any provision of this Agreement to be performed or observed by two or more persons binds those persons jointly and severally;

Parties: a reference to a party to this Agreement or any other document includes that party's personal representatives/successors and permitted assigns;

Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

Precedence : if there is any conflict between the different parts of this Agreement, then unless specifically stated otherwise, the Key Details will prevail over Part 2, and Part 2 will prevail over the Delivery Plan;

Precedence with Memorandum of Understanding: if there is any conflict between this Agreement and the Memorandum of Understanding, then unless specifically stated otherwise, this Agreement will prevail;

Related Terms: where a word or expression is defined in this Agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;

Writing: a reference to “written” or “in writing” includes email and any commonly used electronic document format such as .DOC or .PDF.

END OF PART 3

SCHEDULE: PAYMENT REQUEST

To: DEPARTMENT OF INTERNAL AFFAIRS

Dated: [•]

PAYMENT REQUEST

1. We refer to the Funding Agreement dated [•] 2020 between [•] as recipient (**Recipient**) and the Department of Internal Affairs (**DIA**) (the **Agreement**). Terms defined in the Agreement have the same meaning in this Payment Request.
2. This is a Payment Request for the purpose of clauses 1.2 and 1.3 of the Agreement.
3. Each of the Expenditure Programme Milestones that have been completed are:

[insert description of each of Expenditure Programme Milestones completed, including the date of completion]
4. The amount of Funding requested is \$[•] plus GST if any.
5. The Funding requested in this Payment Request has been or will be required to meet the Eligible Costs.
6. We enclose with this Payment Request:
 - (a) a breakdown / total transaction listing of total Eligible Costs that have been or will be incurred to deliver the completed Expenditure Programme Milestone(s);
 - (b) the conditions to the applicable Expenditure Programme Milestone(s) as set out in the Funding Agreement and the Delivery Plan;
 - (c) a quarterly report; and **Note: (c) is not applicable for the first Payment Request, or where DIA has agreed under item 7 of the Key Terms that a Payment Request does not need to be provided alongside a quarterly report*
 - (d) any other reasonable information or evidence requested by DIA or the Monitor in relation to Eligible Costs that have been incurred or will be incurred.
7. We confirm that:
 - (a) no Termination Event is subsisting; and
 - (b) each of the warranties set out in the Agreement are correct as at the date of this Payment Request.

By and on behalf of the Recipient by

NAME OF RECIPIENT

Chief Executive

Authorised Officer

THREE WATERS STIMULUS GRANT DELIVERY PLAN

Instructions for completion: A single Delivery Plan is to be completed for the full Expenditure Programme. Territorial Authorities may elect to provide appendices providing further detail of specific elements of the proposed expenditure programme.

The draft Delivery Plan must be submitted by the Territorial Authority as soon as possible and in any event by no later than 30 September 2020 to threewaters@dia.govt.nz, with a copy to 3waters@crowinfrastructure.govt.nz. The Delivery Plan will be assessed by the Department of Internal Affairs and Crown Infrastructure Partners Limited, who may elect to provide feedback and require further detail, additions or alterations. A revised version of the Delivery Plan, incorporating all agreed changes, must be submitted for approval thereafter, with the final Delivery Plan to be in an approved form by 31 October 2020.

Where the Department of Internal Affairs requires additional reporting or other assurance based on a specific Delivery Plan, this will be included in section 17 below following the Department of Internal Affairs/Crown Infrastructure Partners Limited review. Section 17 will form part of the Delivery Plan. All figures in this Delivery Plan should be GST exclusive.

Capitalised terms in this Delivery Plan have the meaning given to them in the Funding Agreement, where applicable.

Territorial Authority information

1. Programme
Title:

2. Territorial
Authority:

3. Total Maximum Amount Payable (NZ\$M):

\$

4. Organisation Lead Contact:

Name:	
Position:	
Email:	

Expenditure Programme overview

5. Please provide a brief description of the expenditure programme to be undertaken:

6. Location/address of the programme:

(if this is a series of investments, please identify each location where relevant)

7. What is the **total** estimated cost of the programme (NZ\$M)?

8. If the total estimated cost exceeds the Total Maximum Amount Payable, please specify the funding source(s) and amount(s):

Funding Source	Amount (NZ\$M)
	\$
	\$
Total	\$

9. Please provide a high-level breakdown of the expenditure programme including a cost schedule identifying estimated costs for each major component:

10. What is the expected number of people employed, and net jobs created through the expenditure programme? How has this been estimated?

Expenditure Programme commencement

11. Please describe the initial activity to be undertaken on expenditure programme commencement:

Expenditure Programme completion

12. Please outline below the high-level plan that will ensure the expenditure programme is completed by 31 March 2022 (these should largely mirror the milestones below):

Expenditure Programme funding status

13. Please indicate below the expenditure programme funding status:

Included in LTP	Y/N	Amounts NZ\$	Year
Included in Annual Plan 2020/21	Y/N	Amounts NZ\$	N/A
Not funded in any plan	Y/N	Amounts NZ\$	Year
Was funded but COVID-19 deferred	Y/N	Amounts NZ\$	Year
Is any Territorial Authority co-funding being contributed?	Y/N	Amounts NZ\$	Year

14. Please set out the key milestones of the expenditure programme to be undertaken, and for each milestone the planned completion date and budget:²

	Expenditure Programme Milestone (including a description of how the milestone is identified)	Completion Date	Maximum Funding instalment amount (NZ\$) ³	Budgeted costs to complete the expenditure programme (NZ\$)	[DIA USE ONLY] Funding Conditions
1.	Commencement Date occurring under the Funding Agreement	31 October 2020 (or such date agreed otherwise in writing with DIA under the Funding Agreement)	NZ\$[INSERT HERE] [Note: this is to be 50% of the Total Maximum Amount Payable]	Nil	
2.	[Commencement of expenditure programme]	[date] [To be no later than 31 March 2021]	NZ\$[INSERT HERE]	NZ\$[INSERT HERE]	
3.	[milestone]	[date]	NZ\$[INSERT HERE]	NZ\$[INSERT HERE]	
4.	[milestone]	[date]	NZ\$[INSERT HERE]	NZ\$[INSERT HERE]	
5.	[milestone]	[date]	NZ\$[INSERT HERE]	NZ\$[INSERT HERE]	
6.	[milestone]	[date]	NZ\$[INSERT HERE]	NZ\$[INSERT HERE]	
7.	[Completion of expenditure programme]	[date] [To be no later than 31 March 2022]	NZ\$[INSERT HERE]] ⁴	NZ\$[INSERT HERE]	

² All figures should be GST exclusive.

³ You may choose to determine each maximum Funding instalment amount for a milestone on the basis of seeking funds either for application towards costs incurred for that milestone, or for application towards costs to be incurred for the following milestone.

⁴ The final Payment Request needs to be submitted with the quarterly report for the period ending 31 December 2021.

	TOTAL		<i>[Must be less or equal to Total Maximum Amount Payable]</i>	<i>[Must be equal to the total estimated cost of the expenditure programme]</i>	
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15. Briefly outline the final expected outcomes/objectives of the expenditure programme:

16. Briefly outline an assessment of how the expenditure programme supports the reform objectives set out in the Memorandum of Understanding relating to Three Waters Services Reform between you and the Sovereign in Right of New Zealand acting by and through the Minister of Local Government:

DIA USE ONLY

17. Additional requirements in respect of the Funding Agreement (such as specific reporting requirements):

The parties acknowledge and agree that this is the agreed Delivery Plan.

SIGNATURES

SIGNED by the **SOVEREIGN IN RIGHT OF NEW ZEALAND** acting by and through the Chief Executive of the Department of Internal Affairs or his or her authorised delegate:

Name:

Position:

Date:

SIGNED for and on behalf of

by the person(s) named below, being a person(s) duly authorised to enter into obligations on behalf of that territorial authority:

Name:

Position:

Date:

Name:

Position:

Date:



Our advice

Prepared for SOLGM
Prepared by Jonathan Salter and Lizzy Wiessing
Date 31 July 2020

PRIVILEGED AND CONFIDENTIAL

Three waters services reform MOU - no explicit triggers for consultation before territorial authorities sign

- | | |
|-------------------|--|
| Background | <ol style="list-style-type: none">1. You have asked us to prepare advice to be circulated to territorial authorities with the draft memorandum of understanding for three water services reform (MOU).2. Our advice proceeds on the presumption that councils will enter into the MOU after their annual plan for 2020/21 has been adopted. |
| Question | <ol style="list-style-type: none">3. Do territorial authorities need to consult their community before entering into the MOU? |
| Answer | <ol style="list-style-type: none">4. Generally, no. There are no explicit triggers for consultation before entering into the MOU. The decision to enter into it is of course subject to the general requirements relating to decision-making in Part 6 of the Local Government Act 2002 (LGA 02). If councils consider they do not have a reasonable understanding of community views in relation to the commitments arising from the MOU then they could choose to consult their communities about the decision. We expect this will be the exception not the norm.5. Certain choices made subsequently as to what projects to advance or steps to take might trigger consultation requirements at that time. |

Our reasons

		Page
Summary	<ul style="list-style-type: none"> The obligations assumed on upon entry into the MOU do not trigger any explicit requirements to consult in the LGA 02. 	2
	<ul style="list-style-type: none"> The decision is subject to the general requirements relating to decision-making in Part 6 of the LGA 02, meaning local authorities may choose to consult. 	3
	<ul style="list-style-type: none"> Subsequent decisions relating to either the reform or projects/funding aspects may trigger consultation requirements at that time. 	3-4
The obligations assumed upon entry into the MOU have no explicit consultation triggers	6. The key commitment in the MOU is to working constructively together to support the objectives of the the three waters service delivery reform programme (page 3). The MOU contains objectives that will underpin the reform programme and inform the development of reform options/proposals and core reform design features (pages 3 and 4). We refer to this as the reform commitment.	
	7. It is fundamental to the reform commitment that there is acknowledgement by both parties to the MOU that there are challenges facing the delivery of water services and infrastructure and the communities that fund and rely on those services, that are in need of solutions. These challenges are set out in summary form in the Background section. This section also makes it clear that the reform process and stimulus funding proposed by government is designed to support economic recovery post COVID-19 and address persistent systemic issues facing the three waters sector through a combination of: <ul style="list-style-type: none"> Stimulation investment, to assist economic recovery through job creation and maintain investment in water infrastructure renewals and maintenance; and Reforming current water service delivery, into larger scale providers, to realise significant economic, public health, environmental, and other benefits over the medium to long term. 	
	8. The Background refers to a shared understanding that a partnership approach will best support the wider community and ensure that the transition to any eventual new arrangements is well managed and as smooth as possible. This partnership approach is set out more fully in the section "Principles for Working Together" as a relationship based on mutual trust and respect, openness, non-adversarial dealings and constructive problem-solving, co-operation and information sharing. As principles to underpin dealings between local authorities and the Crown, these are uncontroversial.	

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9. The reform objectives which “inform the development of reform options/proposals” are similarly self-evident with the possible exception of the objective of:

“Improving the co-ordination of resources, planning, and unlocking strategic opportunities to consider New Zealand’s infrastructure and environmental needs at a larger scale.”

10. This is offset to some extent by the objective of “undertaking the reform in a manner that enables local government to further enhance the way in which it can deliver on its broader “wellbeing mandates” as set out in the Local Government Act 2002.”
11. The parties to the MOU agree to consider minimum design features which include water service delivery entities of significant scale (most likely multi-regional) to enable benefits from aggregation to be achieved over the medium to long-term, structured as statutory entities.
12. Funding from central government to councils is available in three tranches. Tranche one funding will be provided following entry into the MOU and agreement to an associated funding agreement and delivery plan. The delivery plan will need to show that the funding is to be applied to opex or capex that supports economic recovery through job creation and maintains, increases or accelerates investment in core water infrastructure renewals and maintenance (page 5). The funding cannot be applied to projects already in a council’s annual plan. We refer to this as the projects commitment.
13. The MOU is effective from the date of signing until 30 June 2021, unless terminated earlier or extended.
14. Neither the reform commitment nor projects commitments bind councils to specific three waters projects. Rather, councils are committing to participate in a reform process looking at changes to three waters delivery and identify possible projects that are eligible for funding. The obligations are exploratory/investigative in nature.
15. The MOU cannot, and does not, supplant the planning, accountability and associated consultation obligations of local authorities in the LGA 02. These continue to apply when there is a relevant trigger.
16. Decisions on three waters projects are the likely outcome of the reform process and funding provided, after participation in the process, after entry into the MOU. The consultation can be undertaken at that time.

The decision to enter the MOU is subject to the Part 6 LGA 02 decision-making obligations –

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17. Whether or not to enter into the MOU will be at councils’ discretion. As a decision, the decision will be subject to the general decision-making obligations in Part 6 of the LGA 02.
18. The Part 6 LGA 02 obligations include the section 78 obligation to consider the views and preferences of interested and affected
-

these do not strongly indicate that consultation is required

persons when making this decision, and determine whether consultation is needed or appropriate in order to identify those views and preferences.

19. This determination as to extent of compliance with section 78 will be a judgement for each council to make under section 79, and will depend in part on the particular council's significance and engagement policy (**SEP**), and its 2020/21 annual plan and current LTP.
20. The availability of Crown funding for core water infrastructure (at an amount disclosed before the MOU is entered into) is a unique opportunity to relieve local funding pressures that councils might reasonably expect their communities to support. The associated commitment to cooperate in a consideration of structural water reform is a subject on which councils may have limited understanding of community views. However, the exploratory/investigative nature of the reform commitment and the express provision in the MOU that it does not give rise to legally enforceable obligations, suggest the ready application of section 79(2) as a justification for not undertaking specific community engagement at this time.
21. Councils should check out of an abundance of caution that their SEP does not indicate a need to consult before entering the MOU. We expect it to be very unlikely that many policies will indicate consultation is required, including because of the nature of the obligations assumed upon entry into the MOU and that the decision is not irrevocable. Also potentially relevant is that the timeframes imposed by central government do not permit sufficient time to consult.
22. If councils enter into the MOU, they may want to consult subsequently on whether to continue their support of reform. LTP consultation in 2021 would be the obvious opportunity, and would provide timely information about whether to participate in tranche two.

Consultation triggers for decisions on three waters reform (post entry into the MOU)

23. Some specific LGA 02 consultation triggers that may be relevant to decisions on three waters reform (after participation in the reform process in the MOU) are:
 - 23.1 **Section 56** – councils must consult before becoming a shareholder in a council controlled organisation (**CCO**). If the reformed service delivery approach leads to councils being shareholders in new multi-regional providers (which seem likely to be CCOs), then section 56 may be triggered.
 - 23.2 **Section 97(1)(b)** – if the reformed delivery approach amounts to a “decision to transfer the ownership or control of a strategic asset to or from the local authority”, then it would be necessary to amend the council's LTP to explicitly provide for this decision, which requires consultation under section 93E. Water network assets are almost always listed as a strategic asset in SEPs.

23.3 Section 137(3)(a) – councils must consult before entering into a “joint arrangement”, which is an arrangement between a council and another party “for the purpose of providing water services or any aspect of a water service”. This trigger may be remote, particularly if central government in providing funding is not also seeking to provide any aspect of a water service.¹

Consultation triggers for decisions on three waters projects (post entry into the MOU)

24. One specific consultation trigger that needs to be considered is section 97(1)(a) of the LGA 02. If the projects being funded would significantly alter levels of service for three waters activities, then it would be necessary to amend the council's LTP to explicitly provide for this decision, which requires consultation under section 93E.
25. It will depend on particular councils' LTPs, but this trigger can likely be avoided by councils selecting appropriate projects. (This was generally achieved by councils as they responded to the impacts of COVID-19 during the annual plan process for 2020/21).
26. Leaving aside section 97(1)(a), section 78 will still be relevant. It should be reasonably safe for councils to not consult to address section 78 where projects are brought forward from future work programmes and the combined effect of these projects is not a significant or material variation from the 2020/21 annual plan or LTP.
27. As to whether the combined effect of projects brought forward is a significant or material variation from the 2020/21 annual plan or LTP will depend on the degree to which the projects are already provided for in the annual plan or LTP and what, if any, financial impact there may be on the particular council. If projects are already provided for in the infrastructure strategy (in the LTP) and they can be entirely funded from central government (meaning no negative financial impact on the council), it seems very unlikely that there will be a significant or material variation from the annual plan or LTP of any consequence to the community. On this basis, consultation is unlikely to be indicated.
28. Strictly, the provision of central government funding could create a material change to revenue commitments (even if it is downward rather than upward) that reflect in a change to financial statements included in an annual plan, that, given the degree of change, could be expected to be consulted on before being adopted. Councils encountered similar issues in preparing their annual plans to respond to COVID-19 where different funding sources (for example borrowing or reserve funds) have had to be employed from what was anticipated. These decisions tended to be made without further consultation if the council assessed that it did not affect levels of service with reference to section 97 or was within the scope of rate change consulted on. In the current circumstances, we consider that the fact that the change is not detrimental lessens the risk of not consulting and (having occurred after the annual plan has been

¹ Section 17A requires periodic reviews of service delivery, but this section in itself does not contain a trigger for consultation.

adopted) makes it something that is duly reported on in the annual report and treated as an operating surplus.

29. We note that councils are not absolutely bound by their plans or policies (under sections 96 and 80), but this does not remove the need to assess whether consultation is appropriate when departing from them. Consistency with plans and policies is often a criterion for significance in SEPs. Where consultation does not occur, relevant statutory compliance will likely include disclosure in the annual report, and perhaps resolving in accordance with section 80 (where the departure from the annual plan is significant).

**Please call or
email to discuss
any aspect of this
advice**

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Notional Funding Allocations

Region	Territorial Authority	Notional allocations		Total (\$m)
		TA allocation (\$m)	Regional allocation (\$m)	
Northland	Far North District Council	5.90	14.13	28.26
	Whangarei District Council	5.89		
	Kaipara District Council	2.35		
Waikato	Thames-Coromandel District Council	2.40	33.30	66.61
	Hauraki District Council	1.53		
	Waikato District Council	5.67		
	Matamata-Piako District Council	2.47		
	Hamilton City Council	8.73		
	Waipā District Council	3.41		
	Ōtorohanga District Council	1.25		
	South Waikato District Council	1.94		
	Waitomo District Council	1.75		
	Taupō District Council	4.16		
Bay of Plenty	Western Bay of Plenty Council	3.46	21.12	42.23
	Tauranga City Council	7.46		
	Rotorua District Council	4.71		
	Whakatāne District Council	3.49		
	Kawerau District Council	0.39		
	Ōpōtiki District Council	1.60		
Gisborne	Gisborne District Council	5.52	5.52	11.04
Hawke's Bay	Wairoa District Council	11.04	50.00	
	Hastings District Council	15.36		
	Napier City Council	12.51		
	Central Hawke's Bay District Council	11.09		
Taranaki	New Plymouth district	5.05	8.95	17.89
	Stratford district	1.19		
	South Taranaki district	2.70		
Manawatū-Whanganui	Ruapehu district	2.80	20.27	40.54
	Whanganui district	3.16		
	Rangitikei district	2.41		
	Manawatu district	2.54		
	Palmerston North city	4.67		
	Tararua district	2.51		
	Horowhenua district	2.17		

Notional Funding Allocations

Region	Territorial Authority	Notional allocations		Total (\$m)
		TA allocation (\$m)	Regional allocation (\$m)	
Wellington	Kapiti Coast district	3.13	29.90 (including Greater Wellington Regional Council)	59.80
	Porirua city	3.09		
	Upper Hutt city	2.55		
	Lower Hutt city	5.70		
	Wellington city	10.89		
	Masterton district	2.20		
	Carterton district	0.92		
	South Wairarapa district	1.42		
Tasman-Nelson-Marlborough	Tasman district	4.89	14.01	28.02
	Nelson city	2.86		
	Marlborough district	6.26		
West Coast	Buller district	2.27	7.62	15.25
	Grey district	1.92		
	Westland district	3.43		
Canterbury	Kaikoura district	0.94	50.00	100.00
	Hurunui district	3.75		
	Waimakariri district	4.01		
	Christchurch city	20.26		
	Selwyn district	5.33		
	Ashburton district	3.99		
	Timaru district	3.43		
	Mackenzie district	2.56		
	Waimate district	1.68		
	Waitaki district	3.73		
	Chatham Islands territory	0.32		
Otago	Central Otago district	4.73	20.60	41.20
	Queenstown-Lakes district	4.74		
	Dunedin city	7.92		
	Clutha district	3.20		
Southland	Southland district	7.03	11.15	22.31
	Gore district	1.10		
	Invercargill city	3.02		

The central and local government Steering Committee has put together the following FAQs to assist councils with an understanding of the Three Waters Reform funding allocations.

1. What is the purpose of the investment allocation?

- The investment package has been designed to:
 - Support investment across the economy, helping to stimulate economic activity and jobs in all regions of New Zealand; and
 - Support the objectives of the three waters services reform by encouraging councils to participate in the reform programme.
- The investment package is structured into two components to complement these objectives:
 - A direct allocation to each council, comprising 50 per cent of its notional allocation; and
 - A regional allocation, comprising the sum of the remaining 50 per cent of the notional allocations for each council in the relevant region.

2. What is the purpose of the regional allocation?

- The purpose of the Government's regional allocation is to encourage territorial authorities to have collaborative three waters investment conversations with their neighbouring councils, and to advance collective participation by councils in the reform programme.
- Access to this regional allocation is dependent on at least two thirds of councils within the region agreeing to participate in the programme.

3. How do councils access the funding?

- Territorial authorities that agree to participate in the Three Waters Services Reform programme, by signing up a Memorandum of Understanding with the Crown, will be eligible to access the investment package.
- To access funding, territorial authorities will be asked to sign a Funding Agreement with the Crown that sets out the terms and conditions attached to its funding and to submit a Delivery Plan that identifies the projects and associated outcomes to be delivered.
- Each regional group will be required to agree the funding allocation between the local authorities within the region.
- A joint letter from the Mayors of participating local authorities to the Minister of Local Government and the Steering Committee should be used to communicate an agreement.
- Local authorities will need to incorporate the regional funding allocations into the Funding Agreement and Delivery Plan to be submitted to threewaters@dia.govt.nz and 3waters@crowinfrastructure.govt.nz by 30 September 2020.

4. What if it is ambiguous what two thirds of a region means?

- There are varying numbers of councils in each region. To reflect this, the Minister of Local Government will have discretion to approve exceptions to the requirement that two thirds of councils must agree to participate in the reform programme to access the regional funding allocation.

5. How might the regional allocation work in practice?

- The Steering Committee strongly encourages territorial authorities to progress conversations within their regions about the reform programme.

The central and local government Steering Committee has put together the following FAQs to assist councils with an understanding of the Three Waters Reform funding allocations.

- Through these regional conversations, territorial authorities have an option to agree an approach to the regional funding allocation, taking account of regional investment priorities.
- The Steering Committee has, however, recommended a preferred approach for allocating the regional funding is to adopt the national formula that has been used to determine the direct allocation to territorial authorities (i.e. 75% population and 25% land area, excluding national parks).
- It is the view of the Steering Committee that this formula represents a transparent and equitable basis for allocating funding.

6. How have the allocations been reached?

- The Government has agreed to a notional allocation framework based on a nationally-consistent formula, with some adjustments to take account of exceptional circumstances.
- The general approach to determining each authority's notional allocation is based on:
 - The population in the relevant council area, as a proxy for the number of water connections serviced by a territorial authority (75 per cent weighting).
 - The land area covered by a local authority excluding national parks, as a proxy for the higher costs per connection of providing water services in areas with low population density (25 per cent weighting).
- Ministers have made several adjustments to the general approach outlined above, to take account of a small number of exceptional circumstances:
 - \$30 million has been set aside for non-council rural drinking water suppliers to help address the challenges these suppliers are facing in delivering safe drinking water to consumers. There are a range of private supply arrangements in rural and remote areas, and affordability challenges are particularly acute for some non-council drinking water suppliers including marae.
 - An allocation of \$50 million for the Hawke's Bay region which supplements the formula-based allocation with a top-up in recognition of the leadership and progress that region has demonstrated in exploring reform of three waters arrangements. This has contributed to building momentum for change and represents tangible progress towards service delivery reform.
 - Exploring alternative solutions to progressing water services delivery reform in the Auckland region. Significant progress has already made on aggregation of water services through the Auckland Governance Reforms. In addition, the Auckland region faces several unique challenges associated with meeting future three waters investment which require a bespoke approach. Discussions will be held with Auckland Council on the potential for further water services delivery reform in the region.

The central and local government Steering Committee has put together the following FAQs to assist councils with an understanding of the Three Waters Reform funding allocations.

7. What information has been used for the funding formula?

- Land area for each territorial authority was sourced from 2020 Stats NZ GIS data. <https://datafinder.stats.govt.nz/layer/104267-territorial-authority-2020-generalised/>
- Land area for national parks was sourced from 2020 LINZ data. <https://data.linz.govt.nz/layer/53564-protected-areas/>
- Population figures were taken from Stats NZ's latest subnational population estimates. <https://www.stats.govt.nz/information-releases/subnational-population-estimates-at-30-june-2019-provisional>

8. When will the funding be released to councils?

- Initial disbursement of 50% of the total funding allocated to each local authority (including the regional allocation) will be released to as soon as practicably possible once Delivery Plans are approved.
- The remainder will be disbursed on a quarterly basis, subject to appropriate progress being made against the approved Delivery Plan.

9. Is there guidance available to assist my council with developing a Delivery Plan and understanding what the funding could be spent on?

- Yes, this guidance has been published on the Three Waters Reform webpage: <https://www.dia.govt.nz/Three-Waters-Reform-Programme>

5.2 DRAFT FINANCIAL REPORT AND CARRY FORWARDS FOR THE 2019/20 FINANCIAL YEAR**File Number:** COU1-1400**Author:** Brent Chamberlain, Chief Financial Officer**Authoriser:** Monique Davidson, Chief Executive**Attachments:** Nil**PURPOSE**

The matter for consideration by the Council is the draft financial results for 2019/2020 and for Council to approve the proposed allocations to carry forwards, special funds, and between activities for the 2019/2020 Financial Year.

RECOMMENDATION FOR CONSIDERATION

That having considered all matters raised in the report:

- a) That Council receives the report entitled Draft Financial Report and Carry Forwards for the 2019/2020 Financial Year.
- b) Council approve the proposed allocations to carry forwards and special funds for the 2019/2020 Financial Year.
- c) Council approve that the 2019/2020 activity surpluses in the general rate funded activities be used to fund the deficits in the general rate funded activities as proposed.

EXECUTIVE SUMMARY

This report brings to Council the draft unaudited Financial Statements for the Council for the year ended 30 June 2020.

Contained in the report is a list of movements in Special Funds/Carry Forwards that are proposed to be funded from this year's activities, and a proposal that where a general rate funded activity has a surplus, that this surplus be applied to those general rate rated activities that have deficits.

BACKGROUND

Council is reported to quarterly on Council Finances. This report brings to Council the draft unaudited financial results for the year ended 30 June 2020, and the funding impact statement for both the whole of Council and each group of activities undertaken by Council.

DISCUSSION

Set out below is a summary of the draft unaudited financial results for the 2019/20 financial year:

Comprehensive Income and Expenditure Report						
	YTD Actuals	YTD Budget	Bud Var	2019 Actuals	2019 Var	% Change
Operating Income						
General rates, uniform annual general charges and rates penalties	13,380	13,435	(55)	12,643	737	5.8%
Targeted rates	7,413	7,256	157	7,187	226	3.1%
Subsidies and Grants (Operating and Capital)	10,004	9,422	582	11,167	(1,163)	-10.4%
Fees, charges	3,781	3,262	519	3,416	365	10.7%
Interest and dividends from investments	215	140	75	189	26	13.7%
Development Contributions	92	22	70	364	(272)	-74.7%
Other Income	513	229	284	788	(275)	-34.9%
TOTAL	35,398	33,766	1,632	35,754	(356)	-1.0%
Applications of Operating						
Payments to staff	5,567	5,322	(245)	5,147	(420)	-8.2%
Payments to suppliers	17,490	15,392	(2,098)	17,037	(453)	-2.7%
Depreciation and Amortisation	12,397	12,102	(295)	11,946	(451)	-3.8%
Finance costs	429	593	164	173	(256)	-148.2%
TOTAL	35,883	33,408	(2,474)	34,303	(1,580)	-4.6%
Operating Surplus/(Deficit)	(485)	358	(843)	1,451	(1,936)	
Gain/(Loss) on Asset Revaluations	4,683	0	(4,683)	47,265	42,582	90.1%
Asset Impairments	(1,082)	0	1,082	0	1,082	
Operating Surplus/(Deficit)	3,116	358	2,758	48,716	(45,600)	

It is important to note that this is based on traditional accounting presentation requirements and is more akin to how a "For Profit" entity would report. It is quite different to the Funding Impact Statement that the Local Government Act requires which looks at all sources of income and then how it has been applied/spent.

What this shows is that while Council has earned \$1.6m more in revenue than budgeted, this is \$0.4m less than last year. The bulk of this decline is in subsidies and grants which is despite Council receiving PGF money that wasn't available in the previous year. This is because Council has received \$1.5m less in NZTA subsidies than in the previous year. NZTA subsidies are received as a reimbursement of works undertaken. Council is planning a significant bridge strengthening program in 2020/21 which will see a higher level of spend and therefore a higher NZTA subsidy.

Costs are \$2.5m ahead of budget, but only \$1.6m (4.6%) ahead of last year. The change year on year is driven by additional staffing resources, higher financing costs reflecting higher debt levels, undertaking the PGF work which was unbudgeted, and inflation.

Below the line are Council's asset revaluations. This year Council has revalued roading and 3 water assets (last year was land and buildings and 3 waters). In addition this year Council has an impairment on the holding values of the Waipukurau Library and Memorial Hall due to seismic issues.

External Debt/ Investments/ Asset Creation

During 2019/20 Council's external debt has gone from \$2m to \$20m. This money was used in part to fund the creation of new assets and in part to create investments.

Council's weighted average cost of funds is 2.28% (2019: 3.85%), and the maturities are as the table below:

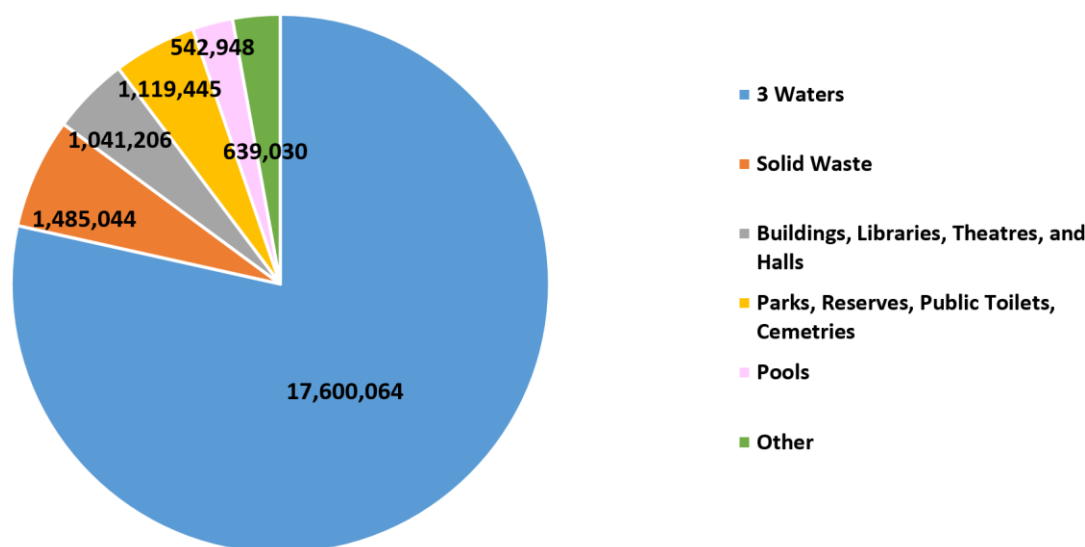
Debt Position	Draw Date	Maturity Date	Interest Rate	Amount 30/06/2019	Amount Now	Movement
LGFA - Fixed Rate	28/08/2017	25/08/2025	3.85%	2,000,000	2,000,000	-
LGFA - Fixed Rate	22/07/2019	15/04/2024	2.19%	-	10,000,000	10,000,000
LGFA - Fixed Rate	16/12/2019	15/04/2023	1.96%	-	4,000,000	4,000,000
LGFA - Fixed Rate	16/03/2020	15/04/2027	2.03%	-	4,000,000	4,000,000
ANZ Seasonal Facility (\$1,500,000)				-	-	-
Total Debt			2.28%	2,000,000	20,000,000	18,000,000

During 2019/20 Council has spent \$19.8m on acquiring new assets or renewing existing assets.

In addition Council has found itself in the position that it could take out term deposits with a higher yield than its cost of borrowing (typically with a 0.5% net margin). Therefore, knowing that Council has a significant asset program planned it has borrowed early (enough to fund the next 6 months of this program) which means at year end Council was holding \$11m of term deposits (2019: \$2.5m) with an average yield of 2.6%, with a mix of maturities out to December 2020.

While Council has external debt of \$20m, it also has internal debt (i.e. borrowings from other Council reserves). Total debt at 30 June was \$22.4m which means in addition to the \$20m external debt, Council has used \$2.4m of Councils internal funds to fund its infrastructure assets. The pie chart below shows how this debt is allocated to the various Council activities.

Total Debt by Division @ 30/06/20



Special Funds

Special Funds and Trust Accounts are funded held for a specific purpose and are allocated interest annually from Councils investments/internal borrowings. During the year \$150k of interest was added to Councils special funds which represented a 2.5% return.

During the year the following movements (excluding interest) occurred in special funds:

Special Fund	Activity	Movement	Notes
Capital Projects Fund	Overheads	(59,766)	Legal & Valuations preparing land for sale
Ruahine & Aramoana Wards	Public Toilets	(21,376)	Funding of new Te Paerahi Public Toilet
Esplanade Reserves Fund Acct	Parks & Reserves	(6,348)	Purchase of Esplanade Strip
Landfill Aftercare Reserve	Solid Waste	(333,000)	Funding of Leachate Project, to be repaid over next 10 years
Landfill Aftercare Reserve	Solid Waste	50,743	Funding of future landfill aftercare
Vehicle Depreciation Reserve	Overheads	85,257	Funding of Future Vehicle Fleet Replacements
LT Vehicle Depreciation Reserve	Land Transport	21,773	Funding of Future Land Transport Vehicle Fleet Replacements
Mayoral Fund	Leadership	2,420	Adding Covid Donations to fund, to be distributed next year
Adverse Events Fund	Solid Waste	(262,838)	Funding of June 2019 Flooding Repairs
Adverse Events Fund	Land Transport	8,683	Annual loan repayment of "Fire" funding
Stormwater Renewal Reserve	Stormwater	(132,366)	Funds used to create stormwater assets
Water Rates Smoothing Reserve	Water Supplies	125,000	Fund to smooth future water rates as per Long Term Plan
Wastewater Upgrade Reserve	Wastewater	436,284	Funds set aside to upgrade Wastewater treatment plants
Te Aute Drainage Scheme Reserve	Stormwater	(6,100)	Funds used to to fund activity in Te Aute Drainage Scheme
Bridge Replacement Funding	Land Transport	52,122	Funds set aside to upgrade Bridges
Waipawa Libraries Donations Res	Libraries	94,228	Bequest Received
District Landfill Levy Res	Solid Waste	(30,442)	Net movement in Waste Minimisation Funds Held
Housing Depreciation Reserve Acct	Retirement Housing	(51,379)	Funding capital works at Retirement Housing
		(27,105)	

Carry Forwards

Carry Forwards is the practice where Councils take projects that were budgeted to occur in a financial year, and therefore rated for but remain unspent at year end. These projects are expected to be completed in the following financial year so Council "Carries Forward" the rates funding to the following year to allow that project to be undertaken.

For the 2019/2020 below is a list of the Carry Forwards:

Carry Forwards	Activity	Carry Forward	Notes
Leadership Carry Fwd	Leadership	20,000	Maori Engagement Funds
District Planning	District Planning	16,679	Creation of District Planning Maps
Health Carry Fwd	Public Health	25,000	District Licensing Committee to be held in carry forwards until required
Solid Waste Carry Fwd	Solid Waste	9,794	Committed Solid Waste Capital Upgrade Projects
Water Carry Fwd	Water Supplies	1,703	Committed Water Capital Upgrade Projects
Waste Water Carry Fwd	Wastewater	49,536	Committed Waste Water Capital Upgrade Projects
Stormwater Carry Fwd	Stormwater	278,001	Committed Stormwater Capital Upgrade Projects
Parks Reserves Pools Carry Fwd	Parks & Reserves	20,962	Committed Parks & Reserves Capital Upgrade Projects
Theatres Halls Carry Fwd	Theatres & Halls	42,566	Committed Theatre Capital Upgrade Projects
Cemeteries Carry Fwd	Cemeteries	13,000	Committed Cemetery Capital Upgrade Projects
Properties Carry Fwd	Properties	67,787	Committed Property Capital Upgrade Projects
IT Carry Fwd	Overheads	133,222	Committed IT/Phone System Capital Upgrade Projects
Administration Carry Fwd	Overheads	155,081	Committed Document Scanning Back Capture/Audio Visual Capital Upgrade Projects
Chief Exec CFWD	Overheads	4,021	CE professional Development
Finance Services Carry Fwd	Overheads	9,199	Rates Doubtful Debt Allowance
Finance Services Carry Fwd	Overheads	45,000	Long Term Plan Audit Fees
Finance Services Carry Fwd	Overheads	18,284	Long Term Plan Resources
GIS Carry Fwd	Overheads	82,122	Aerial Mapping delayed due to Covid.
LT Sub Carry Fwd Renewal	Land Transport	1,447,146	Roading & Bridge Upgrades
		2,439,103	

Group Surplus and Deficits

Once you take into account the operating result of each Council Activity, and the movements in Special Funds and Carry Forwards above, Council is still left with a surplus/(deficit) in each activity.

Those activities that are funded by Targeted Rates (3 Waters and Roding) have had their surplus/(deficits) cleared into their specific Special Funds Account (for 3 Waters) and Carry Forwards (as disclosed in the tables above) to ensure that those targeted rates remain ring fenced for those activities.

The remaining activities are funded from general rates also have surplus/(deficit) positions. It is proposed that these be cleared by "activity transfers" between these activities to ensure that they are balanced at a top level.

At an individual activity level the surplus/(deficit) were:

Activity	Surplus/(Deficit)
Community Leadership	73,706
Planning & Regulatory	(171,316)
Solid Waste	78,967
Recreation & Community Facilities	18,643
	0

Having done all done all this Council has a balanced Funding Impact Statement (as per the table below):

Funding Impact Statement Report			
Sources of Operating	YTD Actuals	YTD Budget	Bud Var
General rates, uniform annual general charges and rates penalties	13,379,846	13,435,029	(55,183)
Targeted rates	7,413,116	7,255,748	157,368
Subsidies and Grants for Operating Purposes	4,496,855	3,394,933	1,101,922
Fees, charges	3,781,277	3,260,474	520,803
Interest and dividends from investments	214,937	139,835	75,102
Local authorities fuel tax, fines, infringement fees and other receipts	491,666	196,289	295,377
TOTAL	29,777,697	27,682,308	2,095,389
Applications of Operating			
Payments to staff	5,567,072	5,321,904	(245,168)
Payments to suppliers	17,320,029	15,428,292	(1,891,737)
Finance costs	364,078	568,636	204,558
Other operating funding applications	0	(36,693)	(36,693)
TOTAL	23,251,180	21,282,139	(1,969,041)
Net Operating Cash Flows	6,526,517	6,400,169	126,348
Sources of Capital			
Subsidies and grants for capital expenditure	5,507,054	6,027,458	(520,404)
Gross proceeds from sale of assets	18,811	34,661	(15,850)
Development and financial contributions	92,097	21,972	70,125
Increase (decrease) in debt	18,000,000	12,288,650	5,711,350
TOTAL	23,617,962	18,372,741	5,245,221
Applications of Capital			
to meet additional demand	0	0	0
to improve the level of service	12,439,478	17,238,353	4,798,875
to replace existing assets	7,324,211	11,654,786	4,330,575
Increase (decrease) in reserves	(468,641)	(3,277,791)	(2,809,150)
Increase (decrease) of investments	10,849,431	(842,432)	(11,691,863)
TOTAL	30,144,479	24,772,916	(5,371,563)
Net Capital Cash Flows	(6,526,517)	(6,400,175)	(126,342)
Grand Total	0	(6)	6

RISK ASSESSMENT AND MITIGATION

The proposed actions ensure that the targeted rates remain ring fenced for the use of 3 waters and roading, and that the general rate funds are only applied to those activities that are to be funded by general rates under Council's Revenue and Financing Policy.

FOUR WELLBEINGS

This report delivers an update on Council's finances, and shows that Council is acting in a transparent, fiscally prudent manner, with the best interests of Central Hawkes Bay District in mind.

DELEGATIONS OR AUTHORITY

While much of the movements in special funds and carry forwards reflect previous Council resolutions, how to deal with the residual activity surplus (deficits) needs to be decided.

SIGNIFICANCE AND ENGAGEMENT

In accordance with the Council's Significance and Engagement Policy, this matter has been assessed as of some importance.

OPTIONS ANALYSIS

Council as the ability to approve the proposed allocations to carry forwards and special funds for the 2019/2020 Financial Year and that the 2019/2020 activity surpluses in the general rate funded activities be used to fund the deficits in the general rate funded activities as proposed.

Or Council can chose not approve the proposed allocations, and provide officers with guidance how they wish to allocate the surplus/ (deficits) between special funds/carry forwards/and activities.

Recommended Option

This report recommends option number one, approving the proposed allocations for addressing the matter.

NEXT STEPS

Officers will action whatever decision is made, and proceed to have the Auditor General audit these financial statements.

RECOMMENDATION

That having considered all matters raised in the report:

- a) That Council receives the report entitled Draft Financial Report and Carry Forwards for the 2019/2020 Financial Year.**
- b) Council approve the proposed allocations to carry forwards and special funds for the 2019/2020 Financial Year.**
- c) Council approve that the 2019/2020 activity surpluses in the general rate funded activities be used to fund the deficits in the general rate funded activities as proposed.**

5.3 CIVIC AWARDS SELECTION PANEL APPOINTMENT**LATE ITEM.****File Number:** COU-1400**Author:** Bridget Gibson, Governance Support Officer**Authoriser:** Monique Davidson, Chief Executive**Attachments:** Nil

Note to Councillors that the *Civic Awards Selection Panel Appointment* report is a late item to the agenda, and the report will be circulated preceding the extraordinary Council meeting to be held 20 August 2020.

6 PUBLIC EXCLUDED BUSINESS**RESOLUTION TO EXCLUDE THE PUBLIC****RECOMMENDATION**

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
6.1 - Appointment of a Commissioner to the District Licensing Committee	s7(2)(a) - the withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons	s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7

6 DATE OF NEXT MEETING**RECOMMENDATION**

THAT the next meeting of the Central Hawke's Bay District Council be held on 24 September 2020.

8 KARAKIA**9 TIME OF CLOSURE**