



AGENDA

RĀRANGI TAKE

NOTICE OF AN ORDINARY MEETING OF

COUNCIL

to be held on **Thursday, 27th August 2020** commencing at **1.00 pm** in the Council Chambers, 36 Weld Street, Hokitika and via Zoom

Chairperson: His Worship the Mayor

Members: Cr Carruthers (Deputy)
Cr Hart
Cr Kennedy
Cr Martin
Kw Tumahai

Cr Davidson
Cr Hartshorne
Cr Keogan
Cr Neale
Kw Madgwick



In accordance with clause 25B of Schedule 7 of the Local Government Act 2002, members may attend the meeting by audio or audiovisual link.

Council Vision:

We work with the people of Westland to grow and protect our communities, our economy and our unique natural environment.

Purpose:

The Council is required to give effect to the purpose of local government as prescribed by section 10 of the Local Government Act 2002. That purpose is:

- (a) To enable democratic local decision-making and action by, and on behalf of, communities; and
- (b) To promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

1. KARAKIA TĪMATANGA OPENING KARAKIA

2. NGĀ WHAKAPAAHA APOLOGIES

3. WHAKAPUAKITANGA WHAIPĀNGA DECLARATIONS OF INTEREST

Members need to stand aside from decision-making when a conflict arises between their role as a Member of the Council and any private or other external interest they might have. This note is provided as a reminder to Members to review the matters on the agenda and assess and identify where they may have a pecuniary or other conflict of interest, or where there may be a perception of a conflict of interest.

If a member feels they do have a conflict of interest, they should publicly declare that at the start of the meeting or of the relevant item of business and refrain from participating in the discussion or voting on that item. If a member thinks they may have a conflict of interest, they can seek advice from the Chief Executive or the Group Manager: Corporate Services (preferably before the meeting). It is noted that while members can seek advice the final decision as to whether a conflict exists rests with the member.

4. NGĀ TAKE WHAWHATI TATA KĀORE I TE RĀRANGI TAKE URGENT ITEMS NOT ON THE AGENDA

Section 46A of the Local Government Official Information and Meetings Act 1987 states:

- (7) An item that is not on the agenda for a meeting may be dealt with at the meeting if –
- (a) the local authority by resolution so decides, and
 - (b) the presiding member explains at the meeting at a time when it is open to the public, –
 - (i) the reason why the item is not on the agenda; and
 - (ii) the reason why the discussion of the item cannot be delayed until a subsequent meeting.
- (7A) Where an item is not on the agenda for a meeting, –
- (a) that item may be discussed at the meeting if –
 - (i) that item is a minor matter relating to the general business of the local authority; and
 - (ii) the presiding member explains at the beginning of the meeting, at a time when it is open to the public, that the item will be discussed at the meeting; but
 - (b) No resolution, decision, or recommendation may be made in respect of that item except to refer that item to a subsequent meeting of the local authority for further discussion.

5. NGĀ MENETI O TE HUI KAUNIHĒRA MINUTES OF MEETINGS

Minutes circulated separately via Microsoft teams

- **Ordinary Council Minutes – 23rd July 2020**

6. ACTION LIST (Pages 5 - 6)

7. NGĀ TĀPAETANGA PRESENTATIONS

NIL

8. PŪRONGO KAIMAHI STAFF REPORTS

- **Harold Creek Raw Water Supply – Hari Hari** (pages 7 - 15)
Louis Sparks, Group Manager: District Assets
- **Three Waters Service Delivery Reform Programme Report** (pages 16 - 102)
Louis Sparks, Group Manager: District Assets
- **Financial Performance: July 2020** (pages 103 - 112)
Lesley Crichton, Group Manager: Corporate Services
- **Interim Audit Management Report Year Ended 30 June 2020** (pages 113 - 135)
Lesley Crichton, Group Manager: Corporate Services
- **Policy - Appointments to District Licensing Committee Report** (pages 136 - 145)
Te Aroha Cook, Regulatory Services Manager

- **Annual Dog Control Policies and Practices Report** (pages 146 - 154)
Te Aroha Cook, Regulatory Services Manager

9. KA MATATAPU TE WHAKATAUNGA I TE TŪMATANUI RESOLUTION TO GO INTO PUBLIC EXCLUDED

(to consider and adopt confidential items)

Resolutions to exclude the public: Section 48, Local Government Official Information and Meetings Act 1987.

The general subject of the matters to be considered while the public are excluded, the reason for passing this resolution in relation to each matter and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of the resolution are as follows:

| Item No. | General subject of each matter to be considered | Reason for passing this resolution in relation to each matter | Ground(s) under Section 48(1) for the passing of this resolution |
|-----------------|--|--|--|
| 1. | Confidential Minutes – 23 rd July 2020 | Good reason to withhold exist under Section 7 | That 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 or withholding exists. Section 48(1)(a) |

**DATE OF THE NEXT ORDINARY COUNCIL MEETING –
THURSDAY, 24TH SEPTEMBER 2020
COUNCIL CHAMBERS, 36 WELD STREET, HOKITIKA AND VIA ZOOM.**

Council Meetings - Action List

| Date of Meeting | Item | Action | Completion Date/Target Date | Officer | Status |
|-----------------|---|---|-----------------------------|---------|---|
| 28.06.18 | Kaniere School Students – Cycle trail | Council staff to get back to the Kaniere School Students regarding the proposal. | Oct 2020 | DA | Council Engineers has finalised the road crossing plan near the Kaniere School. Transportation Manager has placed the order for the electronic signs to be installed. The signs and footpath construction will commence soon following the fibre cable installation by local network contractor in the footpath area. |
| 04.04.19 | Speed Limits | Extension of some limits and open conversation with road users on suitable speed limits. | Oct 2020 | DA | Public consultation to formally adopting any speed limit changes into the revised bylaw to follow the LTP consultation by end of September. The information has been issued to the mandatory agencies (Police, NZTA, AA, Road Transport Association, DHB) |
| 18.04.19 | Transfer of Pensioner Housing to Destination Westland | Strategy Document to be developed with a working group. | May 2020 | CE | Consultant appointed and work underway. |
| 25.07.19 | Carnegie Building Project | The CE to seek additional external funding to minimise or eliminate the Council additional funding commitment. | On going | CE | <p>Applications lodged with Lotteries and Regional Culture and Heritage Fund completed.</p> <p>A report to the Capital Projects and Tenders committee on 12 May 2020 resolved to hold any further works until funding application decisions.</p> <p>Lotteries have declined our application – still awaiting confirmation from Culture & Heritage Fund.</p> |
| 22.08.19 | Fox Landfill | Council support staff in progressing their investigations into the engineering methodology, financial implications and funding mechanisms of the long-term options. | Sept 2020 | GM DA | <p>A PGF funding application has been submitted for the Fox Landfill Project. Council is awaiting a formal contract for the allocated funding for 'shovel ready' infrastructure projects as announced.</p> <p>The PGF Funding application is supporting the relocation of the landfill material to Butlers Landfill plus funding to do a final sweep of Fox River for any visible remaining material.</p> |

| Date of Meeting | Item | Action | Completion Date/Target Date | Officer | Status |
|-----------------|---|--|-----------------------------|------------|--|
| 28.11.19 | Iwi representation around the Council table | Mayor to write to the Minister of Local Government seeking advice. | In progress | Mayor & CE | Response received from DIA. Further discussions to be completed on next steps. |
| | Rimu-Woodstock Lookout | Replace Interpretation panels, repair shed and review maintenance contract | Sept 2020 | CE, GMDA | <p>The Rimu-Woodstock Lookout infrastructure now added to the Westroads maintenance contract.</p> <p>All graffiti has been removed and shed cleaned. The damaged interpretation panels removed, repaired and refitted this week. Three signs lost are with local printer to be reprinted. The valley photo display damaged beyond repair. This to be reprinted with a replacement photo.</p> <p>The Rimu Lightning Walking Trail maintenance repairs required due to past flood damage. Council in consultation with contractors and DoC assisting with planned trail repairs.</p> |

Report

DATE: Thursday, 27 August 2020

TO: Mayor and Councillors

FROM: Operations Manager: District Assets

HAROLD CREEK RAW WATER SUPPLY – HARI HARI

1 SUMMARY

- 1.1 The purpose of this report is to inform the Mayor and Councillors of the complications regarding the raw (i.e. untreated) water supply at Harold Creek in Hari Hari that provides water to a handful of households.
- 1.2 This issue is pertinent now as the owner of a land parcel (through which water pipes convey water to the connected properties) wishes for conveyance through his property to cease. Secondly, this scheme represents a potential future liability to Council due to anticipated new drinking water legislation that is likely to impose higher compliance responsibilities for supplies like Harold Creek. Current legislation has limited application to very small supplies such as this one but this is expected to change.
- 1.3 Council seeks to meet its obligations under the Local Government Act 2002 and the achievement of the District Vision adopted by the Council in May 2018, which are set out in the Long Term Plan 2018-28. These are stated on Page 2 of this agenda.
- 1.4 This report presents an options assessment of different solutions to address the issues discussed in 1.2 above.
- 1.5 This report concludes by recommending that Council receive this report and proceed with Option 4.1. This option represents a low upfront capital cost to Council, would require no maintenance costs or ongoing support from Council. The capital costs can be repaid by affected ratepayers over a flexible time period. As the ratepayers would be responsible for their own connection, they would not be required to pay water rates to Council in the future. This would also remove Council's legislative risks associated with complying with DWSNZ.

2 BACKGROUND

- 2.1 The Harold Creek water supply was built in 1974 by the Ministry of Works (refer **Appendix 1**: Photos of Harold Creek raw water supply).
- 2.2 Westland District Council is responsible for the ongoing management and maintenance of the system.
- 2.3 The water intake is situated in the Wilberg Range Scenic Reserve (Department of Conservation land) for which an easement agreement exists (expiry date 31 December 2053). Refer map in **Appendix 2**.
- 2.4 The easement agreement covers the water reservoir area (approximately 100m²), an access road of approximately 0.25ha and part of the water pipeline.
- 2.5 The water pipeline is a mixture of MDPE and PVC Gravity Main and it passes through the land of Mr Jon Sullivan and no easement for this exists. Mr Sullivan, a farmer, wishes to have water conveyance discontinued through his property as soon as possible.
- 2.6 This raw water supply was the Hari Hari township supply until Hari Hari's water treatment plant was built on Robertson Road from 2008-2009.
- 2.7 The Harold Creek supply is now disconnected from the current Hari Hari township reticulation.
- 2.8 WDC holds a Resource Consent (RC11029) to take water from an unnamed tributary of Harold Creek to provide water for these affected properties. This expires on 16 March 2046 unless surrendered sooner.
- 2.9 The water supply is gravity-fed and untreated. Water passes through two 2mm fish screens and bag filters.
- 2.10 Water in the creek is sourced from runoff from the mountains in the vicinity.
- 2.11 The intake is situated in the Alpine Fault Avoidance Zone.
- 2.12 Council staff have identified seven properties (listed in table below) currently connected to this water supply.
- 2.13 Properties currently connected to this supply are rated for an untreated water rate of \$283.28 annually, compared to a \$377.70 annual domestic water rate for properties connected to the treated Hari Hari township supply.

| Rating number | assessment | Additional comments |
|---------------|------------|--|
| 2579137602 | | Charged untreated water rate |
| 2579137600 | | Charged untreated water rate |
| 2579137801 | | Has never been charged a water rate (whether treated or untreated) – this needs to be rectified! |
| 2579137400 | | Charged untreated water rate |
| 2579119801 | | Charged untreated water rate |
| 2579137900 | | Property owner intends to install a bore on his property for his own water needs. |
| 2579138001 | | Charged untreated water rate. |

3 CURRENT SITUATION (RISK ASSESSMENT)

- 3.1 This matter has been drawn to Council’s attention now, because the pipeline cuts across the property of rating assessment number 2579137900. There is no easement agreement in place and the property owner has expressed a strong desire for water conveyance through his property to cease as soon as possible. There are currently no back-up water mechanisms available for the properties who rely on Harold Creek for their water supply. This would therefore leave the affected properties without a water connection.
- 3.2 The Creek area is unsecured and accessible to animals, thus is at risk of E. coli and other bacterial contaminations. It is also situated in the Alpine Fault Avoidance Zone and is prone to flooding and slips. Regular stop bank maintenance is required (undertaken by West Coast Regional Council).
- 3.3 Importantly, the Harold Creek water supply is non-compliant with the Drinking Water Standards of New Zealand (DWSNZ). Although, not a problem at present under the current legislation, the anticipation is the new drinking water legislation soon to be enacted will require this scheme to comply with DWSNZ in the future. The costs associated with making this supply compliant would not be viable financially, for Council or the affected parties, because of the challenges associated with the raw water source. Therefore, Council’s continued involvement with this water supply is a huge liability.

4 OPTIONS

There are two options which could be considered to remedy the risks outlined in 3.1-3.3 (inclusive) above:

- 4.1 Option 1: Close down the Harold Creek water supply and provide each of the affected households with a rain water tank, pump, and first flush diverter.

Self-supplies (i.e. rainwater or bore supplies) for individual households will not, as far as can be anticipated, come under the ambit of the new drinking water legislation. Council would pay upfront the set-up costs to ensure safe installation of all components and earthworks (estimated cost of \$10,000 per affected household – approximately \$60,000 in total). Affected parties would be required to pay this cost back (including interest), via a one-off invoice or via a Capital Repayment Rate under the Local Government (Rating) Act 2002 over a maximum period of 20 years. The advantages of this option are that there would be no ongoing cost to Council or to the ratepayer (who would no longer have to pay water rates). This was the process Council used to divest the Hannahs Clearing water supply in 2012 after consultation with the community.

- 4.2 Option 2: Close the Harold Creek water supply and extend the reticulation of the township supply by 3.2km so that the properties currently serviced by the Harold Creek Supply can connect to the treated bore-fed Hari Hari scheme. A written estimate of this work including installation of additional laterals is valued at \$334,220.23. (If Council proceeds with this option, this project would need to go through a formal tender process and therefore the final cost could differ from this estimate). Affected properties could then connect to a safe, potable water supply which meets the Drinking Water Standards of New Zealand criteria.

5 SIGNIFICANCE AND ENGAGEMENT

- 5.1 Under Clause 1.3 of Council's Significance and Engagement Policy (adopted 18 December 2014) and the Local Government Act 2002 (LGA), section 5, this issue would be deemed to be 'significant' due to its direct impact and effect on a small group of persons. As such, it would be appropriate for Council to consult with the parties directly affected in line with Council's Consultation Policy, once Council has approved a formed proposal.
- 5.2 In accordance with Section 131 of the Local Government Act 2002 (LGA), Council has the power to close down or transfer the operation of a small water services with fewer than 200 people to a community representative, subject to the following conditions:
 - 5.2.1 Consulting with the Medical Officer of Health and making publicly available in a timely and balanced manner the views of the Medical Officer of Health and any relevant information including reviews, assessments, comparison of options and management plan(s).
 - 5.2.2 A binding referendum is held per Section 9 of the Local Electoral Act 2001 and using the First Past the Post electoral system. To close the

water supply requires support of at least 75% of the votes; transfer requires support of at least 50% of the votes.

6 ASSESSMENT OF OPTIONS (INCLUDING FINANCIAL IMPLICATIONS)

Please refer to table on next page for summary of options including costs and timeframe (where known or possible to predict).

- 6.1 Should Option 4.1 be chosen, Council would pay upfront the set-up costs to ensure safe installation of the components and earthworks (estimated cost of \$10,000 per affected household – approximately \$60,000 in total). Affected parties would be required to pay this cost back, via a one-off invoice or via a Capital Repayment Rate under the Local Government (Rating) Act 2002 over a maximum period of 20 years. As this is not a currently budgeted project, this would be included as a project in the 2021-2031 Long Term Plan.
- 6.2 Should Option 4.2 be chosen, Council would fund the reticulation extension initially with this cost being repaid by affected households through a capital repayment rate or lump sum contribution (effectively a targeted rate). Council would have a much larger establishment cost for this option than option 4.1. Ongoing maintenance for this supply would be the responsibility of Council. However, the increase in maintenance costs would be minimal as Council already maintains this as the main Hari Hari community water supply. Properties would have to pay a full domestic water rate as opposed to the discounted water rate they currently pay for the untreated supply. Per Council's Revenue and Financing Policy, the debt would be repaid over 20 years with a floating interest rate. Repayments on the principle sum would begin the year following commission and would be approximately \$17,500 per year (not including interest). As this is not a currently budgeted project, this would be included as a project in the 2021-2031 Long Term Plan.

Under the Local Government Rating Act 2002, Part 4a, anytime a Council requires a capital contribution from ratepayers it must:

- Have adopted a capital project funding plan for the capital project, with the plan:
- Commencing at the start of the financial year
- Containing the matters required under the Local Government Rating Act s117E(1), and;
- Be adopted as part of the Council's Annual Plan or Long Term Plan.

Summary of Water Supply Options

| Option Summary | Cost | Timeframe | Advantages to WDC | Advantages to Customer | Disadvantages to WDC | Disadvantages to Customer |
|---|---------------------------|--|--|---|--|---|
| 4.1 Provide affected households with their own rainwater tank, pump and first flush diverter (Preferred option) | \$60,000 | <ul style="list-style-type: none"> • Three weeks for construction and installation. • Consultation with community could take a couple of months. | <ul style="list-style-type: none"> • Cost-effective • Quick and easy installation • No WDC responsibility or liability: Removes potential future DWSNZ compliance issues and no ongoing operational or maintenance costs to Council | <ul style="list-style-type: none"> • Increases reliability and continuity of supply • Cost-effective option • Ratepayers would not need to pay water rates | <ul style="list-style-type: none"> • Staff time working through consultation process and changes needed to financial policies and legalities of setting Capital Contributions Rate | <ul style="list-style-type: none"> • Ratepayers need to reimburse Council for set-up costs (long-term payment plans would be made available) • Minor maintenance costs to customers over time • Total reliance on tanks for water usage -in extreme droughts rainwater may be insufficient and customers may need to purchase additional water |
| 4.2 Extend the Hari Hari Town Water Supply reticulation to connect affected properties | \$334,000 (estimate only) | 4 months (approx.) | <ul style="list-style-type: none"> • Only minimal increase to O&M costs (as the township supply already exists) • Removes potential future DWSNZ compliance issues | <ul style="list-style-type: none"> • Continuity of supply • No customer responsibility | <ul style="list-style-type: none"> • Most expensive option • Large project to manage with contractors • Staff time working through consultation process and changes needed to financial policies and legalities of setting Capital Contributions Rate | <ul style="list-style-type: none"> • Huge capital costs to be repaid which would be onerous and unrealistic for the small number of affected parties to meet • Increase in water rates charges to customers once works are completed |

7 PREFERRED OPTION(S) AND REASONS

7.1 The preferred option is to undertake a binding referendum to close the Harold Creek water supply and set affected households up with a rainwater tank with a first flush diverter. This would give the residents water that is almost certainly safer than the water they currently receive at a minimal cost. Once the set-up costs have been repaid to Council, the households would be self-sustaining. They would be able to maintain their own water supply independently and would have no rates obligation to Council for water. This option is the cheapest overall to achieve, and installation is quick and easy to achieve.

8 RECOMMENDATION(S)

- A) **THAT** Council receive this report.
- B) **THAT** Council support the preferred option 4.1 to close the Harold Creek water supply and provide affected households with self-sustaining rainwater tanks.
- C) **THAT** the following engagement and consultation is undertaken:
- Formally consult with the Medical Officer of Health regarding this proposal subject to Section 131 (2)(b) and (c)(i) of the Local Government Act 2002
 - Hold a community meeting in Hari Hari with affected households, outlining the options available and allowing time for questions and answers
 - Hold a binding referendum conducted under section 9 of the Local Electoral Act 2001 to meet the stipulations of Section 131 (2)(d)(i) of the Local Government Act 2002 to close down a small water service.
 - Include this as a project in the 2021-2031 Long Term Plan.

Erle Bencich
Operations Manager

Appendix 1: Photos of Harold Creek raw water supply

Appendix 2: Map of Harold Creek raw water supply





*Land parcel outlined in red is Wilberg Reserve (DoC land)

**Blue lines show Harold Creek reticulation pipeline from the intake and up to the boundaries of connected properties.

Report

DATE: 27 August 2020

TO: Mayor and Councillors

FROM: Chief Executive and Group Manager: District Assets

THREE WATERS SERVICE DELIVERY REFORM PROGRAMME

1 SUMMARY

- 1.1 The purpose of this report is to seek Council approval to 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.
- 1.2 This issue arises from the need for Council to provide post COVID-19 stimulus to maintain and improve Three Waters Infrastructure and participate in the conversation of the three year programme of reform of local government water service delivery arrangements and support the establishment of Taumatua Arowai which is the new water services regulator.
- 1.3 Council seeks to meet its obligations under the Local Government Act 2002 and the achievement of the District Vision adopted by the Council in May 2018, which are set out in the Long Term Plan 2018-28. These are stated on Page 2 of this agenda.
- 1.4 **This report concludes by recommending:**
 - THAT Council receive the report.
 - THAT Council agree to signing the Memorandum of Understanding and Funding Agreement as tabled.
 - THAT Council agree to nominate 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.
 - THAT Council agree to delegate decisions about the allocation of regional funding to the Chief Executive of the Council, with the understanding that the minimum level of funding to the Council be based upon the formula used to calculate the direct council allocations.

Noting that participation by two-thirds of territorial authorities within the West Coast Region is required to access the regional allocation.

2 BACKGROUND

2.1 Issues facing the Three Waters System, and rationale for reform:

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.

2.2 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 [TO BE UPDATED ONCE BILL IS ENACTED]. 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.

3 CURRENT SITUATION

3.1 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 1.

3.2 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.



3.3 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 relevant allocations for Westland District Council are:

- \$3,428,153.96 (excluding GST) direct allocation for Westland District Council
- \$15,246,607.09 (excluding GST) regional allocation for West Coast 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.

This has been agreed at the Mayors & Chairs Forum on the 12th August 2020. Hence the final full funding allocation to Westland District Council is \$6,856,307.93.

3.4 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 1);
- Funding Agreement (Appendix 5);
- Delivery Plan (Appendix 6).

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. (REFER TO APPENDIX 2)

Funding Agreement

This Council has been allocated \$3,428,153.96 by the Crown, if it opts in to the reform programme. A further \$15,246,607.09 has been allocated to the West Coast Region to agree an appropriate distribution between participating Councils. 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.

There are several options for how the regional funding could be allocated between councils. The joint central-local government Three Waters Steering Committee preferred approach is to apply the same formula¹ used to calculate the direct allocations. Under this approach, the Council would receive an additional \$3,428,153.96, contributing to a total funding allocation of \$6,856,307.93.

It is recommended that the Council delegates authority to the Chief Executive to agree an appropriate allocation with other participating councils, with the understanding that the Council share of the regional allocation should be \$3,428,153.96 at a minimum, noting that participation by two thirds of territorial authorities within the region is to access the regional funding. 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.

¹ Applying a 75% weighting for population and a 25% weighting for land area, excluding national parks.

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.

4 OPTIONS

4.1 **Option 1** is to receive the report and recommendation.

4.2 **Option 2** is not receiving the report and recommendation.

5 SIGNIFICANCE AND ENGAGEMENT

5.1 This matter is assessed as being of medium significance as the 1st tranche of funding does not bind council to any legal responsibility. The value of the allocation is significant hence the assessment of medium significance. There will also be a high level of public interest in the outcomes of the three waters reform process.

5.2 Community consultation is not required (refer legal option Appendix 2). However, there may be subsequent decisions relating to either the reform or projects/funding aspects that may trigger consultation requirements at that time.

6 ASSESSMENT OF OPTIONS (INCLUDING FINANCIAL IMPLICATIONS)

6.1 **Option 1** is the preferred option as 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.

- 6.2 **Option 2** is not preferred as this will mean that Council would not be able to access the allocation funding which can be used to progress our three waters infrastructure aspirations. The implications of not signing the Memorandum of Understanding are that council does not receive the 1st Tranche of funding but can opt in in the future stages of the three waters reform process.
- 6.3 There are no additional costs incurred by signing the MoU.

7 PREFERRED OPTION(S) AND REASONS

- 7.1 **Option 1** is the preferred option due to the fact that as 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.
- 7.2 It provides funding to support councils three waters projects and operational costs
- 7.3 It provides stimulus for the local economy by providing additional project work

8 RECOMMENDATION(S)

- A) **THAT** Council receive the report.
- B) **THAT** Council agree to signing the Memorandum of Understanding and Funding Agreement as tabled.
- C) **THAT** Agree to nominate 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** Agree to delegate decisions about the allocation of regional funding to the Chief Executive of the Council, with the understanding that the minimum level of funding to the Council be based upon the formula used to calculate the direct council allocations, and noting that participation by two-thirds of territorial authorities within the West Coast Region is required to access the regional allocation.

Simon Bastion
Chief Executive

Louis Sparks
Group Manager: District Assets

- Appendix 1 – Memorandum of Understanding Three Waters Services Reform.
- Appendix 2 – Legal opinion from Simpson Grierson – Three Waters Services Reform Memorandum of Understanding.
- Appendix 3 – Three Waters Reform Programme – Series of slides from the Three Waters Steering Group, Department of Internal Affairs.
- Appendix 4 – Frequently Asked Questions Document.
- Appendix 5 – Three Waters Stimulus Grant Delivery Plan
- Appendix 6 – Three Waters Stimulus Funding Agreement

Memorandum of Understanding Three Waters Services Reform

Between the Sovereign in right of New Zealand acting by and through the Department of Internal Affairs and

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 | Territorial Authority's representative |
|--|--|
| Allan Prangnell threewaters@dia.govt.nz CC. Chief Legal Advisor Legal.notices@dia.govt.nz | |

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 by The Sovereign in right of New Zealand
acting by and through the Chief Executive of the
Department of Internal Affairs

Date

.....

SIGNED by

on behalf of

Date

.....

SIGNED by

on behalf of

Date

Witness signature

.....

Witness name

Witness occupation

Witness address

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:
 - 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.

-
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 –

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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Three Waters Reform Programme

A proposal to transform the delivery
of three waters services

Webpage: <https://www.dia.govt.nz/Three-Waters-Reform-Programme>

Email: 3waterssteeringgroup@dia.govt.nz

New Zealand Government



**Te Tari Taiwhenua
Internal Affairs**

**We are.
LGNZ.**

Te Kāhui Kaunihera o Aotearoa.

 **SOLGM**

New Zealand Society of
Local Government Managers

Quick overview

1 An opt-in reform programme

With an initial **\$761 million funding package** from central government, and designed to support economic recovery post COVID-19 and address persistent systemic issues facing three waters, by:

- stimulating investment and job creation to assist with **economic recovery**;
- reforming water service delivery, **into larger scale providers**, to realise significant economic, public health, environmental, and other benefits over the medium to long term.

2 Phased delivery

The reform programme will be undertaken in phases, each informed by the previous stage.

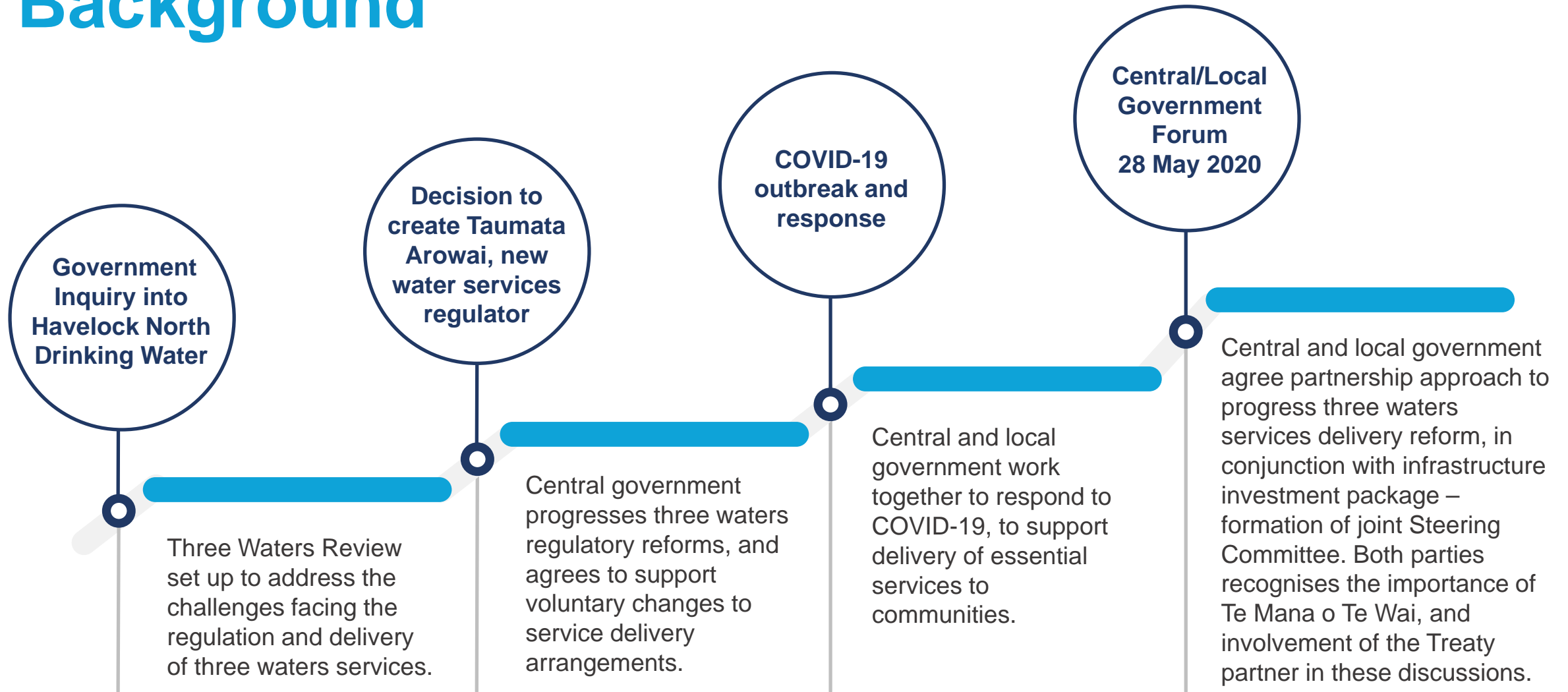
The first phase requires Councils to consider a **non-binding MOU** to share information and participate in reform programme and **does not require asset transfers**.

This is a **good faith** agreement to work together.

3 3-year horizon

Subsequent phases will occur over the **next 3 years** and will require close collaboration, including with input from iwi/Māori.

Background

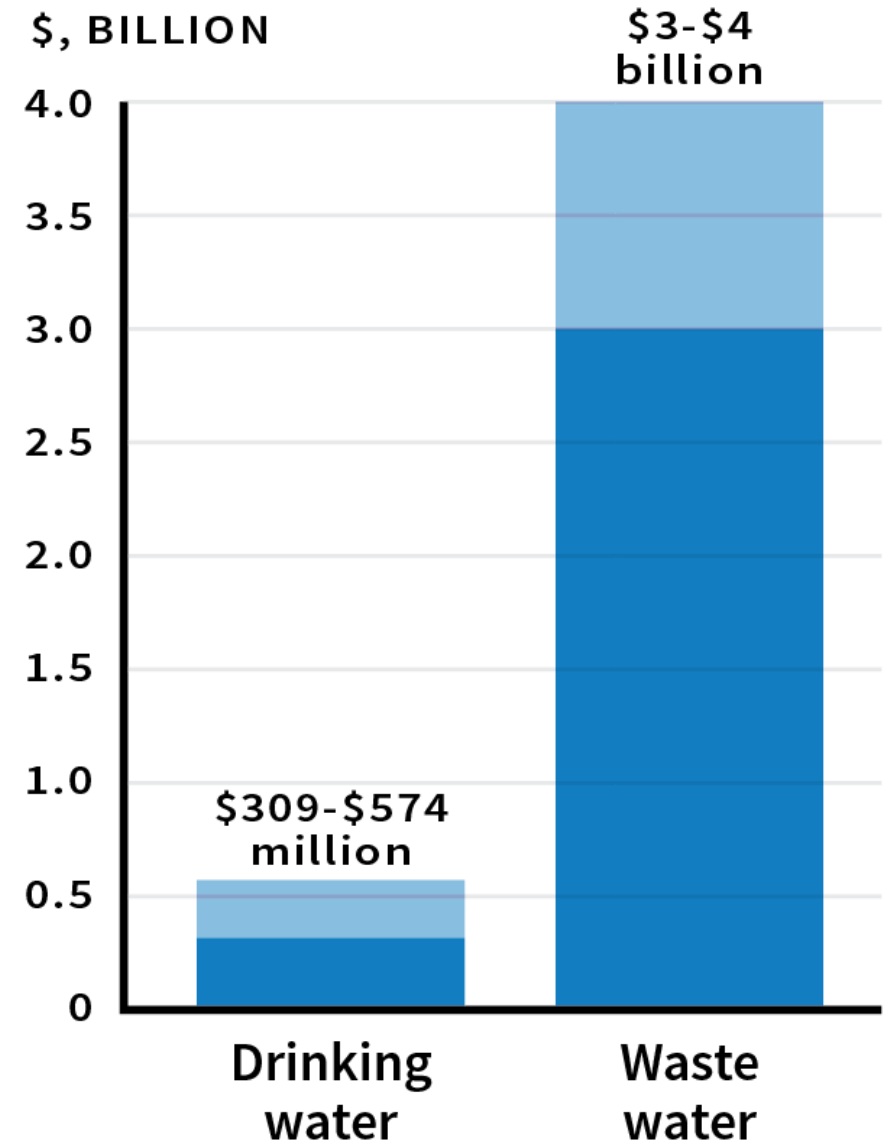


Regulation

- Taumata Arowai, new drinking water regulator, with a focus on compliance, monitoring and enforcement of new drinking water regime.
- Water Services Bill to give effect to Cabinet decisions to significantly strengthen the regulatory framework.
- Potential economic regulation to:
 - Improve transparency about infrastructure and investment
 - Protect interests of customers
 - Support efficiency

Investment challenges

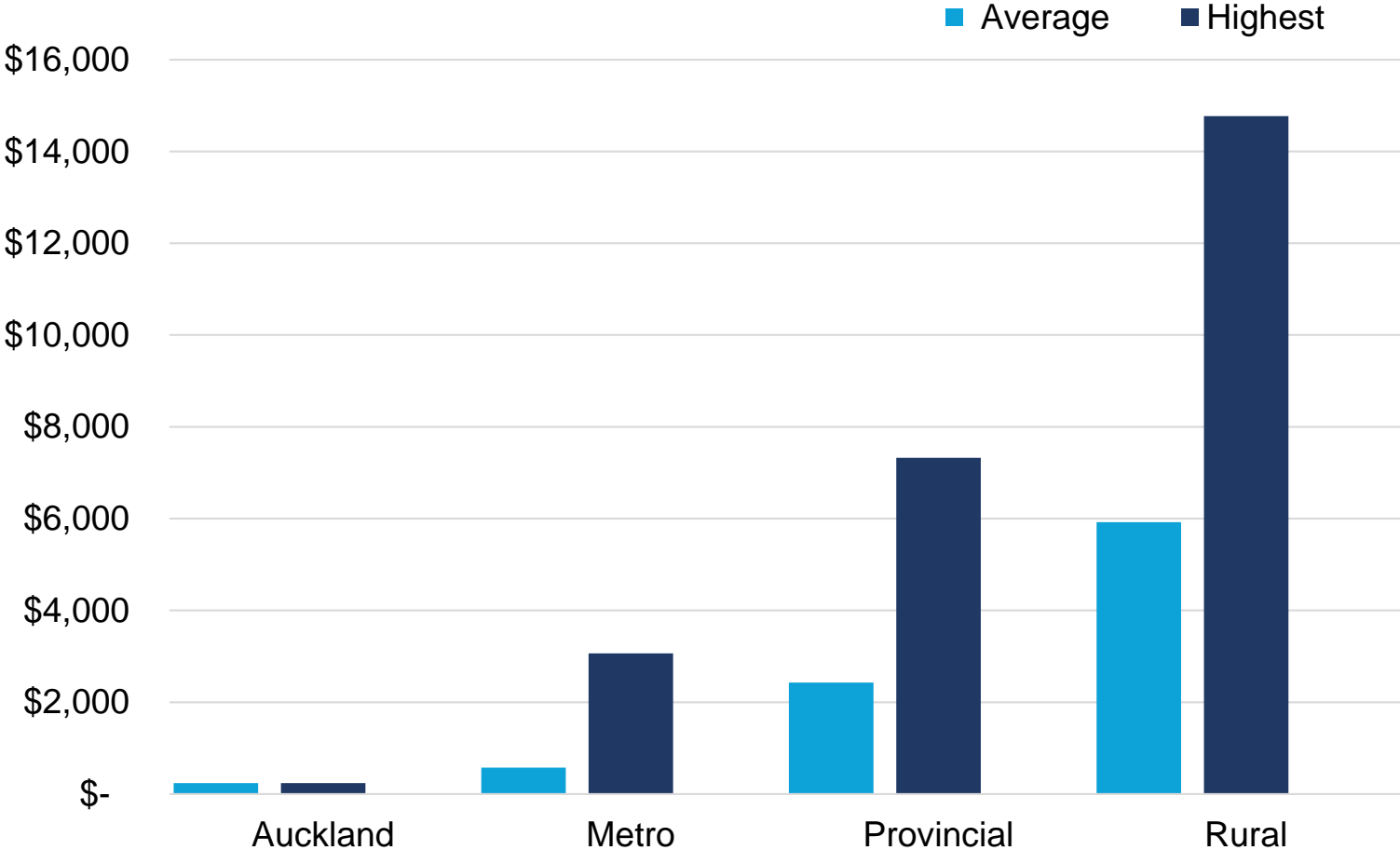
1. Staying ahead of the significant reinvestment and renewals has been a challenge.
2. The cost of meeting drinking water and waste water standards will be high.
3. Funding, financing and affordability issues are only going to be exacerbated by the revenue challenges following COVID-19.
4. Pipes are 80% of the asset base, and are in addition to this.



Funding and affordability challenges

The challenge is greatest for small councils with fewer ratepayers to share costs.

Estimated cost per rateable property for upgrades to wastewater plants that discharge to coastal and freshwater*



* Wastewater costs are driven by existing RMA consent requirements, not three waters changes

Parallel Conversation

There is a parallel opportunity for the local government sector to partner with the Government to ensure the sector is better positioned to expand their role in delivering community wellbeing.

- The Government is acutely aware of the significance of the proposed reform programme for the roles and functions of local government in supporting community wellbeing.
- Over the last year DIA has engaged with local government on how to better promote community wellbeing. We have heard:
 - All parties would need to operate in a different, more seamless and sustainable way;
 - Needs a partnership between local government and central government, iwi, NGOs, and industry to better deliver community-led priorities.

Proposal

The Government is proposing a programme for reforming three waters service delivery arrangements, which would be delivered in parallel with an economic stimulus package of Crown investment in water infrastructure.

Economic stimulus package

- \$761m in FY 2020/21.
- Funding provided to territorial authorities who opt-in to a partnership process, before the end of August.
- Funding to be invested in three waters infrastructure that support economic recovery.
- Further tranches will depend on Government decisions and progress against reform objectives.

Service delivery reform Programme

- A phased, three-year programme to reform three waters services delivery arrangements.
- Supported by joint central/local government steering committee.
- Engagement with sector, Iwi/Māori and stakeholders throughout the programme.

Reform objectives

A Significantly improving safety and quality of drinking water services, and the environmental performance of wastewater and stormwater systems.

B Ensuring all New Zealanders have equitable access to affordable three waters services.

C Improving resource coordination and unlocking strategic opportunities to consider national infrastructure needs at a larger scale.

D Increasing resilience of three waters service provision to both short- and long-term risks and events, particularly climate change and natural hazards.

E Moving three waters services to a more financially sustainable footing, and addressing the affordability and capability challenges faced by small suppliers and councils.

F Improving transparency and accountability in cost and delivery of three waters services, including the ability to benchmark performance of service providers.

Reform design features

Design features that the **proposed** reform programme should examine, as a minimum:

- A** **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.
- B** **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.
- C** **Publicly owned entities**, with a preference for collective council ownership.
- D** **Mechanisms for enabling iwi /Māori and communities** to provide input in relation to the new entities.

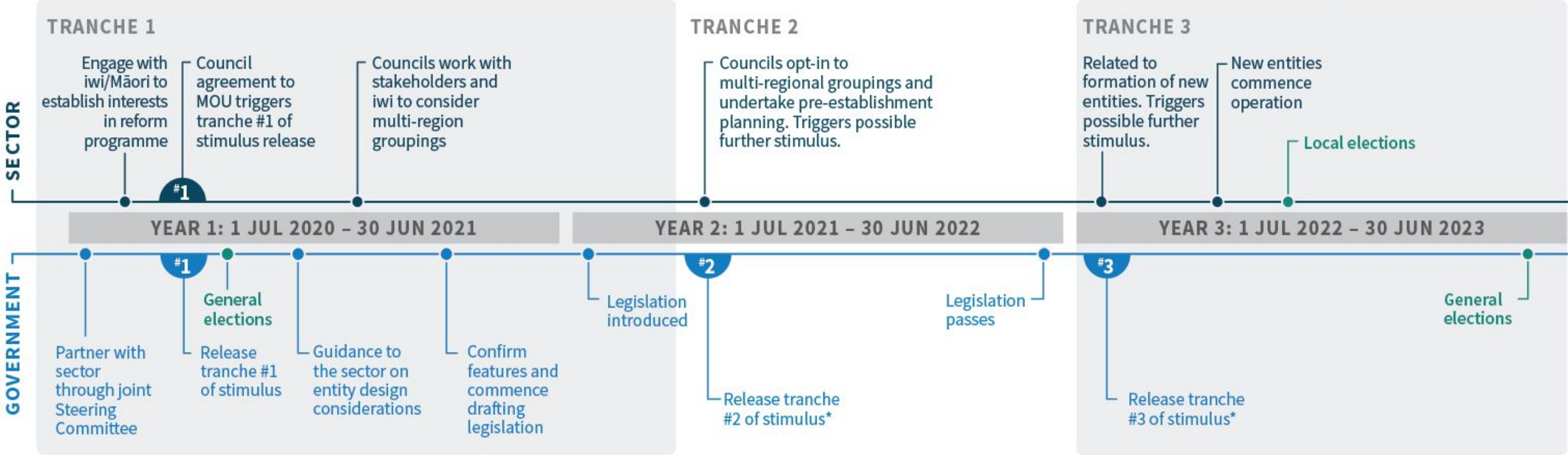
Approach to aggregation

The potential size of the entities will need to be considered against three principles:

| | |
|---------------------------------------|---|
| Scale benefits | Potential to achieve scale benefits from the greater scale of water service delivery to consumers at a multi-regional level to ensure full benefits of scale are achieved through a population/customer base. |
| Communities of interest | Alignment of geographical boundaries to encompass natural communities of interest , belonging and identity including rohe/takiwā. |
| Relevant regulatory boundaries | Relationship with relevant regulatory boundaries particularly to enable water to be managed from source to the sea. |

Indicative timeline

* Subject to Government decision-making



Questions?

Breakout session

Let's break into small groups and discuss:

- 1** What are your thoughts on the proposed minimum design features and reform process?
- 2** What factors do you think the Steering Committee should consider as the reform programme progresses?
- 3** What guidance or support do you think would be helpful?

Next steps

What **mechanisms and support** will be made available to local authorities to participate in this process?

Memorandum of understanding

A model agreement developed by the Steering Group for each Council to enter into with the Government:

Legal opinion commissioned by SOLGM on behalf of the Steering Committee was provided by Simpson Grierson that the MoU **does not** contain any explicit triggers for consultation under the Local Government Act 2002.

Committed to...

- Engage in the first phase of the reform programme.
- Work with neighbouring councils to consider the creation of large scale entities.
- Principles and objectives of working together with central government.
- Openly share information and analysis undertaken on the state of the three waters asset base and delivery system.

Does not...

- Legally commit Councils to future phases of the reform programme.
- Require Councils to transfer assets or establish new water entities.
- Exclude participation in later phases – Councils that choose to opt-in later can still do so but will not have access to the initial funding package.

Funding

Decision to opt-in to tranche one required no later than the end of August to access initial stimulus funding

1

Funding provided to maintain and accelerate three waters infrastructure investment

- Funding provided as a grant.
- Can be used for Capex and/or Opex.
- Drinking water and wastewater priority.

2

Funding allocation to be determined shortly

- Ministers working to confirm this shortly.

3

Planning implications

- Likely focus on renewals and bringing forward of BAU capital works programme.

Funding Agreement

Mechanisms for accessing the Government funding package:

Funding Agreement

- Standard-form agreement between Crown and local authorities.
- Guides the release and use of funding.
- Grant funding.
- Sets out:
 - Funding amount.
 - Funding conditions.
 - Public Finance Act/ public accountability requirements.
 - Reporting obligations.

Delivery Plan

Potential
mechanism for
accessing the
Government
funding package:

Potential Delivery Plan

- Short-form template submitted to Crown Infrastructure Partners for review and monitoring.
- Show that funding is applied to operating or capital expenditure that supports economic recovery and maintains/increases investment in core water infrastructure.
- Sets out:
 - A summary of works.
 - Estimated cost.
 - Location of the physical works.
 - Number of people employed in the works.
 - Reporting arrangements.
 - Assessment of how it supports the stimulus objectives.
 - Expected benefits/outcomes.

What are we inviting local authorities to do before August?

Consider whether you will opt-in to a partnership process with the Government to:

- Explore and design a pathway for reforming three waters service delivery arrangements in a way that will be beneficial for your communities.
- Secure an initial release of funding to stimulate economic recovery and maintain, increase or accelerate planned investment in three waters infrastructure.

NOTE: Decisions required no later than the 31 August to access initial stimulus funding.

Next Steps

Upcoming Future Engagement

- Updated FAQs and guidance material following workshops (ongoing)
- Webinar with CEs and Water Managers (early August)
- Webinar for Legal and CFOs (early August)
- Iwi/Māori engagement, in conjunction with Taumata Arowai (September/October)
- Steering Committee communications and updates (ongoing)
- Policy and Commercial discussions (post August)

Questions?

Breakout session

Let's break into small groups and discuss:

- 1** What are your thoughts about the proposed MoU/Funding Agreement and Delivery Plan?
- 2** What further advice or information would your Council require to consider opting in to tranche one?
- 3** What guidance or support do you think would be helpful?

Ngā mihi Thank you

Webpage: <https://www.dia.govt.nz/Three-Waters-Reform-Programme>

Email: 3waterssteeringgroup@dia.govt.nz



Te Tari Taiwhenua
Internal Affairs

We are.
LGNZ.
Te Kāhui Kaunihera o Aotearoa.

 **SOLGM**
New Zealand Society of
Local Government Managers

The central and local government Steering Committee has put together the following compilation of FAQs to assist councils with an understanding of the proposed reform programme. These will be added to and updated as further questions arise and the reform programme progresses.

Three Waters Reform Programme: Frequently Asked Questions

FAQs Part 1: High-level questions on reform parameters and scope, and the joint approach

1. Why does service delivery reform need to happen?

- The Havelock North inquiry highlighted some significant deficiencies in the provision and regulation of safe drinking water. This has seen the Government progress a programme of three waters regulatory reform, including the establishment of Taumata Arowai, the new Water Services Regulator.
- While addressing the regulatory issues, both central and local government acknowledge there are broader challenges facing local government water services and infrastructure, and the communities that fund and rely on these services.
- Under-investment in three waters infrastructure in some parts of New Zealand and persistent affordability challenges make it increasingly difficult to meet rising drinking water and environmental regulatory requirements and community expectations, while providing resilient infrastructure. There are concerns that the economic recovery from COVID 19 will exacerbate this situation.
- Addressing these challenges through service delivery reform is intended to facilitate good public health and environmental outcomes, increase resilience to climate change and natural hazards, and enhance community wellbeing and equitable access to affordable water services for all New Zealanders.

2. What will the reform programme entail?

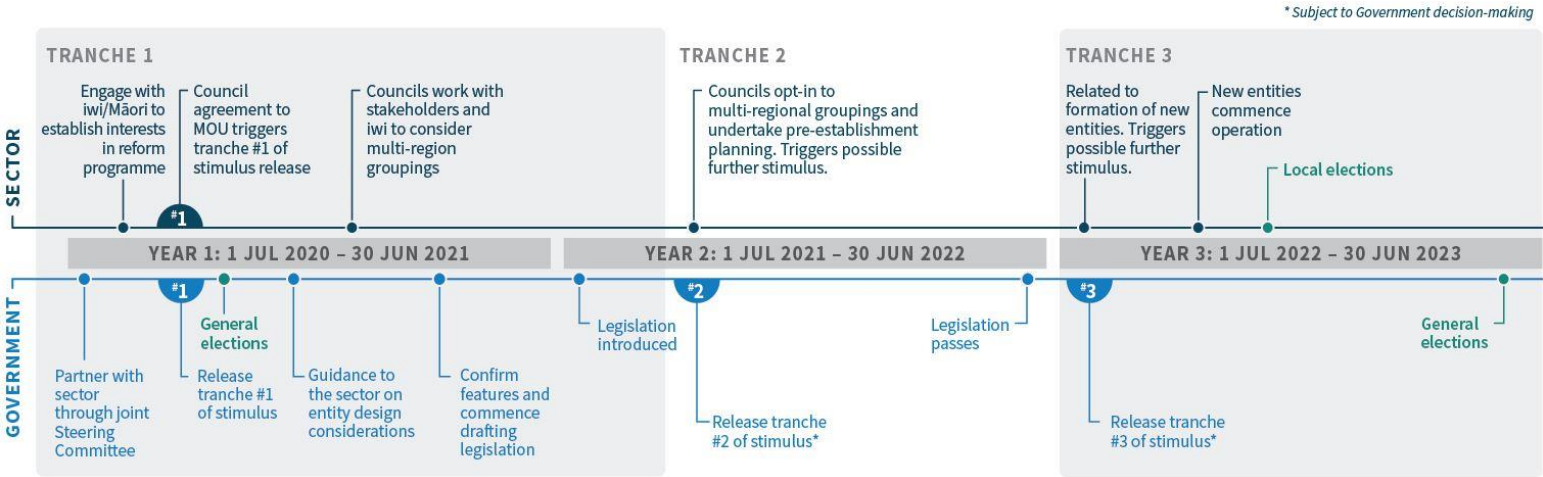
- The reform programme is an opt-in programme designed to support economic recovery post COVID-19 and address persistent systemic issues facing the three waters sector, through a combination of:
 - stimulating investment, to assist economic recovery through job creation, and maintain/accelerate/increase investment in water infrastructure renewals and maintenance; and
 - reforming current water service delivery to realise significant economic, public health, environmental, and other benefits over the medium to long term. The Government's starting intention is for new service delivery arrangements, such as multi-regional entities, which can achieve the benefits of scale, and reflect neighbouring catchments and communities of interest.
- Alongside the above, the reform programme also has the following objectives:
 - significantly improving the safety and quality of drinking water services, and the environmental performance of wastewater and stormwater systems;
 - ensuring all New Zealanders have equitable access to affordable three waters services;

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- improving the coordination of resources and unlocking strategic opportunities to consider New Zealand's infrastructure 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 across the sector and particularly by some 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.
- The reform is expected to proceed in phases, enabling councils to determine at each point in the process whether they will participate in future phases on a voluntary, opt-in basis.
 - The first phase of the programme includes a Memorandum of Understanding (MoU) between central and local government to progress the reform in partnership and targeted infrastructure stimulus to enable improvements to water service delivery and ensure economic recovery following COVID-19.
 - The subsequent phases of the reform programme will be guided by the process undertaken in partnership throughout phase one. However, the Government’s starting intention is to reform current water service delivery arrangements into larger scale providers. These phases will also be on an opt-in basis for local government.

3. What is the timeframe for the reform programme?

- Below is an indicative timetable for the full reform programme. While this is subject to change as the reform progresses, it provides an overview of the longer-term reform pathway.



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4. Why are central and local government working together on this programme and why is this the best approach to take?

- A partnership approach between central and local government enables the expertise and aspirations of both parties to guide the proposed reform programme.
- An initial allocation of funding will be made available upon signing of a MoU that commits parties to work together on the reform programme. This stimulus investment will support three waters projects, creating and maintaining jobs and investment in water infrastructure renewals in the context of COVID-19 pressures.
- Additional funding will be subject to Government decision-making and reliant on the parties demonstrating substantive progress against the reform objectives. The amount, timing, conditions and any other information relating to future funding will be advised at the appropriate time.

5. What are the key features the Government is expecting from future reformed service delivery arrangements?

- The first phase of the programme will involve central and local government working in partnership to design and develop the proposed new service delivery arrangements and operating models.
- The initial focus of phase one is on drinking water and wastewater assets and services; however, we will work through the inclusion of stormwater, where appropriate, as part of the reform programme.
- However, the Government is expecting new service delivery arrangements, such as multi regional entities, which can achieve the benefits of scale, and reflect neighbouring catchments and communities of interest. The new water entities would also likely be governed by competency-based boards.
- There are also a number of features that central government expects to be included/retained in new water service delivery entities including:
 - The new water entities must be able to borrow independently of councils;
 - The new entities must be publicly owned – with a preference for collective council ownership – and there need to be mechanisms to protect against privatisation in the future;
 - Consumer interests must be protected, and the model must allow for consideration of the needs and well-being of local communities;
 - At a minimum, drinking water and wastewater must be included in the new water entities. Stormwater services may be included where efficient and effective to do so; and
 - The new entities will be statutory entities (i.e. designed and established by legislation).
- The reform of water service delivery is likely to present a range of Treaty interests which will need to be identified and explored as part of the reform programme through targeted engagement with iwi/Māori.

The central and local government Steering Committee has put together the following compilation of FAQs to assist councils with an understanding of the proposed reform programme. These will be added to and updated as further questions arise and the reform programme progresses.

6. Can councils choose to participate in the reform?

- This reform of service delivery arrangements is an opt-in reform programme. However, the initial stimulus funding to invest in critical water services and infrastructure is contingent upon councils participating in the reform programme. This will entail working with neighbouring councils over the course of the reform period to consider the creation of multi-regional entities.
- There will be subsequent phases of the reform at which councils can choose to opt-in. Later phases are likely to require councils to opt-in by signing a binding contract committing to the reform of their water services.
- Regardless of participation in this process, all water service providers will be required to meet drinking water and wastewater regulatory requirements, including complying with the proposed new drinking water regulatory system that will be overseen by Taumata Arowai (the new Water Services Regulator).

7. What will happen to the voluntary service delivery reform programmes that some councils have already embarked on?

- Those councils that have already begun discussions about three waters reform will be well placed to engage with the reform design.
- It is a decision for councils as to whether they continue their voluntary programmes or sign the MoU and commit to working to get alignment with the reform objectives.
- We will work with these councils on whether their current programmes are likely to meet the objectives of the benefits of scale, and reflect neighbouring catchments and communities of interest as we work through the reform process.

FAQs Part 2: Councils' role in the reform programme

1. How can local government play a role shaping the reforms?

- To ensure reformed water service delivery entities have longevity they need to be shaped and influenced by both central and local government.
- Central and local government have created a Three Waters Steering Committee with representatives from central and local government to oversee and provide input into the design of the proposed service delivery entities.
- The Steering Committee comprises elected members and chief executives from local government along with LGNZ, SOLGM and central government officials.
- Councils signing the MoU will be committing to engage in the reform programme and to work with their neighbouring councils to consider the creation of multi-regional entities.
- Initial sector engagement is planned for July and August 2020 to provide an initial forum for raising issues and areas for the Steering Committee to work through and consider in the detailed design and policy work.

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- As we progress beyond this date, we will provide you with updates, and hold workshops or webinars on specific topics to explain options and trade-offs and hear your views.

2. What would my council actually be committing to?

- Councils signing the MoU are committing to the principles and objectives of working together with central government through the first stage of the reform programme.
- This will entail working with neighbouring councils over the course of the reform period to consider the creation of multi-regional entities for the improvement of three waters service delivery for communities. This will include:
 - Open communication and a no-surprises approach to matters related to the reform programme;
 - Working with neighbouring councils over the course of the reform period with a view to creating multi-regional entities; 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.
- The Initial funding allocation will be provided as soon as practicable following agreement to the MoU and associated Funding Agreement and Delivery Plan.
- The Delivery Plan and associated reporting arrangements will need to show that the funding is to be applied to operating or capital expenditure on three waters service delivery that:
 - supports economic recovery through job creation; and
 - maintains, increases or accelerates investment in core water infrastructure renewals and maintenance.
- This funding will not need to be repaid if the council does not ultimately commit to subsequent stages of the reform programme provided you meet the terms of the Funding Agreement and Delivery Plan.
- Additional funding will be subject to Government decision-making and reliant on the parties demonstrating substantive progress against the reform objectives.

3. Is the stimulus a grant or a loan?

- The stimulus is a grant.
- The initial funding will be made available following the signing of the MoU and associated Funding Agreement and Delivery Plan and can be applied to three water services as described in those documents.
- It is important that this funding is spent effectively and efficiently as soon as possible to support the economic recovery following COVID-19.
- Additional funding will be subject to Government decision-making and reliant on the parties demonstrating substantive progress against the reform objectives.

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4. What resource do I need to commit to this engagement process?

- It is important that elected members commit to engaging in the reform programme as, ultimately, they will need to decide whether to participate in the future phases of the reform.
- Some resource may be required to support the sharing of information with government agencies as agreed under the MoU. Beyond this, it is up to every council to determine the level of resource they want to commit to the programme.

5. What does my council need to decide and when?

- As part of the voluntary opt-in process, councils need to consider and sign the MoU and associated Funding Agreement and provide a Delivery Plan by the end of August 2020.
- This MoU covers the first phase of the programme and commits central and local government to partner and work towards the reform of three waters service delivery.
- Councils should approach the MoU in good faith. However, if they initially support the MoU and reform programme and subsequently opt-out, they can do so.
- If a council opts-out, it will not be able to access future funding associated with future phases of the programme.

6. Why does the MoU need to be signed by the August deadline?

- The first phase of the reform programme is in part designed to support economic recovery relating to COVID-19 through urgent funding stimulus. To achieve this, the investment needs to be made and actioned very promptly.
- The initial allocation of funding will be released immediately upon signing the MoU and associated Funding Agreement and Delivery Plan.
- This will help create and maintain jobs, investment in infrastructure renewals and maintenance, and protect the safety and sustainability of this essential infrastructure and its associated services.

7. What happens if my council cannot make a decision in this timeframe?

- If your council is unable to make a decision in the required timeframe to sign the MoU, it will not qualify for this stimulus funding.
- However, councils may wish to remain engaged throughout the first phase of the reform programme even if they have not signed the MoU, as they will be able to opt-in to later stages of the reform programme.
- Councils that opt-in to the reform programme at a later stage may be eligible to receive funding associated with that phase of the programme (future funding is subject to Government decision making).

8. What role will iwi/Māori have throughout the reform programme?

- It is important that the rights and interests of the Crown's Treaty partners are well understood and that our work is informed by this relationship.
- We acknowledge the range of relationships councils have with tangata whenua that will need to be considered alongside the reform programme.

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- We will be formally engaging with iwi/Māori throughout the reform programme to understand the Treaty rights and interests as they relate to the reform. However, we encourage councils to remain engaged with their iwi partners throughout the journey as well.

9. Will councils need to consult with their communities before signing the MoU?

- While each council will have their own significance and engagement policy, our best advice is that you will not have to consult your communities to sign up to the MoU and participate in phase one of the reform programme.
- Signing the MoU, and committing to participate in the reform programme, does not commit the council to change the way it currently delivers three waters services.
- However, you will need to consider your own significance and engagement policy when considering investment to be made through the Funding Agreement and Delivery Plan.
- The decision to commit to the transition to new water entities will not occur until the second phase of the reform programme which is likely to be mid-2021 at the earliest.
- Commitment to subsequent stages of the reform programme may require changes to your LTP which would require public consultation at that stage in the process.

10. How does participating in the reform programme impact my council planning process?

- Participating in this initial stage of the reform programme does not impact your LTP process.
- However, subsequent stages of the reform programme may require changes to your LTP to reflect commitment to future changes as part of this phase of the reform.
- We will work with councils to understand the implications of future stages of the reform, how to undertake public consultation to reflect future commitment to the reform, and how we might reduce the burden of this as the reform programme progresses.

FAQs Part 3: Potential forms of new water service delivery entities

1. What sort of model (ownership/financial) is envisaged?

- The first phase of the reform will work through this question in partnership with central and local government. However, the Government's starting intention is for the entities to meet the objectives of the reform, as above, including to be financially self-sufficient and sustainable.
- The Government's preferred model is that the entities remain in public ownership and that they should be statutory entities.
- Statutory entities are created in legislation and are different from Crown entities. They can have non-commercial functions or commercial imperatives.

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- Each statutory entity usually has its own establishing legislation that contains entity-specific objectives that could be a mix of social, cultural, public policy, and commercial. There will be opportunities for local government to help shape the key features of this legislation through the reform programme.
- The entities will need to be legally separate from councils to ensure balance sheet separation for both the water entity and councils to drive improved access to capital and funding instruments.

2. Will this be a set model for each entity or will there be flexibility?

- The Government is expecting new service delivery arrangements, such as multi-regional entities, which can achieve the benefits of scale, and reflect neighbouring catchments and communities of interest. We anticipate that the entities will have many features in common, as provided for in legislation.
- However, the exact make up of each entity may differ to allow some flexibility at a local level in terms of operations, management, governance, and funding and financing, while ensuring the long-term success and sustainability of these entities.

3. Why does the Government prefer a multi-regional entity?

- A multi-regional entity implies an entity or organisation that is not limited to or constrained by regional boundaries and is likely to include councils in more than one neighbouring region.
- Ministers have indicated a preference for a small number of entities, with at least one large urban centre within each entity. The exact numbers and boundaries of these would be finalised following discussions with local government through the reform programme. However, these decisions are likely to be based on factors such as benefits of scale, communities of interest, and catchments.
- A multi-regional approach is preferred by the Government as it is more likely to achieve the size (population and customer density) over which scale efficiencies are likely to be necessary to meet the objectives of the reform programme.
- The aim of the first phase of the reform programme will be to identify configurations that best meet the objectives of the reform in partnership with central and local government.

4. Looking after water services is a large part of what my council does – if this is being done by other entities what will my council do instead?

- This is an important consideration and will be discussed in parallel to the reform programme in partnership with local government.
- Councils provide a wide range of services to communities, and play an essential role in supporting community wellbeing. These roles and potential new roles will be fully explored alongside the reform programme.

5. How will community interests be maintained under the new entity?

- We understand that councils will want to ensure that your ratepayers are protected. The reform process and subsequent design of the water entities will provide mechanisms to ensure this happens.

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- New governance and management structures will be put in the place for the new entities with an appropriate establishment phase. These entities will be independently and commercially run and separate from council.
- Councils may no longer have direct control over the assets or water provision in your area. However, there will be mechanisms put in place to ensure local service delivery considerations and influence are maintained.

6. How will the new water entities coordinate with council functions such as planning for growth and roading?

- This is an important consideration. The design of new water service entities will need to consider the interaction of these functions to support integrated land use and infrastructure planning and community wellbeing.
- We will work through this with councils as part of the reform programme.

FAQs Part 4: Potential forms of new water service delivery entity ownership and governance

1. Is this privatisation by stealth and how will public ownership be protected?

- No. The Government has been clear that, if service delivery arrangements are reformed, water infrastructure must remain in public ownership.
- Most water infrastructure is already publicly owned – by communities through their council.
- The preference is for multi-regional water entities to be collectively owned by councils – on behalf of their communities – as shareholders.
- However, the new water entities will need sufficient legal separation to ensure they can borrow, independently of councils and without impacting councils' balance sheets.
- The basis for shareholding will need careful consideration and financial and commercial analysis through the first phase of the reform programme. This analysis will also investigate ways to ensure protections against any future impulse towards privatisation.

2. Will there be Crown ownership?

- The possibility of some form of Crown shareholding has also been raised, but these matters require further consideration and will be worked through as the design process proceeds.
- There are several reasons why the Crown may consider having an ownership interest, including to reflect its level of investment through the economic stimulus packages, and to support the reform objectives. However, these matters require thorough analysis through the early phases of the reform programme.

3. What is the iwi/Māori role in entity ownership and governance?

- It is important that the rights and interests of the Crown's Treaty partners are well understood and that our work is informed by this relationship.
- At a minimum, the entities will be set up in legislation and this may require the relationship to the Treaty to be clearly expressed.

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- A programme of targeted engagement will be undertaken with appropriate parties to canvass matters of mutual interest as the programme proceeds.

4. Is there a role for the private sector?

- The Government has expressed a clear and consistent message that public ownership of water infrastructure is a bottom line, and there must be ongoing protections against privatisation.
- This does not mean the private sector has no role to play. Many councils receive services from the private sector – through consultancies and contractors, for example – it is anticipated the private sector will continue to play a very important role in providing services to the new entities.
- A possible benefit of the reform will be more certainty for the private sector on the pipeline of three waters work.

FAQs Part 5: Asset ownership and transfers

1. Will my council still have control over our assets and service conditions?

- It is proposed that the assets related to provision of water services will be transferred to the new water entities. This would be to ensure that they are owned, maintained and operated independently by the new entities (although the current preference is that the entities themselves would be collectively owned by councils).
- The transfer of assets enables the water entities to take a strategic approach to infrastructure planning and development and funding and financing arrangements.
- We will work to ensure councils and the communities they represent will be able to have their say on service conditions and expectations through mechanisms set up in the design of the statutory entities.

2. What will be the process for having assets valued and how will I be compensated for any transferred assets?

- We will work closely with councils through the valuation process and provide guidance as this process advances.
- We will engage with expert valuers and analysts to assess methods of valuation and how such a large-scale, nationwide valuation exercise can be undertaken through the reform programme.
- We will also need to understand any liabilities and debt relating to these assets and whether/how this would transfer and the impact on any appropriate compensation.
- This approach will have an objective of ensuring consistency of methodology and approach to gain a consistent and accurate view across the country to ensure this process is conducted fairly.

3. What will asset value mean in terms of potential shareholding?

- Detailed work will give us a better idea of whether asset value by itself is the right measure to determine potential shareholding or not.

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- Other factors could influence this including future capex (which would drive future asset mix), liabilities, investment required, charging models and potential Crown shareholding.

4. How will debt associated with these assets/revenue streams be treated?

- We understand that different councils apply different methods in relation to debt funding their assets.
- Some councils' debt is direct and clearly separable; others raise debt at a general council level with some applied to water related capex. Some councils have no debt associated with water assets.
- We will need to work through this and determine how this debt is treated.

5. If water assets and liabilities are taken out of my council, what will this do to its ability to borrow?

- We will be asking councils for information on assets and liabilities to assess this and determine the impact, on balance sheets, revenue, liabilities and on the ability to borrow. This will vary from council to council.
- We will work through this with participating councils as part of the reform programme.

6. What will happen with my internal resource/staff allocated to water services? Will they transfer too?

- Ultimately this will be a matter to be worked through between employers and employees.
- Consideration will need to be given to the overall level of resource and capability required at an aggregated entity level. However, an objective of the reform is to see efficiencies through shared service delivery at scale.
- Efficiencies mentioned above may not necessarily mean a reduction in staff, but will instead help address current capability and capacity issues, as staff will be used more efficiently across the entity area.
- Once groupings are determined associated resourcing will also need to be worked through and we anticipate appropriate establishment and transition phases.
- Where your staff operate across water and other council assets, decisions will need to be made as to the best place for this skilled resource to remain.

7. Should I continue with my three waters investment programme now?

- For now, carry on as planned. We are asking councils to not let this process stop you from making planned investment in water assets.
- The additional investment provided by the Government as part of this reform programme is designed to enable you to undertake this planned investment despite the significant impact of COVID-19 on all councils and address existing investment gaps.
- We don't want to stop investment at this key time when improvements and change are needed nationwide, and economic benefits of investment and the associated impact of improved water services are needed.

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- When we ask for information to help us shape the reform programme, we will also be interested in your planned capital investment in water and any debt you are planning on raising to fund this.

FAQs Part 6: Water related revenue

1. Will councils retain their water-related revenue?

- Revenue relating to these assets would need to be available to the new entities to ensure that they have the funding (or are able to raise debt against this funding) to maintain, replace and invest in future water assets.
- Different models for revenue collection are applied across the country and we will work with you to understand this and consider whether this will need to evolve over time.

2. How will my ratepayers be charged for water under this model?

- We are looking to minimise the change to consumers.

3. How do I get comfort that ratepayers will not be cross-subsidising other regions and/or face increased costs?

- An aggregated model of service delivery will always involve some degree of cost sharing across the region. However, the extent and scale of this will be worked through in partnership with councils as part of the policy development through the reform programme.
- The intention of this reform is to address the significant ongoing under-investment in three water services in some areas and the capability, capacity and affordability issues that are facing some councils, particularly in light of the expected impact of COVID-19.
- From a national perspective, any increased costs due to cross-subsidisation in the short-term are likely to be offset in the medium-term by benefits of the changes to create sustainable larger scale entities.
- In the medium- to long-term, this includes the operational and efficiency advantages and cost benefits of operating at scale.

4. There have been references to economic regulation – what does this mean?

- Economic regulation is a form of regulation that is put in place to support efficiency and protect the interests of customers/consumers (for example, through information transparency and/or price/quality control).
- The proposed new arrangements could require some form of economic regulation to ensure this happens.
- The nature and extent of economic regulation will be informed, in part, by the nature of proposed entities and the manner in which they are funded.
- Economic regulation is a common feature associated with the provision of water utilities overseas and of other utilities in New Zealand such as electricity and telecommunications. Regulation of this type is typically introduced in phases.

5. How does my council disaggregate water revenue from rates?

The central and local government Steering Committee has put together the following compilation of FAQs to assist councils with an understanding of the proposed reform programme. These will be added to and updated as further questions arise and the reform programme progresses.

- Councils currently have different approaches to charging for water services with some being separate and some included as part of rates and some being volumetric.
- We will work with you through the reform programme, and provide guidance and advice (where required) to help you with this.

6. How will these entities be funded -- will there be Crown funding available?

- We won't know this until we are in a position to assess all the information and data from councils and understand what water assets, revenue, liabilities and forecasts look like.
- In the interim, the government has provided stimulus funding support investment required to support the reform programme.

FAQs Part 7: Other considerations

1. How will Taumata Arowai regulate/take into consideration rural drinking water supplies that are combined stock and domestic supply?

- Many rural drinking water supplies in New Zealand cater for both domestic and stock consumption.
- Taumata Arowai is working on acceptable solutions for end point treatment devices to ensure safe domestic supply of drinking water, in areas where supplies are connected with stock water.
- End point treatment means the treatment of drinking water at the final point of the supply at which the consumer can use or collect drinking water.
- Should an end point treatment device be required, the drinking water supplier will be responsible for the installation, maintenance and ongoing testing of the treatment device.
- Any acceptable solution for end point treatment would be available to suppliers that wish to utilise them but this will not be compulsory as some suppliers may choose to take different approaches. This approach will only be suitable to small supply schemes.

2. Will rural drinking water supplies be transferred to the responsibility of the new entities?

- This reform is focused on council-owned water supplies.
- Council-owned rural agricultural water supplies, that primarily provide stock water but also provide drinking water, will be considered as part of the service delivery reform.
- As the reform progress, we will work closely with councils to identify how the existing arrangements for their ownership and operation of rural agricultural water supplies could be transitioned into the new water entities.

3. Will councils be responsible for making sure the output of privately-owned small rural water schemes in their districts meets the drinking water standards enforced by Taumata Arowai?

- No, this will be the role of the regulator (Taumata Arowai).

The central and local government Steering Committee has put together the following compilation of FAQs to assist councils with an understanding of the proposed reform programme. These will be added to and updated as further questions arise and the reform programme progresses.

4. Why will Taumata Arowai be concerning itself with rural community water supplies when they've always been managed locally?

- Evidence indicates that some small drinking water suppliers face difficulties in providing safe and acceptable drinking water to their communities.
- Taumata Arowai's starting position is that rural communities should not be second-class citizens when it comes to the safety and quality of their drinking water.
- To this end, Taumata Arowai will work with rural drinking water schemes to ensure they are aware of their obligations to provide safe drinking water, and that they have practical technical advice on how to affordably do so.

5. I am a small council - will I get a say in shaping the solution or just have to follow suit? Will design be dominated by larger councils?

- An intention of the reform process is to ensure that the needs and interests of all communities are identified and understood.
- The views of all councils that sign the MoU will be heard and considered in the final design of the reform.

6. What happens if no neighbouring councils want to join up with my council?

- Once the MoUs have been signed, we will work with those councils that are interested in considering reform.
- The ability to join the reform programme is open to all councils at any stage so more councils may choose to join at subsequent phases.
- However, once the deadline for opting into the initial stimulus funding has passed, there is no further opportunity for councils to access that funding.

7. What happens if the other councils in a multi-regional entity haven't maintained their asset base or have large capex requirements in the next 5/10 years? Are my ratepayers now expected to subsidise this?

- These are the kinds of issues that need to be worked through in a fair and transparent manner as part of the reform programme.
- We expect the reform programme will greatly assist a shared understanding of these issues.

8. We have legislative obligations in the provision of water services. Will legislation be enacted to cover these responsibilities? What other legislation is proposed?

- Legislation will be enacted to transfer responsibilities from councils to the new water entities. Drafting of legislation is planned for next year following detailed policy and design undertaken through the early stages of the reform programme.

9. How will consents be dealt with?

- The new water entities will need to apply for consents under the Resource Management Act as councils do now.

10. What is the process for submitting questions and continued engagement in the reform programme?

- We expect questions to arise throughout the process and will be updating FAQs and distributing these to our webpage as we progress.

The central and local government Steering Committee has put together the following compilation of FAQs to assist councils with an understanding of the proposed reform programme. These will be added to and updated as further questions arise and the reform programme progresses.

- Beyond our proposed initial period of engagement, we will continue to meet and discuss pressing issues with the Steering Committee. We will also provide your council with regular update emails, and opportunities to join webinars and formal information-sharing sessions.
- If there are questions you would like to discuss prior to MoU signing, we will do our best to accommodate this. Please send an email to 3WatersSteeringGroup@dia.govt.nz with your query.
- Please make it as specific as possible so we can do our best to answer it in the short timeframe available. Given the short timeframes and work to be done as part of the programme, we may not be in a position to answer your question fully.



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: | <input type="text"/> |
| Position: | <input type="text"/> |
| Email: | <input type="text"/> |

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:¹

| | Expenditure Programme Milestone (including a description of how the milestone is identified) | Completion Date | Maximum Funding instalment amount (NZ\$) ² | 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]] ³ | NZ\$[INSERT HERE] | |
| | TOTAL | | [Must be less or equal to Total Maximum Amount Payable] | [Must be equal to the total estimated cost of the expenditure programme] | |

¹ All figures should be GST exclusive.

² 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.

³ The final Payment Request needs to be submitted with the quarterly report for the period ending 31 December 2021.

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:



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

1 Parties The Sovereign in right of New Zealand, acting by and through the Chief Executive of the Department of Internal Affairs (**DIA**)
[NAME OF RECIPIENT] (**Recipient**)

2 Background 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:

- 1. 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
- 2. 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.

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).

The New Zealand Government has also mandated Crown Infrastructure Partners Limited (**CIP**) to assist in managing such funding by undertaking a monitoring role.

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.

DIA has agreed to contribute funding to the Recipient on the terms and conditions of this Agreement (**Agreement**).

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**.

3 Conditions Precedent 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:

- 1. This Agreement, duly executed by the Recipient by 30 September 2020.
- 2. The Memorandum of Understanding, duly executed by the Recipient by 31 August 2020.

3. 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.

- 4 **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**).
- 5 **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 dates set out therein.
- 6 **End Date**

The End Date is 31 March 2022, or such later date determined by DIA in its discretion.
- 7 **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:

 - (a) Receipt of a duly completed Payment Request in accordance with clause 1 of Part 2.
 - (b) The Expenditure Programme(s) having commenced no later than 31 March 2021.
 - (c) DIA receiving and being satisfied with the quarterly reports specified in the Key Details, together with the other information required in this Agreement.
 - (d) No Termination Event, or event entitling DIA to suspend funding under this Agreement, subsisting.
 - (e) 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.

8 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:

- (a) Description and analysis of actual progress of the Expenditure Programme(s) against planned progress for the relevant Quarter;
- (b) A summary of expenditure, actual against budgeted (including underspend and cash float), for the relevant Quarter;
- (c) Plans for the next Quarter;
- (d) Forecast cashflows and forecast of the costs to complete the Expenditure Programme(s);
- (e) 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);
- (f) A summary of the number of jobs created, actual against expected, through people employed in the Expenditure Programme(s);
- (g) Any specific reporting requirements set out in the Delivery Plan; and
- (h) Any other information that is notified by DIA in writing to the Recipient.

The final report must include the following information:

- (a) Description and analysis of completion of the Expenditure Programme(s) against the original programme;
- (b) A summary of expenditure, actual against budgeted (including underspend), for the full Expenditure Programme(s);
- (c) Detail of the Recipient's proposed next steps;
- (d) An update on media, marketing and communication activities for the Expenditure Programme(s);
- (e) A summary of the number of jobs created, actual against expected, through people employed in the Expenditure Programme(s);
- (f) 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.

9 Special Terms

[None] / [***Special terms to be added***]

10 **Recipient's Bank Account** [xx-xxxx-xxxxxxxx-xxx]

11 **Representative** DIA's Representative:
Name: Allan Prangnell
Email: threewaters@dia.govt.nz

Recipient's Representative:
Name: [name]
Email: [email]

12 **Address for Notices** To DIA:
Three Waters Reform
Level 7, 45 Pipitea Street
Wellington 6011
Attention: Allan Prangnell
Email: threewaters@dia.govt.nz, with
a copy to legalnotices@dia.govt.nz
To the Monitor:
Attention: Anthony Wilson
Email:
3waters@crowinfrastucture.govt.nz

To the Recipient:
[address]
Attention: [name]
Email: [email]

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:
Position:
Date:

Name:
Position:
Date:

Name:
Position:
Date:

END OF PART 1

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 misspending 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

Report



DATE: 27 August 2020
TO: Mayor and Councillors
FROM: Group Manager, Corporate Services

FINANCIAL PERFORMANCE: JULY 2020

1 SUMMARY

- 1.1 The purpose of this report is to provide an indication of Council's financial performance for 1 month for July 2020.
- 1.2 This issue arises from a requirement for sound financial governance and stewardship with regards to the financial performance and sustainability of a local authority.
- 1.3 Council seeks to meet its obligations under the Local Government Act 2002 and the achievement of the District Vision adopted by the Council in May 2018, which are set out in the Long Term Plan 2018-28. These are stated on Page 2 of this agenda.
- 1.4 This report concludes by recommending that the Council receive the financial performance report for July 2020, attached as **Appendix 1**.

2 BACKGROUND

- 2.1 The Council receives monthly financial reporting so that it has current knowledge of its financial performance and position against targets and objectives adopted in the Long Term Plan 2018-28.
- 2.2 This allows for Council to understand the impact of the decisions made through these plans.
- 2.3 The Audit and Risk Committee receives a more detailed financial report on a quarterly basis.

3 CURRENT SITUATION

- 3.1 The report for July 2020, is the first report against the annual plan 2020-21.
- 3.2 As this is the first month of reporting, there is very little information to provide around variances or forecasting, therefore the report is a more summarised version than would normally be provided.
- 3.3 The report contains a sustainability report which provides an overview of the health of Councils financial position. The sustainability report measures Councils current performance against benchmarks, which are either required through the Financial Reporting and Prudence Regulations 2014, or the Local Government Funding Agency.
The sustainability report does not include the section on essential services, as this measure shows the capital expenditure for the year against the depreciation charged. Because only one month is accounted for the essential services measure would be skewed.
- 3.4 The report normally contains the standard financial statements, however for July 2020 not all statements have been included.
- 3.4.1 Comprehensive revenue and expense, which details the operating revenue and expenses of Council. The forecast column is currently stated as the full year budget as variances at this point will only be timing differences.
- 3.4.2 Notes are provided for each line within the statement of Comprehensive Revenue and Expense for variances over \$25,000.
- 3.4.3 There is no statement of Financial Position as this requires the previous financial year balances to be completed, audited and approved by Council. The current audit is scheduled to take place at the end of September for a 31 October 2020 sign off within the statutory deadline required in the Local Government Act 2002.
- 3.4.4 Reporting on projects has not been included, as these would relate to one month for the month of July 2020 and again will be reflective of timing differences.

4 OPTIONS

- 4.1 **Option 1:** Council can choose to receive the report or not.

5 SIGNIFICANCE AND ENGAGEMENT

- 5.1 The report is administrative in nature and although is of interest to the Community, the report is for information purposes only and consultation is not required.

6 ASSESSMENT OF OPTIONS (INCLUDING FINANCIAL IMPLICATIONS)

- 6.1 The report is for information only, the report is to inform the Council on the financial position therefore financial implications are discussed within the body of the report itself.

7 RECOMMENDATION(S)

- A) **THAT** Council receive the Financial Performance Report for July 2020

Lesley Crichton
Group Manager, Corporate Services

Appendix 1: Financial Performance for July 2020

Appendix 1



Financial Performance For July 2020

Contents

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Sustainability Report

| Total revenue | Total expenditure | Total surplus/(deficit) |
|--|---|---|
| \$1.93M | \$1.45M | \$0.48M |
| Is 4.34% more than the total budget of \$1.85M | Is 31.42% less than the total budget of \$2.11M | Is 287.17% more than the total budget of- \$0.26M |

SUSTAINABILITY

Rates to operating revenue 60.78%

| | |
|-------------------|---------|
| Rates Revenue | \$1.17M |
| Operating Revenue | \$1.93M |

60.78% of operating revenue is derived from rates revenue. Rates revenue includes penalties, water supply by meter and is gross of remissions. Operating revenue excludes vested assets, and asset revaluation gains.

Balanced budget ratio 133.47%

| | |
|-----------------------|---------|
| Operating revenue | \$1.93M |
| Operating expenditure | \$1.45M |

Operating revenue should be equal or more than operating expenditure. Operating revenue excludes vested assets and asset revaluation gains. Operating expenditure includes depreciation and excludes landfill liability and loss on asset revaluations. Year to date revenue is 133.47% of operating expenditure.

Interest to rates revenue (LGFA Cov.) 4.00%

| | |
|--------------------------------|---------|
| Net interest and finance costs | \$0.05M |
| Rates Revenue | \$1.17M |

4.00% of rates revenue is paid in interest. Our set limit is 25% of rates revenue. Net interest is interest paid less interest received. Rates revenue includes penalties, water supply by meter and gross of remissions.

Interest to operating revenue 2.43%

| | |
|--------------------------------|---------|
| Net Interest and finance costs | \$0.05M |
| Operating revenue | \$1.93M |

2.43% of operating revenue is paid in interest. Our set limit is 10% of operating revenue. Net interest is interest paid less interest received.

Liquidity Risk (LGFA Cov.)**146.65%**

| | |
|------------------------------|----------|
| Gross debt | \$19.62M |
| Undrawn committed facilities | \$3.98M |
| Cash and cash equivalents | \$5.17M |

The liquidity risk policy requires us to maintain a minimum ratio of 110% which is also an LGFA covenant. Our current liquidity risk is 146.65%

Statement of Comprehensive Revenue and Expense

| Statement of Comprehensive Revenue and Expense | | | | | | | |
|--|-------|----------------------------------|--------------------------------|--------------------------|--------------------------|----------------------------|----------------|
| For the period ended July 2020 | | | | | | | |
| | Notes | Full Year Forecast (\$000) | Full Year Budget (\$000) | YTD Budget (\$000) | Actual YTD (\$000) | Variance YTD (\$000) | Var/Bud % |
| Revenue | | | | | | | |
| Rates | | 15,907 | 15,907 | 1,174 | 1,174 | () | 0.0% |
| Grants and subsidies | 01 | 5,593 | 5,593 | 414 | 468 | 54 | 13.1% |
| Interest Revenue | | 43 | 43 | 4 | 5 | 1 | 25.8% |
| Fees and Charges | | 1,947 | 1,947 | 171 | 159 | (13) | -7.4% |
| Other revenue | 02 | 1,209 | 1,209 | 89 | 127 | 38 | 42.7% |
| Total operating revenue | | 24,700 | 24,700 | 1,851 | 1,931 | 80 | 4.3% |
| Expenditure | | | | | | | |
| Employee Benefit expenses | | 4,236 | 4,236 | 361 | 375 | 13 | 3.7% |
| Finance Costs | | 867 | 867 | 72 | 52 | (21) | -28.6% |
| Depreciation | 03 | 7,141 | 7,141 | 595 | 570 | (25) | -4.2% |
| Other expenses | 04 | 12,373 | 12,373 | 1,081 | 451 | (630) | -58.3% |
| Total operating expenditure | | 24,616 | 24,616 | 2,110 | 1,447 | (663) | -31.4% |
| Operating Surplus/(Deficit) | | 84 | 84 | (259) | 484 | 743 | -287.2% |

Notes to the Statement of Comprehensive Revenue and Expense

Comments were provided on permanent variances over \$25,000 only.

01 Grants and subsidies

The variance is mainly due to carrying forward of unspent grants received in last financial year.

02 Other revenue

Actuals are higher than planned mainly due to timing of Dog registration income.

03 Depreciation and amortisation

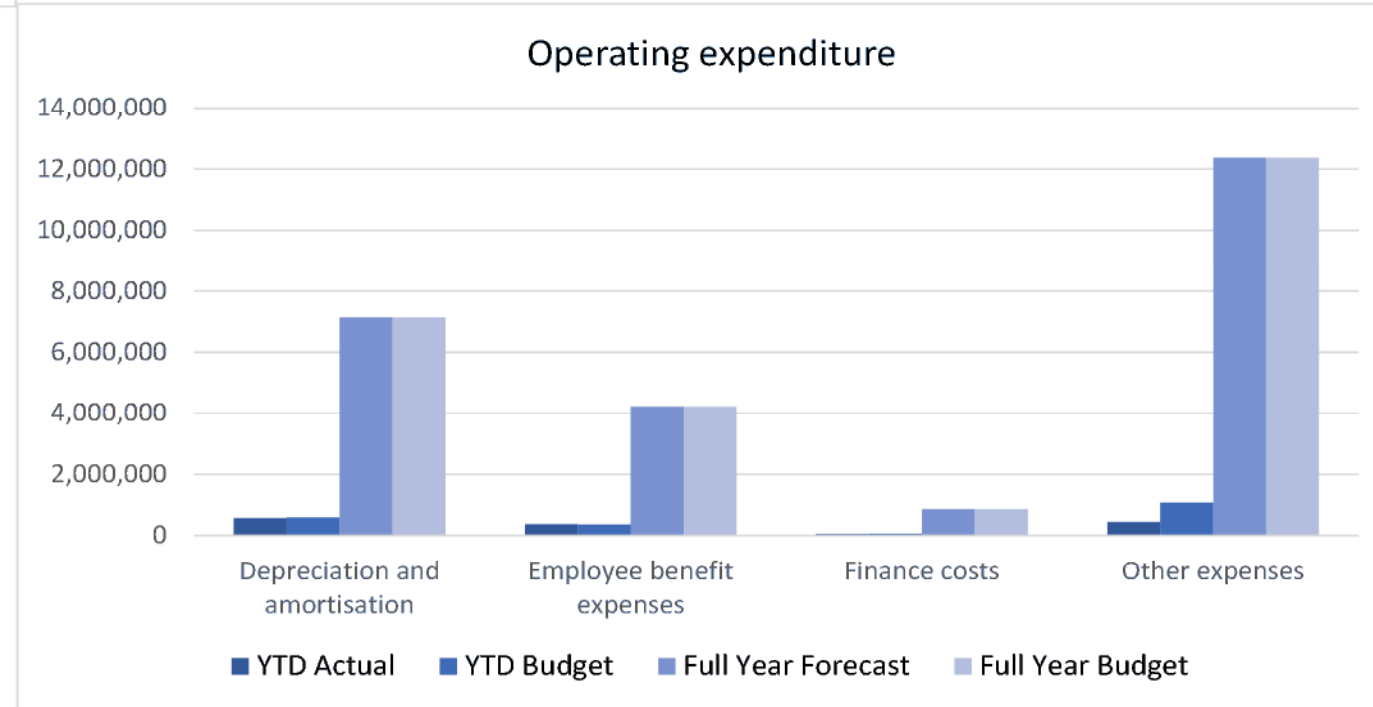
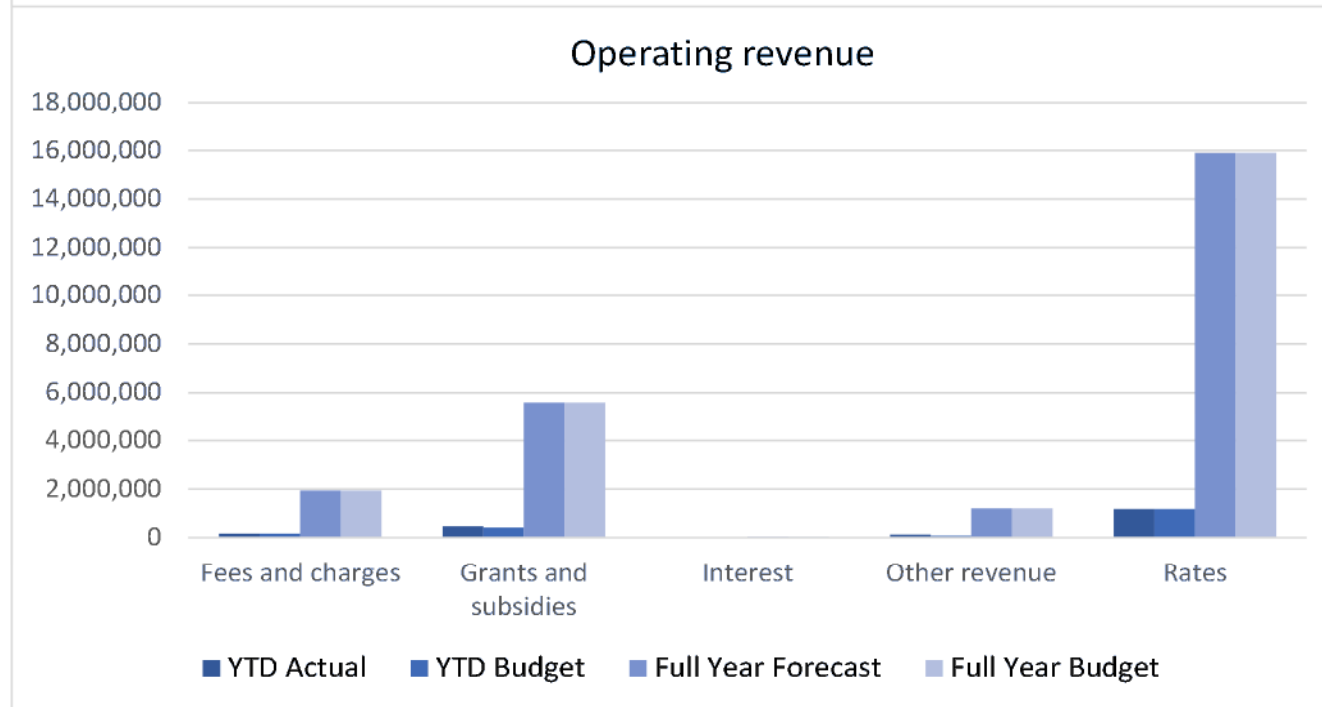
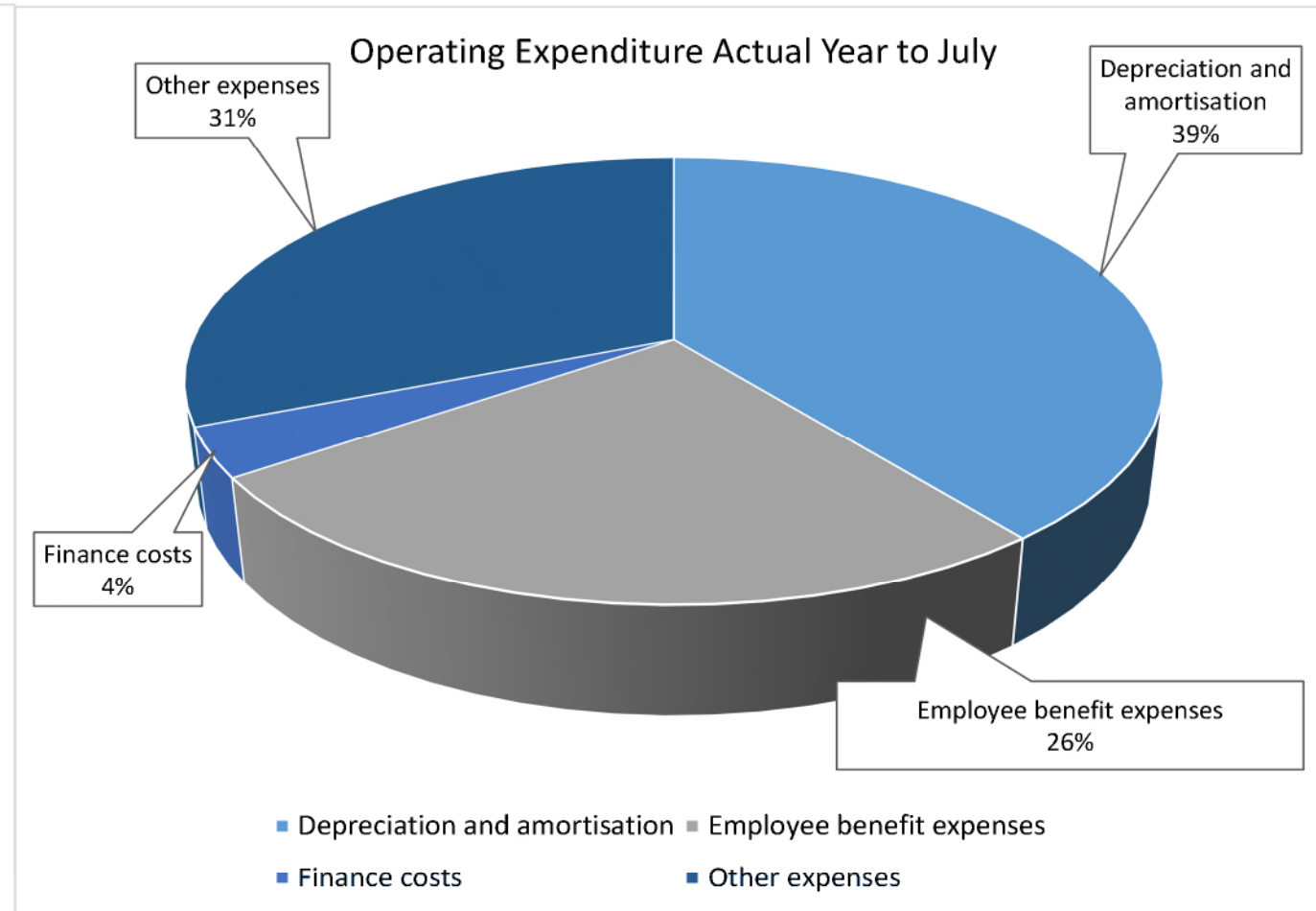
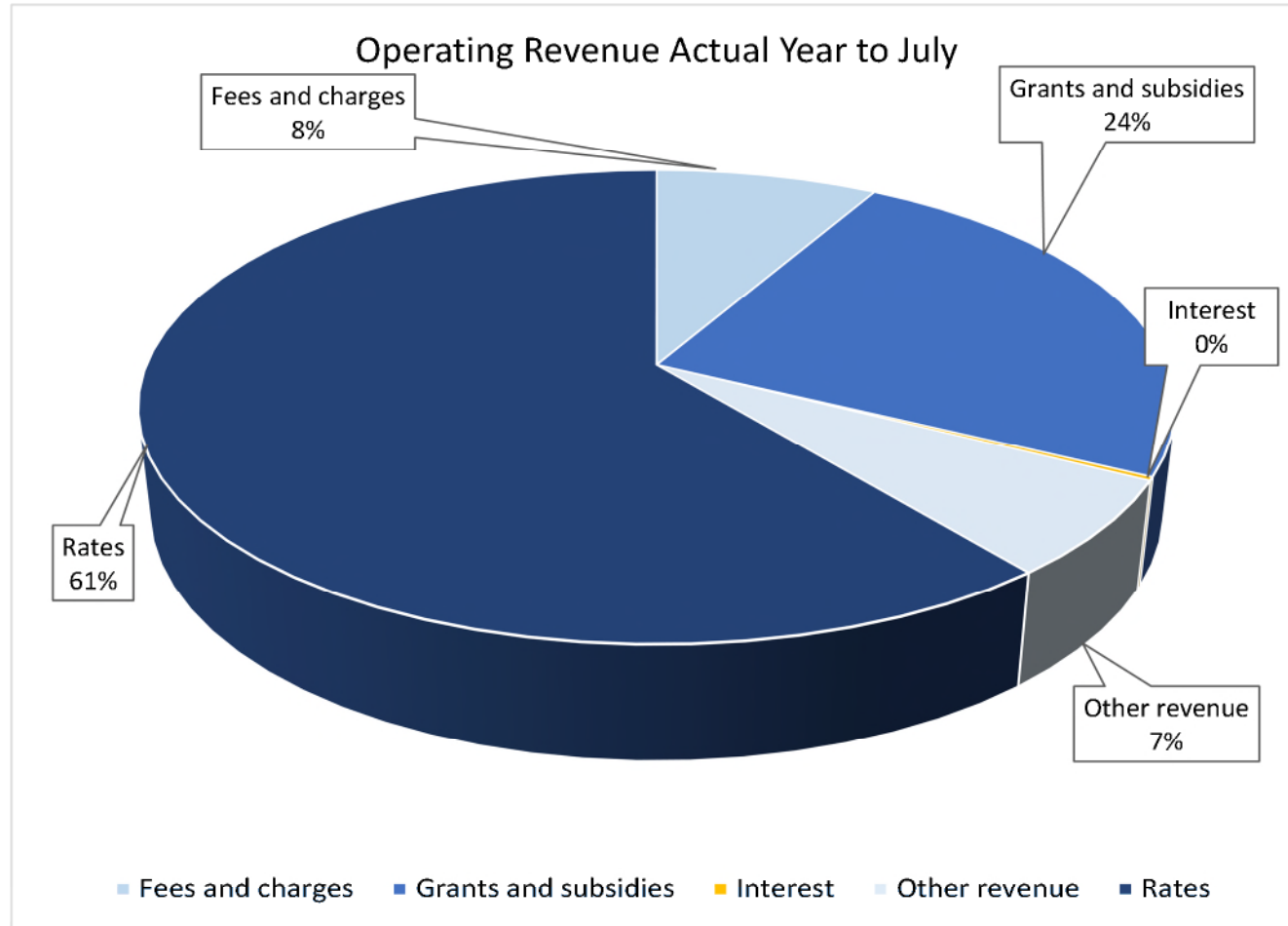
Current year actual depreciation calculations are still in progress and will be updated after capitalization for 2019/2020 financial year is completed.

04 Other expenses

Mainly due to timing, invoices for current year are still being received however we have estimated and recorded some expenditure where we can.

| | | | | | | | | |

Revenue & Expenditure Graphs



Report

DATE: 27 August 2020

TO: Mayor and Councillors

FROM: Group Manager, Corporate Services

INTERIM AUDIT MANAGEMENT REPORT YEAR ENDED 30 JUNE 2020

1 SUMMARY

- 1.1 The purpose of this report is to present the Interim Audit Management Report (attached as **Appendix 1**) for the year ended 30 June 2020.
- 1.2 The report is written by Chantelle Gernetzky, the appointed Auditor for Audit New Zealand and has been reviewed by Council management. Observations and comments from both are contained within the report.
- 1.3 Council seeks to meet its obligations under the Local Government Act 2002 and the achievement of the District Vision adopted by the Council in May 2018, which will be set out in the next Long Term Plan 2018-28. These are stated on Page 2 of this agenda.
- 1.4 This report concludes by recommending that Council receive the Interim Audit Management Report for the year ending 30 June 2020.

2 BACKGROUND

- 2.1 Each year Audit NZ will carry out an interim audit of Council. The audit focuses on Councils control environment and systems and determines the audit approach to the final audit.
- 2.2 In the first instance, the CE and Group Manager, Corporate Services receives a draft report for staff to provide a response to the comments.
- 2.3 The interim audit also reviews actions taken on previous years audit recommendations and progress from Council against those recommendations.

3 CURRENT SITUATION

- 3.1 There were previously 21 recommendations, 4 have been implemented or closed, 8 are open and 9 will be followed up during the final audit.
- 3.2 There were 4 new recommendations, and staff have commented on these in the body of the interim audit management report attached as **Appendix 1**.
- 3.3 No recommendations are marked 'urgent', all open recommendations are marked 'necessary'.
- 3.4 Previous recommendations were updated during the interim audit process. These can be found under Appendix 1 of the Interim Audit report itself.
- 3.5 COVID-19 is an area that audit will also focus attention during the final audit, particularly the impacts on financial controls, transactions and risk.

4 OPTIONS (WITH ANALYSIS)

- 4.1 The Council can decide to receive or not receive the report. There are no financial implications on receiving the report.

5 SIGNIFICANCE AND CONSULTATION

- 5.1 This report is for information and deemed to be of low significance. No consultation is required.

6 RECOMMENDATION

- A) **THAT** Council receive the Interim Audit Management Report for the year ended 30 June 2020.

Lesley Crichton
Group Manager, Corporate Services

Appendix 1: Interim Audit Management Report 30 June 2020

Report to the Council on the interim audit of

Westland District Council

For the year ended 30 June 2020

Contents

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Key messages

We have completed our interim audit for the year ended 30 June 2020. This report sets out our findings from the interim audit.

We reviewed the internal control systems and, where appropriate, tested the operation of relevant controls throughout the year. We will use this information to plan an efficient final audit.

Purpose and scope of our interim audit

The primary objective of our interim audit was to update our understanding of the Council's control environment and systems of internal control relevant to the audit. We have documented and tested controls within Council's key financial systems and will use the results of this work to determine the audit approach for our final audit.

During the interim visit, we also reviewed the service performance information systems that Council has in place to report against its measures and targets set out in its 2018-28 Long-term Plan. Our review also covered the systems that support the mandatory performance measures that Council are required to report on.

Matters identified during the audit

Covid-19

Covid-19 could impact how the group operates, how transactions are accounted for, potentially the control environment overall, and even financial viability.

We will need to get an understanding of what changes are happening as a result of Covid-19 across the group, and then understand if any of these changes result in new risks or changes to the level of risk we had previously identified.

Current and prior year issues

We have identified new recommendations within section 2 of this report. The progress against prior year issues is summarised in Appendix 1.

Thank you

We would like to thank management and staff for the assistance they have provided to us during the planning and interim stages of our audit.



Chantelle Gernetzky
Appointed Auditor
4 August 2020

1 Recommendations



Our recommendations for improvement and their priority are based on our assessment of how far short current practice is from a standard that is appropriate for the size, nature, and complexity of your business. We use the following priority ratings for our recommendations.

| Explanation | Priority |
|---|------------|
| <p>Needs to be addressed <i>urgently</i></p> <p>These recommendations relate to a significant deficiency that exposes Westland District Council to significant risk or for any other reason need to be addressed without delay.</p> | Urgent |
| <p>Address at the earliest reasonable opportunity, <i>generally within six months</i></p> <p>These recommendations relate to deficiencies that need to be addressed to meet expected standards of best practice. These include any control weakness that could undermine the system of internal control.</p> | Necessary |
| <p>Address, <i>generally within six to 12 months</i></p> <p>These recommendations relate to areas where Westland District Council is falling short of best practice. In our view it is beneficial for management to address these, provided the benefits outweigh the costs.</p> | Beneficial |

1.1 New recommendations

The following table summarises our recommendations and their priority.

| Recommendation | Reference | Priority |
|--|-----------|------------|
| <p>Creditor masterfile review</p> <p>Restrict access to “read only” for staff who independently review masterfile changes.</p> | 2.3 | Necessary |
| <p>Project management</p> <p>Introduce, document and apply a formal policy and approach for overseeing project delivery across the Trust.</p> | 2.4 | Beneficial |
| <p>Conflicts of interest</p> <ul style="list-style-type: none"> • Disclose the type of interest (pecuniary and non-pecuniary). • Disclose the potential conflict that could arise and how to manage this. | 2.5 | Beneficial |

| Recommendation | Reference | Priority |
|--|-----------|------------|
| Sensitive expenditure policies Align the policies with the OAG's good practice guidelines. | 2.6 | Beneficial |

1.2 Status of previous recommendations

Set out below is a summary of the action taken against previous recommendations. Appendix 1 sets out the status of previous year's recommendations in detail.

| Priority | Priority | | | |
|---|----------|-----------|------------|-----------|
| | Urgent | Necessary | Beneficial | Total |
| Open | 0 | 8 | 0 | 8 |
| Implemented or closed | 0 | 2 | 2 | 4 |
| Matters that will be followed up during our final audit visit | 0 | 9 | 0 | 9 |
| Total | 0 | 19 | 2 | 21 |

2 Assessment of internal control



The Council, with support from management, is responsible for the effective design, implementation, and maintenance of internal controls. In our interim audit, we considered the internal control relevant to preparing the financial statements and the service performance information. We reviewed internal controls relevant to the audit to design audit procedures that are appropriate in the circumstances. Our findings related to our normal audit work, and may not include all weaknesses for internal controls relevant to the audit.

2.1 Control environment

The control environment reflects the overall attitudes, awareness and actions of those involved in decision-making in the organisation. It encompasses the attitude towards the development of accounting and performance estimates and its external reporting philosophy, and is the context in which the accounting system and control procedures operate. Management, with the oversight of those charged with governance, need to establish and maintain a culture of honesty and ethical behaviour through implementation of policies, procedures and monitoring controls. This provides the basis to ensure that the other components of internal control can be effective.

We performed a high level assessment of the control environment, risk management process, and monitoring of controls relevant to financial and service performance reporting. We considered the overall attitude, awareness, and actions of the Council and management to establish and maintain effective management procedures and internal controls.

2.2 Internal controls

Internal controls are the policies and processes that are designed to provide reasonable assurance as to the reliability and accuracy of financial reporting. These internal controls are designed, implemented and maintained by Council and management.

We reviewed the internal controls, in your information systems and related business processes. This included the controls in place for your key financial information systems.

In performing this assessment, we have identified areas where we believe the control environment can be improved. These have been documented below and within Appendix 1 to this report.

2.3 Creditor masterfile review

Findings

Our review of expenditure systems identified that the Finance Manager had access to make changes to the creditor's masterfile as well as being a backup reviewer. Although the review would only occur when the Financial Accountant is away, it still poses a segregation

of duties risk, as the person performing the review should not have the ability to make changes in the masterfile.

Recommendation

Restrict access to “read only” for staff who independently review masterfile changes.

Management comment

Agreed. Change management process to be reviewed. Any change requests that are outside of the employee role access requirements will go through an IT change process. Any request will need to be made through the Jira service request system which will then require a senior manager approval before any change is made. IT change policy has already been written.

2.4 Project management

Findings

Due to the nature of the Council’s operations, there are usually multiple projects being performed, which need to be appropriately managed. Effective project management can help the Council achieve risk reduction, improved financial control, and operational and project success.

We understand that the Council has a number of informal practices which are applied to managing projects. The Council would benefit from having a more formal approach for managing projects. This will ensure that all projects continue to be successfully managed and there is consistency in the approach within the organisation.

We recommend that such an approach should include a:

- clear organisation-wide project management framework, which details how projects should be monitored, tracked and reported; and
- structured approach to post implementation review that identifies lessons learnt from past projects and applied to current projects.

Recommendation

Introduce, document and apply a formal policy and approach for overseeing project delivery across the Council.

Management comment

Microsoft projects has been rolled out to all staff involved in project management. Process documentation needs to be produced and is a work in progress.

Key roles are undertaking project management training. Recruitment is underway to appoint a full-time project manager to support projects.

2.5 Conflicts of interest

Findings

Conflicts of interest presented by related party transactions represent a particular area of risk in most public sector audits.

Conflicts of interest are an area of concern because of probity, and the potential for matters to gain a high profile. The Auditor-General continues to receive many queries, and requests for inquiries, on conflicts of interest. A conflict of interest, which is not well managed, can create significant legal and reputational risks.

We gained an understanding of how the Council identifies, manages and discloses related party transactions. In addition, we identified that the Interest register could be further enhanced by providing more detail regarding the nature of the relationship. This includes distinguishing whether the interest is pecuniary or non-pecuniary, and whether it represents an actual, potential, or perceived conflict of interest.

Recommendation

The interest register should be further enhanced by:

- disclosing the type of interest (pecuniary and non-pecuniary); and
- disclosing the potential conflict that could arise and how to manage this.

Management comment

To be reviewed.

2.6 Sensitive expenditure policies

We completed a review of the Council's current sensitive expenditure policies and practice against the Office of the Auditor General's sensitive expenditure guideline. From this review, we identified areas of policy improvement for the Council relating to the following:

- Defining "actual and reasonable" and specifying dollar limits and defined boundaries (including only when delegated authority exists).
- Specifying the monitoring and reporting regime.
- Ensuring claims are submitted promptly after the expenditure is incurred.
- Setting out the process for cancelling and destroying credit cards.
- Setting out the consequences of unauthorised use of credit cards, including ensuring that internet purchases need to reflect good security practice.
- If applicable, documenting the procedures around cash advances.

- Documenting procedures around the use of telecommunication equipment, including what costs are reimbursable for telephone calls and Wi-Fi usage while travelling.
- Documenting guidance on staying away over weekends as well as stopovers and travel with spouses.
- Policies should cover loyalty reward scheme benefits and where practically possible, treat loyalty rewards accruing to staff carrying out their official duties as the property of the Council.
- Explicitly prohibiting the reimbursement of mini-bar expenses as well as stating that separate meal expenses may not be claimed if a meal is provided as part of another package paid for by the entity.
- Procedures should outline that the most economical type and size of rental car should be used as well as private use of a rental car should be limited to matter incidental to the business purpose.
- Policies should cover tipping, what constitutes appropriate entertainment expenditure, farewell and retirement expenditure, and Koha and gifts.

Recommendation:

Ensure policies are aligned with the OAG's good practice guidelines.

(<https://oag.parliament.nz/2007/sensitive-expenditure/docs/sensitive-expenditure.pdf>).

Management comment

Group Manager Corporate Services to carry out a full review of the sensitive expenditure policy and process and incorporate relevant recommendations.

3 Adoption of new accounting standards



Public benefit entities must apply the new “group” accounting standards, PBE IPSAS 34 *Separate Financial Statements*, PBE IPSAS 35 *Consolidated Financial Statements*, PBE IPSAS 36 *Investments in Associates and Joint Ventures*, PBE IPSAS 37 *Joint Arrangements*, and PBE IPSAS 38 *Disclosure of Interest in Other Entities*, in preparing their 30 June 2020 financial statements.

Management is responsible for performing the necessary transition work to successfully implement these new standards. Areas of focus with the transition include:

- Assessing whether the revised control definition and guidance result in an entity being assessed as controlled under PBE IPSAS 35 for those entities previously assessed as not controlled under prior standards. For example, trusts established by the District Council that support the District Council in achieving its objectives.
- Determining whether a joint arrangement is categorised as a joint venture or joint operation. Joint ventures must be accounted for using the equity method.
- Updating the “group” accounting policies and “group” related disclosures in the financial statements. PBE IPSAS 38 generally requires more disclosure about interests in other entities than the previous standards.
- Implementing changes to systems and processes that may be necessary to support changes in accounting practices.
- Keeping relevant parties informed, such as your auditor and audit committee.

The transition to these new standard may require significant judgement for some arrangements and maybe particularly time consuming for those entities with a large number of potentially controlled entities. It is important that management substantially completes its transition work on these new standards well in advance of 30 June 2020. We recommend that as part of this, management prepare pro-forma financial statements so that revised group-related disclosures can be agreed.

We encourage the District Council to share its transition plan and transition work with us early in the audit process so we can agree issues and adjustments in a timely manner.

4 Useful publications



Based on our knowledge of the Westland District Council, we have included some publications that the Council and management may find useful.

| Description | Where to find it |
|---|--|
| COVID-19 Impact on Public Sector Reporting | |
| <p>The state of emergency in response to the COVID-19 coronavirus has significantly impacted most public sector entities. The consequences for the completion of annual reports and the annual financial statements are one part of this impact.</p> <p>We are developing a series of Bulletins in response:</p> <ul style="list-style-type: none"> • revaluations of property, plant and equipment and investment property; • service performance reporting; and • financial reporting. | <p>On our website under good practice.</p> <p>Link: COVID-19 bulletins</p> |
| Model financial statements | |
| <p>In December 2019, we issued updated model financial statements for Tertiary Education Institutions. The update primarily focuses on the adoption of the new group related-accounting standards PBE IPSAS 34 to PBE IPSAS 38. New disclosures for the early adoption of PBE IFRS 9 have also been included. While these are designed specifically for Crown entities, you may find these useful because of the application of group accounting standards.</p> <p>Our model financial statements reflect best practice we have seen. They are a resource to assist in improving financial reporting. This includes:</p> <ul style="list-style-type: none"> • significant accounting policies are alongside the notes to which they relate; • simplifying accounting policy language; | <p>On our website under good practice.</p> <p>Link: Updated Tertiary Education Institutions Model Financial Statements</p> <p>Link: Model Financial Statements</p> |

| Description | Where to find it |
|---|--|
| <ul style="list-style-type: none"> enhancing estimates and judgement disclosures; and including colour, contents pages and subheadings to assist the reader in navigating the financial statements. | |
| Tax matters | |
| <p>As the leading provider of audit services to the public sector, we have an extensive knowledge of sector tax issues. These documents provide guidance and information on selected tax matters.</p> <p>This includes new guidance on the reduction in deferred tax on buildings that was reintroduced as part of the COVID-19 response package.</p> | <p>On our website under good practice</p> <p>Link: Tax Matters</p> <p>Link: Reduction in deferred tax on buildings</p> |
| Client substantiation file | |
| <p>When you are fully prepared for an audit, it helps to minimise the disruption for your staff and make sure that we can complete the audit efficiently and effectively.</p> <p>We have put together a tool box called the Client Substantiation File to help you prepare the information you will need to provide to us so we can complete the audit work that needs to be done. This is essentially a tool box to help you collate documentation that the auditor will ask for.</p> | <p>On our website under good practice.</p> <p>Link: Client Substantiation File</p> |
| Severance payments | |
| <p>Because severance payments are discretionary and sometimes large, they are likely to come under scrutiny. The Auditor-General has released updated good practice guidance on severance payments. The guide is intended to help public sector employers when considering making a severance payments to a departing employee. It encourages public organisations to take a principled and practical approach to these situations. The update to the 2012 good practice guidance reflects recent case law and changes in accounting standards.</p> | <p>On the OAG's website under 2019 publications.</p> <p>Link: Severance payments</p> |

| Description | Where to find it |
|---|---|
| Good practice | |
| <p>The OAG’s website has been updated to make it easier to find good practice guidance. This includes resources on:</p> <ul style="list-style-type: none"> • audit committees; • conflicts of interest; • discouraging fraud; • good governance; • service performance reporting; • procurement; • sensitive expenditure; and • severance payments. | <p>On the OAG’s website under good practice. Link: Good practice</p> |
| Procurement | |
| <p>The OAG are continuing their multi-year work programme on procurement.</p> <p>They have published an article encouraging reflection on a series of questions about procurement practices and how processes and procedures can be strengthened.</p> | <p>On the OAG’s website under publications. Link: Procurement article</p> |

Appendix 1: Status of previous recommendations

Open recommendations

| Recommendation | First raised | Status |
|---|--------------|---|
| Necessary | | |
| Asset information and valuations | | |
| Valuation process and underlying assets information improve in the following areas: <ul style="list-style-type: none"> • Internal review processes. • The retention/creation of supporting information for unit rates, asset lives and changes to other assumptions. • Continued improvement of asset data. • Updating replacement cost unit rates in future valuations subject to indexing in 2019. • Reviewing road surfacing base lifecycles based on condition-based renewals. • Reviewing the engineering margin at 5-8% which is generally at the low end of ranges we have seen elsewhere. | 2019 | In progress. Recommendations were noted by management during the 2019 audit. These will be followed up the next time infrastructure assets are revalued. |
| Statement of Service Performance | | |
| <ul style="list-style-type: none"> • Ensure systems are implemented to enable Council to report on measures set within the long-term and annual plans. • Complete the residents' survey in 2020 as planned. | 2019 | Progress to be updated as part of our final audit testing. |
| Rates | | |
| <ul style="list-style-type: none"> • Ensure rates and per factor amounts are consistent. • Council collect the per factor amounts included in the resolution. • Address the other issues noted in the 2021 rates setting and invoicing processes. | 2019 | Progress to be updated as part of our final audit testing. |

| Recommendation | First raised | Status |
|---|--------------|--|
| NZTA revenue systems and controls | | |
| Improve the NZTA revenue system and implement controls. | 2019 | In progress. Management are working on improving the reconciliation and claiming process against NZTA. Our final audit will include a focus on reconciling the amounts in the general ledger to those claimed. |
| Infrastructure Asset Disposals | | |
| <ul style="list-style-type: none"> • Ensure that disposals are identified by the District Assets team and the Finance team is notified for removal from the fixed asset register. • Ensure the asset revaluation reserve related to disposed assets is identified and transferred to retained earnings. | 2019 | In progress. Finance have confirmed that disposal forms are being received, with regular reminders also being sent out to staff about completing the forms. We will test a sample of disposals during our final audit. |
| Monitoring asset revaluation reserves | | |
| Determine the asset revaluation reserve attributable to each revalued class of assets. | 2019 | In progress. Recommendation was noted by management during the 2019 audit. This will be followed up the next time infrastructure assets are revalued. |
| Reimbursement of the Mayor's expenditure | | |
| Raise the issue of the Mayor's expenditure reimbursement with the Remuneration Authority to determine how it should be resolved. | 2019 | Progress to be updated as part of our final audit testing. |
| Sensitive expenditure approval | | |
| <ul style="list-style-type: none"> • Ensure expenditure incurred by the Chief Executive is reviewed by the Mayor or Chair of the Finance, Audit and Risk Committee. • Ensure expenditure incurred by the Mayor is approved by the Deputy Mayor or Chair of the Finance, Audit and Risk Committee. | 2019 | Progress to be updated as part of our final audit testing. |

| Recommendation | First raised | Status |
|--|--------------|--|
| Preparation for the audit | | |
| <ul style="list-style-type: none"> A complete substantiation file be produced to support the information in the Annual Report. Review year-end adjustments and the completeness and accuracy of accruals and changes to provisions. | 2018 | Progress to be updated as part of our final audit testing. |
| Service request system | | |
| <ul style="list-style-type: none"> The Council continues to improve its asset information. Ensure the condition information is considered as part of the 2018/19 infrastructure valuations. Work to address the shortcoming in the current asset management practises, as identified through the LTP process. | 2018 | <p>In progress.</p> <p>Council is continuing to develop the Assetfinda system and are planning to implement Assetfinda Service requests through the maintenance contracts.</p> |
| Traffic counts | | |
| As part of the new arrangements with Beca, the Council put in place an appropriate, formal traffic count programme for calculating smooth travel exposure reporting. | 2018 | Progress to be updated as part of our final audit testing. |
| Asset and Asset revaluation | | |
| Management carry out regular reviews of the fixed assets register (FAR) to confirm the existence and ownership of assets. | 2018 | <p>In progress.</p> <p>Finance staff regularly review the FAR, however until a revaluation takes place, Finance is unlikely to be able to determine whether an asset still exists as a physical stock take is not undertaken. Smaller value non infrastructure assets are easier to track and are regularly disposed of.</p> |
| NZTA Claims process | | |
| <ul style="list-style-type: none"> Improve the process for compiling NZTA subsidy claims to ensure they align to the GL. Introduce an independent, evidenced review of the claim before it is submitted. | 2018 | Progress to be updated as part of our final audit testing. |

| Recommendation | First raised | Status |
|---|--------------|--|
| Group accounting policy | | |
| That the Council ensures consistency in group accounting policies going forward. | 2018 | Progress to be updated as part of our final audit testing. |
| Renewals under expenditure | | |
| Ensure that planned renewal expenditure is sufficient to avoid significant failure of assets in future years due to delayed maintenance not being carried out. | 2018 | Progress to be updated as part of our final audit testing. |
| Timely review of balance sheet reconciliations | | |
| Ensure that balance sheet reconciliations are reviewed on a timely basis. | 2018 | <p>In progress.</p> <p>During the interim phase of the audit, we observed that Suspense accounts and Bank reconciliations were prepared. The reconciliations are now prepared in MS-Excel, however we were unable to the date of review and the name of the person performing the review.</p> <p>For Excel based reconciliations, we recommend a cover sheet be included which would allow the preparer and review to document an audit trail of the controls operating.</p> |
| Legislative compliance | | |
| <p>Council develops and implements a sound legal compliance system for identifying and recording potential risks and assessing the likelihood of those risks across all activities of the organisation.</p> <p>Relying solely on the knowledge of staff exposes the organisation to risk, especially when staff change.</p> | 2016 | <p>In progress.</p> <p>The Electronic Document Management System is still being considered as an opportunity to assist once implemented.</p> |

Implemented or closed recommendations

| Recommendation | First raised | Status |
|--|--------------|--|
| Necessary | | |
| Expenditure approval limits | | |
| <ul style="list-style-type: none"> Ensure the Delegations Manual is kept up to date. Ensure changes to purchase order approval limits within MagiQ are supported by formal written documentation. | 2019 | Implemented. |
| Risk Management | | |
| <ul style="list-style-type: none"> Ensure continual review and update of the risk register and implementation of any mitigating actions identified. Ensure that the new risk management system, Quantate, is fully implemented to help better identify, evaluate, monitor and manage risk. | 2017 | Implemented. |
| Beneficial | | |
| Liability Management Policy compliance | | |
| Ensure the interest rate risk control limits are adhered to or consider altering the rates. | 2019 | Implemented. This was discussed with PwC, and they, along with management, were comfortable with the departure from limits due to the low interest rates. The Audit and Risk Committee adopted an updated Liability Management Policy and Investment Policy in March 2020. |
| Risk Register | | |
| <ul style="list-style-type: none"> Include a risk after controls column to show the residual risk. Identify the top 10 risks and review those monthly rather than the whole register and only review the whole register annually or six monthly. | 2019 | Implemented. The Quantate system is now fully operational, and staff are reviewing risks regularly. The Audit and Risk Committee was provided with a full register at the first meeting. |

| Recommendation | First raised | Status |
|---|--------------|--|
| <ul style="list-style-type: none"> Include some graphical representation of the top 10 risks and track movements in those as part of monitoring. | | <p>It has been determined that top 10 risks will be provided on a quarterly basis, with a full register review annually.</p> |

Appendix 2: Disclosures

| Area | Key messages |
|--|---|
| Our responsibilities in conducting the audit | <p>We carry out this audit on behalf of the Controller and Auditor-General. We are responsible for expressing an independent opinion on the financial statements and performance information. This responsibility arises from section 15 of the Public Audit Act 2001.</p> <p>The audit of the financial statements does not relieve management or the Council of their responsibilities.</p> <p>Our audit engagement letter contains a detailed explanation of the respective responsibilities of the auditor and the Council.</p> |
| Auditing standards | <p>We carry out our audit in accordance with the Auditor-General’s Auditing Standards. The audit cannot and should not be relied upon to detect every instance of misstatement, fraud, irregularity or inefficiency that are immaterial to your financial statements. The Council and management are responsible for implementing and maintaining systems of controls for detecting these matters.</p> |
| Auditor independence | <p>We are independent of the Council in accordance with the independence requirements of the Auditor-General’s Auditing Standards, which incorporate the independence requirements of Professional and Ethical Standard 1 (Revised): <i>Code of Ethics for Assurance Practitioners</i>, issued by New Zealand Auditing and Assurance Standards Board.</p> <p>To date, in addition to the audit we have carried out an engagement in relation to the Council’s Debenture Trust Deed, which are compatible with those independence requirements. Other than the audit and these engagements, we have no relationship with or interests in the Council or its subsidiaries.</p> <p>Other than the audit and this engagement, we have no relationship with or interests in the Westland District Council or its subsidiaries.</p> |
| Fees | <p>The audit fee for the year is \$142,100 (inclusive of the OAG Audit Standards and Quality Support fee) as detailed in our Audit Proposal Letter.</p> <p>Other fees charged in the period are \$3,500 for the audit of the Debenture Trust Deed.</p> |
| Other relationships | <p>We are not aware of any situations where a spouse or close relative of a staff member involved in the audit occupies a position with the Council or its subsidiaries that is significant to the audit.</p> <p>We are not aware of any situations where a staff member of Audit New Zealand has accepted a position of employment with the Council or its subsidiaries during or since the end of the financial year.</p> |

AUDIT NEW ZEALAND
Mana Arotake Aotearoa

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PO Box 2
335 Lincoln Road, Addington
Christchurch 8140



Report



DATE: 27 August 2020
TO: Mayor and Councillors
FROM: Regulatory Services Manager

POLICY – APPOINTMENTS TO DISTRICT LICENSING COMMITTEE

1 SUMMARY

- 1.1 The purpose of this report is to obtain a decision from Council on adopting a policy for the appointment of members of the Westland District Council District Licensing Committee.
- 1.2 This report only addresses the appointment of committee members to the District Licensing Committee (DLC).
- 1.3 This issue arises from requirements of the Sale and Supply of Alcohol Act 2012.
- 1.3 Council seeks to meet its obligations under the Local Government Act 2002, THE Sale and Supply of Alcohol Act 2012, and the achievement of the District Vision adopted by the Council in May 2018, which are set out in the Long Term Plan 2018-28. These are stated on Page 2 of this agenda.
- 1.4 This report concludes by recommending that Council adopt the policy for the appointment of members of the District Licensing Committee as attached in **Attachment 1** of this report, and the establishment of a DLC Appointments Committee, comprising of the Mayor, Deputy Mayor, Chief Executive, and District Licensing Committee Secretary.

2 BACKGROUND

- 2.1 Each DLC is required to have a Chairperson who may be an elected member of the territorial authority, or a Commissioner, appointed by the Chief Executive upon the recommendation of Council, and, a minimum of two (2)

Committee Members from the community who are appointed by a recommendation of Council.

- 2.2 Council is required to review membership of the DLC every five years, and may extend appointments for up to five years.

3 CURRENT SITUATION

- 3.1 Council appointed its first DLC Chairperson and a DLC comprising of three members in November 2013 as required under the Sale and Supply of Alcohol Act 2012 (The Act).
- 3.2 The Act also requires membership of a DLC Committee and the position of DLC Chairperson/Commissioner, to be reviewed every five years. In 2017, a new Commissioner was appointed, and the former Commissioner appointed as a member of the DLC. A further member of the DLC tendered his resignation in October 2018.
- 3.3 Membership of the DLC was not reviewed within the legislated timeframe, meaning that without reappointment by recommendation of Council, the term of the remaining two members ended in November 2018.
- 3.4 To enable the DLC to hold a Hearing, the DLC must comprise of a Chairperson/Commissioner, and at least two committee members of the DLC. Currently the DLC comprises of the appointed Commissioner, Mr R Simpson, and DLC Member, Mr B Thompson, whose terms are not due for review until 2022.
- 3.5 Council is currently in the position of not being able to schedule a Hearing, due to the absence of required membership on its DLC.
- 3.6 Council needs to initiate a process to appoint additional members to the DLC.
- 3.7 A proposed appointments policy is presented for consideration by Council. **(Attachment 1)**
- 3.8 The purpose of this policy is to guide the Council on the process for the appointment of members to the DLC.
- 3.9 In summary the policy sets out:
- The legislative background regarding the formation of a DLC
 - The structural requirements of a DLC
 - Requirements regarding who can be appointed to the DLC

- The responsibilities of the DLC
- Statutory and territorial authority requirements
- An appointments process

3.10 Under this policy it is proposed that an Appointments Committee, comprising of the Mayor, Deputy Mayor, Chief Executive, and District Licensing Committee Secretary, will identify a shortlist of candidates whom it considers meet the relevant criteria and will forward those to Council together with a report explaining why those candidates meet the criteria. The Appointments Committee would make a recommendation to Council in a closed meeting, during which, Council will decide whether to accept the candidates and, if so, how many.

3.11 With regard to numbers, it is suggested that five members are initially appointed to sit on a rotating monthly roster basis. This will allow for times when Committee members are unavailable for particular Hearings, whether through personal commitments, or conflicts of interest.

3.12 Appointment of District Licensing Committee members can be a sensitive process, given the responsibility of the role. Although a full DLC may only meet periodically, there will be a need to ensure that any contested applications can be rigorously processed by suitably experienced people in line with the Acts requirements.

4 OPTIONS

4.1 **Option 1.** Council adopt the attached policy for the appointment of members of the District Licensing Committee, and endorses membership of the Appointments Committee.

4.2 **Option 2.** Council amend the attached policy and/or membership of the proposed Appointments Committee

4.3 **Option 3.** Council does not adopt the attached policy and determines an alternative means by which to appoint members to the DLC, that is robust, transparent, and in accordance with legislative requirements.

5 SIGNIFICANCE AND ENGAGEMENT

- 5.1 Under the Sale and Supply of Alcohol Act 2012 Council is required to form one or more District Licensing Committees.
- 5.2 This report only deals with the adoption of a policy for the appointment of members to the District Licensing Committee. Therefore, no public consultation is required.

6 ASSESSMENT OF OPTIONS (INCLUDING FINANCIAL IMPLICATIONS)

6.1 Option 1 Analysis

Having a policy on the appointment of members of the District Licensing Committee provides a transparent mechanism for the appointment of DLC members. It clearly sets out the roles and responsibilities of the Appointments Committee and guides the Council on the overall appointments process

Recommending membership of the Appointments Committee to the defined positions of Mayor, Deputy Mayor, Chief Executive, and District Licensing Committee Secretary also eliminates the requirement to amend the Policy to take account of changing roles/positions, or to seek nominations for membership as sitting members retire, or seek employment opportunities elsewhere.

6.2 Option 2 Analysis

Council may identify some minor amendments to be incorporated into the draft policy at this meeting of Council. Council may also direct that further work be carried out on the policy. This will delay the identification and appointment of additional members to the DLC, and further delay the ability to hold a hearing.

Council may also determine alternative membership of the Appointments Committee from within its number.

6.3 Option 3 Analysis

Council may determine that a policy for the appointment of members to the DLC is not required. This will require an alternative process to be determined, which is transparent, and meet the requirements of the Sale and Supply of Alcohol Act 2012.

7 PREFERRED OPTION(S) AND REASONS

7.1 **Option 1.** *“Council adopt the attached policy for the appointment of members of the District Licensing Committee, and endorses membership of the Appointments Committee”* as attached in **Attachment 1** of this report, is the preferred option

8 RECOMMENDATION(S)

- A) **THAT** Council adopt the Appointment of Members of the District Licensing Committee Policy
- B) **THAT** Council endorses the DLC Appointments Committee comprising of the Mayor, Deputy Mayor, Chief Executive, and District Licensing Committee Secretary.

Te Arohanui Cook
Regulatory Services Manager

Appendix 1: Appointment of Members of the District Licensing Committee Policy

POLICY

APPOINTMENT OF MEMBERS OF THE DISTRICT LICENSING COMMITTEE

1. Introduction

- 1.1. The Sale and Supply of Alcohol Act 2012 (the Act) requires Council to appoint (1) one or more District Licensing Committees (DLC) as required to deal with licensing matters for its District.
- 1.2. The DLC must consist of (3) three members appointed by the Council. The Council may appoint (1) one member as the Chairperson, and that person must either be a member of the Council or a Commissioner appointed to the DLC by the Chief Executive Officer of the Council on the recommendation of Council.
- 1.3. The remaining two members of the DLC must be appointed from the Councils list of persons approved to be members of the DLC.
- 1.4. The list consists of persons who have experience relevant to Liquor Licensing matters, but are not involved with, nor have the appearance of being involved with, the alcohol industry; nor can they be a Police Constable, a Medical Officer of Health, an Inspector, or an employee of the Territorial Authority.
- 1.5. Appointments made to the list of approved persons can be for a period of up to (5) five years, and they can then be approved for (1) or more periods of up to (5) five years.
- 1.6. The DLC is responsible for considering and determining all applications, and renewals, for Licences and Managers Certificates. The DLC is also responsible for the consideration and determination of Temporary Authorities and Special Licences made under the Act.
- 1.7. A Quorum of the DLC may consist of the Chairperson, sitting alone to determine uncontested applications. Where objections are received to an application, then the Quorum must consist of a full (3) three member committee.
- 1.8. The Council may also appoint a member of the Council to act as Deputy Chairperson, to act in place of the Chairperson. This allows for times when the Chairperson is unable to attend to licensing matters due to, illness, absence, a conflict of interest, or any other sufficient reason.
- 1.9. The purpose of this policy document is to guide Council on the process for appointment of members of the DLC.

2. Appointment of Members of the DLC (Required Skills and Experience)

2.1. Statutory Requirements

- i. Section 192 of the Act details the statutory requirements of persons appointed to the DLC
- ii. A Territorial Authority must establish, maintain and publish its own list of persons approved to be members of the Territorial Authority's DLC.
- iii. A Territorial Authority must not approve a person to be included on that list unless that person has experience relevant to alcohol licensing matters
- iv. A person must not be included on the list of the Territorial Authority believes that the person has, directly or by virtue of his or her relationship with another person, such that involvement or appearance of involvement with the alcohol industry that he or she could not perform his or her duties without actual bias; or that person is a Constable, a Medical Officer of Health, and Inspector, or an employee of the Territorial Authority.

2.2 Territorial Authority Requirements

- i. The Council considers that, in addition to statutory requirement, and person that it appoints to the DLC should also possess;
 - Intellectual ability
 - An understanding of Regulatory issues
 - Either regulatory experience, or other experience that is relevant to the activities of the DLC
 - Sound judgement
 - A high standard of personal integrity
 - The ability to work as part of a team.

2.3 Appointment Process

- i. Appointment of the Chairperson or Deputy Chairperson shall be by resolution of the Council.
- ii. Appointments of the other members of the DLC shall be made through an Appointments Committee
- iii. The Appointments Committee shall comprise of the Mayor, Deputy Mayor, Chief Executive Officer, and District Licensing Secretary.
- iv. The Appointments Committee shall be responsible for determining the manner in which the appointments process will be undertaken and the terms and conditions of the selected candidate/s.
- v. The Council will, after receiving a report from the Appointments Committee, decide in open Council whether to accept the candidates and, if so, how many.

3. Appointment Period (Section 192)

Any appointment to the DLC shall be for an initial period of up to (5) five years

4. Resignation or Removal (Section 194)

A member of the DLC may resign from the committee at any time by providing a written resignation to the Territorial Authority

In the case of the Chairperson, or the Deputy Chairperson, they shall cease to be Chairperson if he or she ceases to be a member of the Territorial Authority.

The Territorial Authority may at any time remove a member of the DLC for inability to perform the functions of office, bankruptcy, neglect of duty, or misconduct, proved to the Territorial Authority's satisfaction.

5. Appointment by Advertisement

Where the Territorial Authority decides to advertise a vacancy, the Appointments Committee will consider applications and make a recommendation to Council.

A shortlist of candidates will be made and interviewed by the Appointments Committee, and a report on each candidate provided to Council, with their recommendation.

6. Appointment Without Advertisement

Where the Council decides not to advertise a particular vacancy, it will refer the matter to the Appointments Committee. The Committee will identify a shortlist of candidates whom it considers to meet the above criteria and will forward those to the Council, with a report, explaining why these candidates meet the criteria, and their recommendation for appointment to the DLC.

7. Final Appointment

The Council will make a decision in a public-excluded session (thus protecting the natural privacy of persons). Public announcement of the appointment will be made as soon as practicable after the Council has made its decision.

An elected member who is under consideration to fill a particular vacancy may not take part in the discussion or vote on that appointment.

8. Conflicts of Interest

Members of the Appointments Committee and the DLC will avoid situations where their actions could give rise to a conflict of interest.

9. Remuneration

Remuneration of members of the DLC is determined by the Ministry of Justice.

Additionally, a member of the DLC is entitled to be reimbursed for the actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member.

10. Review

This policy will be reviewed on or before 30 June 2023.

Sale and Supply of Alcohol Act 2012

District licensing committees

186 Territorial authorities to appoint district licensing committees

Each territorial authority must appoint 1 or more licensing committees as, in its opinion, are required to deal with licensing matters for its district

189 Composition of licensing committees

- (1) Each licensing committee consists of 3 members appointed by the territorial authority for that territorial authority's district.
- (2) A territorial authority must appoint 1 member as the chairperson and that person must be a member of that territorial authority or a commissioner appointed to the licensing committee.
- (3) A territorial authority may appoint a member of that territorial authority to be deputy chairperson, and act in place of the chairperson if the chairperson is unable to act because of illness or absence from New Zealand, or for other sufficient reason.
- (4) While acting in place of the chairperson, the deputy chairperson is a member of the committee and has all the powers and duties of the chairperson.
- (5) No act done by the deputy chairperson serving as acting chairperson in the chairperson's absence, and no acts done by the committee while the deputy chairperson is so serving, can in any proceedings be questioned on the ground that the occasion for his or her so serving had not arisen or had ceased.
- (6) The other 2 members of each licensing committee must be appointed from the territorial authority's list maintained under section 192.
- (7) For the purposes of subsection (2), a member of a territorial authority means an elected member of a territorial authority and, in relation to the Auckland Council, includes a member of the governing body (as defined in [section 4](#) of the Local Government (Auckland Council) Act 2009) or a member of a local board established under [section 10](#) of that Act.

192 Territorial authority to establish and maintain list of licensing committee's members

- (1) A territorial authority must either—
 - (a) establish, maintain, and publish its own list of persons approved to be members of the territorial authority's licensing committee or committees; or
 - (b) together with 1 or more other territorial authorities, establish, maintain, and publish a combined list of persons jointly approved by those authorities to be members of the territorial authorities' licensing committees.

- (2) A territorial authority must not approve a person to be included on the list unless that person has experience relevant to alcohol licensing matters.
- (3) A person may be approved for inclusion on the list for a period of up to 5 years and may be approved for any 1 or more further periods of up to 5 years.
- (4) The name of a person must be removed from the list—
 - (a) when 5 years have elapsed since the territorial authority approved the person's name on the list unless the approval is renewed under subsection (3); or
 - (b) if the person resigns or is removed under [section 194](#).
- (5) A person must not be included on the list if—
 - (a) the territorial authority believes that person has, directly or by virtue of his or her relationship with another person, such an involvement or appearance of involvement with the alcohol industry that he or she could not perform his or her duties without actual bias or the appearance of bias; or
 - (b) the person is a constable, a Medical Officer of Health, an inspector, or an employee of the territorial authority.

193 Appointment of commissioners

- (1) The chief executive of a territorial authority may, on the recommendation of the territorial authority, appoint a commissioner or commissioners to any of the territorial authority's licensing committees and any person so appointed has all the functions, powers, and duties of the chairperson of the licensing committee.
- (2) The chief executive may only appoint a person as a commissioner if that person is of good standing in the community and has the necessary knowledge, skill, and experience relating to matters that are likely to come before the committee.
- (3) A person must not be appointed as a commissioner if—
 - (a) the territorial authority believes that person has, directly or by virtue of his or her relationship with another person, such an involvement or appearance of involvement with the alcohol industry that he or she could not perform his or her duties without actual bias or the appearance of bias; or
 - (b) the person is a constable, a Medical Officer of Health, an inspector, or an employee of the territorial authority.
- (4) A commissioner appointed under this section holds office for a term, stated when the commissioner is appointed, of up to 5 years and may be reappointed for 1 or more further periods of up to 5 years.

Report



DATE: 27 August 2020
TO: Mayor and Councillors
FROM: Regulatory Services Manager

ANNUAL DOG CONTROL POLICIES AND PRACTICES REPORT

1 SUMMARY

- 1.1 The purpose of this report is to adopt the Annual Report on Dog Control Policies and Practices for the year ending 30 June 2020.
- 1.2 This issue arises from the statutory requirement pursuant to Section 10A of the Dog Control Act 1996 to adopt and publish an Annual Report on Dog Control Policy and Practices for the year ended 30th June 2020.
- 1.3 Council seeks to meet its obligations under the Local Government Act 2002, the Dog Control Act 1996, and the achievement of the District Vision adopted by the Council in May 2018, which are set out in the Long Term Plan 2018-28. These are stated on Page 2 of this agenda.
- 1.4 This report concludes by recommending that Council adopt the Annual Report on Dog Control Policy and Practices for the year ending 30 June 2020, attached as **Appendix 1**.

2 BACKGROUND

- 2.1 It is a requirement of Section 10A of the Dog Control Act 1996 to prepare a report on Dog Control Policy and Practices. Following adoption, Council must give public notice that the report has been adopted, notify the Secretary of Local Government, and make the report publicly available online.

3 CURRENT SITUATION

- 3.1 The attached report has been prepared in accordance with Section 10A of the Dog Control Act 1996 in respect to the number of; registered dogs, probationary and disqualified owners, dogs classified as dangerous or

menacing, infringement notices, complaints received, and prosecutions taken in or by the territorial authority.

4 OPTIONS

4.1 There is a legislative requirement for Council to adopt an Annual Report on Dog Control Policy and Practices and make the report publicly available by 31st October in the same year. This report is submitted for adoption in accordance with those legislative requirements.

5 SIGNIFICANCE AND ENGAGEMENT

5.1 The adoption of the attached Annual Report is an administrative function required of Council under the Dog Control Act 1996 and is therefore of low significance in accordance with Council's Significance and Engagement Policy.

5.2 As this item does not trigger Council's Significance and Engagement Policy, public consultation is not required. It is a legislative requirement under the Dog Control Act 1996, that following adoption, must be notified and made publicly available online.

6 ASSESSMENT OF OPTIONS (INCLUDING FINANCIAL IMPLICATIONS)

6.1 A draft report is attached for consideration, and recommended for adoption, in accordance with Section 10A of the Dog Control Act 1996.

6.2 There are no financial implications for Council as this is an administrative statutory function required under legislation.

7 PREFERRED OPTION(S) AND REASONS

7.1 The preferred option is that Council adopted the attached draft report to meet the legislative requirement within the Dog Control Act 1996.

8 RECOMMENDATION(S)

A) **THAT** Council adopt the Annual Dog Control Policy and Practices Report for the year ended 30th June 2020.

- B) **THAT** the adoption of the Annual Dog Control Policy and Practices Report for the year ended 30th June 2020 is publicly notified, and made publicly available on Council's website, and

- C) **THAT** the Secretary for Local Government is advised that it has been published in accordance with Section 10A of the Dog Control Act 1996, and Section 5(1) of the Local Government Act 2002.

Te Aroha Cook
Regulatory Services Manager

Appendix 1: 2019/2020 Annual Dog Control Policy and Practices Report.

Westland District Council 2019/2020 Annual Dog Control Policy and Practices Report

1.0 The Dog Control Act 1996

The Dog Control Act 1996 (the Act) requires territorial authorities to publicly report on Dog Control Policies and Practices as outlined under Section 10A. This report contains information and statistics on the Westland District council's Dog Control activity for the year 1 July 2019 to 30 June 2020.

2.0 Dog Control Policy and Bylaw

There have been no reviews or amendments made to the Westland District Council Dog Control Bylaw or Dog Control Policy during this reporting period.

3.0 Administration

3.1 Personnel

Council employs one full-time Warranted Animal Control Officer (ACO), and a part-time after-hours ACO to cover weekends and rostered after-hours duties when the Animal Control Officer is on leave. Appropriately warranted Compliance Officer Personnel may also be rostered to cover ACO functions when primary personnel are on leave.

3.2 Hours of Operation

The Animal Control Officer works from 8:30am to 4:30pm, Monday to Friday and responds to all animal complaints. ACO's respond to complaints 24 hours a day on rostered days, weekends, and statutory holidays, ensuring Council has appropriate cover to deliver service delivery expectations throughout the year. Hours of operation remained unchanged during the COVID-19 Alert Levels with ACO's responding as Essential Service personnel, when required.

3.3 Dog Pound

A Pound is operated in co-operation with the Hokitika SPCA. Council has four designated pound kennels within the SPCA on Hau Hau Road, two kennels situated at the Haast Police Station, and one kennel situated at the Franz Josef Police Station. Council is responsible for the maintenance and management of its own pound assets and facilities, and the stewardship and nourishment of any dogs impounded in its care. The pound operates 24/7 with public access by appointment only via the on-duty ACO, to claim any dog/s under their ownership that have been impounded. Dogs are only released to owners on full payment of due fees, including infringement fees. Any dog not claimed within seven days, if not suitable for rehoming through the SPCA or another approved facility, is euthanised, All dogs are assessed by an ACO and Officers of the SPCA to determine suitability for rehoming.

4.0 Fees and Charges

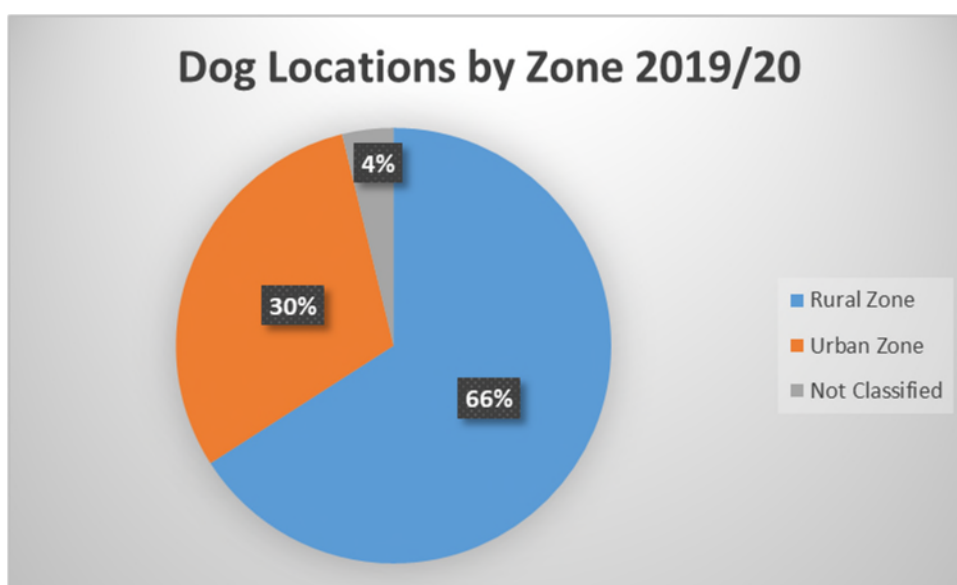
The following fees and charges were adopted by Council for the delivery of Animal Control services for the 2019/2020 year.

The Selected Dog Owner (SDO) category was removed and replaced with a Responsible Dog Owner (RDO) category. Dog owners must meet identified criteria when making application for RDO status, and properties must pass an inspection to qualify for the RDO status. The Working Dog Registration category was also removed, following public consultation, with dogs being registered as either rural or urban.

| Animal Control | Fee (GST inclusive) 2019/2020 |
|---|---|
| Urban Registration (Hokitika and Kaniere Township) | \$74 |
| Registration other Areas | \$58.50 |
| Responsible Dog Owners (RDO) | \$50 Inspection Fee – First Year \$50 Registration Fee – All Areas |
| Registration Dangerous Dog | Standard Registration Fee plus 50% |
| Late Registration – 1 August | Standard Registration Fee plus 50% |
| First Impounding Offence | \$82 |
| Second Impounding Offence | \$164 |
| Third Impounding offence | \$245 |
| Feeding/Day | \$26 |
| Call-out for Dog Reclaiming | \$78 |

5.0 Dog Population Analysis

A total of 1,972 dogs (an increase of 182 on the previous year) and 1,438 owners (an increase of 95 on the previous year) are listed within Council’s database for the reporting period. A total of 1300 dogs are located in the rural zone, 597 in an urban zone, and 75 to be assigned a rural or urban location.



6.0 Enforcement

The format for reporting of complaints, impounding, classification, infringements, and court proceedings was modified for the 2018/19 period and continues in use for this reporting period. Where applicable, generalised figures from previous years have been included in the tables below. "NR" identifies where specifics were 'Not Recorded' by category.

6.1 Complaints

A total of 439 complaints were received during the 2019/2020 reporting period and is compared to previous years as follows.

| Complaints Received | 2015/16 | 2016/17 | 2017/18 | 2018/19 | 2019/20 |
|---------------------|------------|------------|------------|------------|------------|
| Dog Attack | NR | NR | NR | 19 | 15 |
| Rushing/Threatening | NR | NR | NR | 9 | 14 |
| Roaming | NR | NR | NR | 101 | 249 |
| Barking | NR | NR | NR | 32 | 47 |
| Welfare | NR | NR | NR | 21 | 16 |
| General | NR | NR | NR | 41 | 98 |
| Total | 223 | 360 | 104 | 223 | 439 |

6.2 Impounding

A total of 67 dogs were impounded during the reporting period of which 38 were returned to their owners, eight re-homed, and five euthanised.

6.3 Classification of Dog Owners

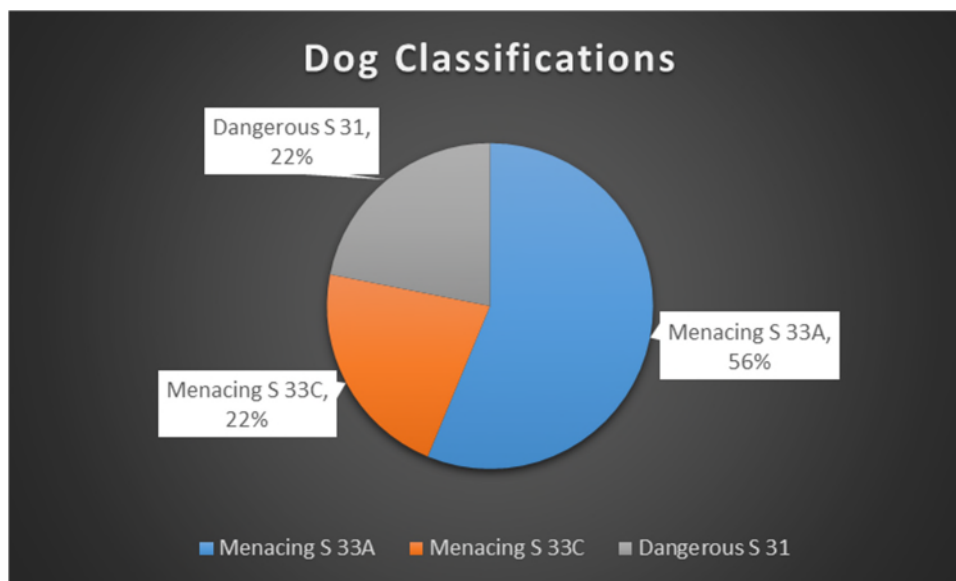
The Council did not classify any dog owners as 'disqualified from owning a dog' in the 2019/2020 year. There are no registered 'disqualified' or 'probationary' owners within the Westland District.

6.4 Classification of Dogs

Dogs can be classified in three different ways:

- Menacing classifications under Section 33A of the Act are applied to a dog which the Council considers may pose a threat to any person, stock, poultry, domestic animal or protected wildlife due to observed or reported behaviour; or any characteristic associated with the dog (their behaviour);
- Menacing classifications under Section 33C of the Act are applied to a dog which belongs wholly or predominantly to one or more breeds or types listed in Schedule 4 of the Act (their breed); or
- Dangerous dogs under Section 31 of the Act are applied to a dog if the owner is convicted under 57A(2), if there is evidence that the dog is aggressive or the owner admits that the dog is aggressive.

Of the 1,972 known dogs in Westland, eighteen are registered as 'Menacing' under Section 33A, seven are registered as 'Menacing' under Section 33C and seven registered as 'Dangerous'.



Under Council's Dog Control Policy, all dogs classified as menacing must be neutered, and muzzled when in a public area.

| | 2018/19 | 2019/20 | Total in District |
|-----------------------|---------|---------|-------------------|
| Menacing S 33A | 6 | 12 | 18 |
| Menacing S 33C | 1 | 6 | 7 |
| Dangerous S 31 | 9 | 0 | 7 |

6.5 Infringements

A total of 86 infringement notices were issued for the following offences:

| Infringement Offence | 2018/19 | 2019/20 |
|---|---------|---------|
| Failure to comply with any bylaw | 6 | 14 |
| Failure to comply with effects of classification | 4 | 3 |
| Failing to register dog | 68 | 204 |
| Failure to keep dog under control | 5 | 10 |
| Failure to provide proper care | 3 | 0 |

6.6 Court Proceedings

There were no court prosecutions undertaken for offences under the Act for the 2019/2020 reporting period.

7.0 Other Services

7.1 Multiple Dog Permits (3+ Dogs – Urban Zone)

A permit is required to keep more than two dogs on a property in an urban area. The issue of a permit is conditional on the suitability of an owner, their property and obtaining of approval from affected neighbours.

In this reporting period, five multiple dog permits are current, and four owners have surrendered their permits, as they no longer have more than two dogs on their property.

7.2 Responsible Dog Owners

Forty-one applications have been approved for Responsible Dog Owners in the reporting period.

7.3 Selected Owner Policy (SOP) Status

SOP status provides a discounted rate of dog registration as an incentive to responsible dog owners. To qualify for SOP status all dogs must be registered on or by 1st August of the current registration year, dog/s must be micro-chipped, there have been no justified complaints against, infringement, or impounding of any dog in the past two years, and the property has been inspected and approved in relation to appropriately fenced areas or kennel runs.