



AGENDA

Late Reports Ordinary Council Meeting Wednesday, 6 July 2022

Date: Wednesday, 6 July 2022

Time: 10.30 am

**Location: Ngā Hau e Whā, William Fraser Building,
1 Dunorling Street, Alexandra**

(Due to COVID-19 restrictions and limitations of the physical space, public access will be available through a live stream of the meeting.)

The link to the live stream will be available on the Central Otago District Council's website.)

**Sanchia Jacobs
Chief Executive Officer**

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5 REPORTS

22.5.30 WATER SERVICES ENTITIES BILL

Doc ID: 585275

1. Purpose of Report

To consider preparing a submission on the Water Services Entities Bill and the implications of this on Council management of water services (water, wastewater and stormwater) during the reform transition period.

Recommendations

That the Council

- A. Receives the report and accepts the level of significance.
- B. Agrees that a submission to the Water Services Entities Bill be drafted and circulated to Councillors for feedback and finalising prior to 22 July.
- C. Agrees that the submission will be ratified at the Council meeting on 24 August 2022.

2. Background

The Water Services Entities Bill (the Bill) was introduced on 2 June 2022 and had its first reading in Parliament on 9 June 2022. The Bill is now in Select Committee and submissions opened on 22 June, with a closing date of 22 July 2022.

The Bill will establish four publicly owned water services entities that will provide water services in place of local authorities. The Bill contains the ownership, governance, and accountability arrangements relating to those entities, and provides for transitional arrangements during an establishment period. The entities will commence delivery of services on 1 July 2024.

Each of the four Water Services Entities has been named after its geographical location, Northern, Western-Central, Eastern-Central, and Southern. Each Council has been placed in an entity, with Southern following the boundaries of the takiwā of Ngāi Tahu.

This Bill is just one component of a comprehensive package to reform water services that are currently provided by local authorities. The Bill will need to be followed by further legislation to provide for:

- additional, detailed implementation arrangements for the entities and service delivery, including provisions relating to the transfer of assets, liabilities, and other matters from local authorities to new water services entities;
- specific powers, functions, and responsibilities of the new water services entities, and pricing and charging arrangements;
- economic regulation and consumer protection regimes relating to the new water services system;
- any changes to Treaty settlement legislation that are required to ensure that settlement obligations are carried forward from territorial authorities to the new water services entities;

- detailed changes to the Local Government Act 2002, the Water Services Act 2021, and other legislation to transfer service delivery arrangements to the new water services entities.

The Bill is complex and requires a range of expertise to adequately review the proposed legislation and provide informed feedback. For the purposes of this report, Central Otago District staff analysis has been limited to providing an outline of the Bill, the implications of the transitional requirements on Council, and analysis of the Bill against the feedback provided by Central Otago District Council to Local Government New Zealand on the Government Three Waters Reform Proposal in August 2021.

3. Overview of Transitional Requirements

Schedule 1 of the Bill contains the transitional, savings and related provisions. This has been reviewed by council officers to understand the operational implications of this on Council.

Appointment of the Establishment Board and Chief Executive

The Minister has additional responsibilities during the establishment period to oversee the establishment of the entities. This role includes the function and power to appoint and remove members of the establishment board of each entity.

The Department of Internal Affairs are responsible for appointing an establishment chief executive to each entity. The establishment chief executive role can extend up to 1 July 2026.

Transfer of Assets, Functions, Liabilities, Staff and Other Matters to the Entity

The establishment chief executive is required to prepare an allocation schedule. This schedule is required to specify assets, liabilities, and other matters that relate wholly or partly to the provision of water services by council. Where these relate partly to water services, then the schedule needs to identify which other council services they relate to.

The Department of Internal Affairs may prepare an establishment plan for an entity. The plan must include:

- a) the processes, policies, and guidance for identifying the functions, staff, and assets, liabilities, and other matters to be transferred to the entity; and
- b) the proposed timing for the transfer of functions, staff, and assets, liabilities, and other matters to the entity; and
- c) the reporting requirements for the quarterly reports to be provided to the Department of Internal Affairs.

It may also include any other matters the Minister considers relevant.

Planning for Work beyond 1 July 2024

The entity is required to prepare an asset management plan and funding and pricing plan during the establishment period. The draft plans are required to be prepared by 1 July 2023.

The requirements of the Bill relating to engagement with consumers and stakeholders on the asset management plan and funding and pricing plan do not apply to the first plans prepared during the transition period. Subsequent asset management and funding and pricing plans are required to be prepared every three years and cover a 10-year period, and have requirements regarding engagement with councils, consumers and communities.

Council is required to co-operate with the Southern Water Services Entity to facilitate the water services reform. This includes complying with any reasonable request for:

- Council employees to be seconded to the entity, and
- Provision of information held by council that may be necessary or desirable for preparing the allocation schedule. This includes a requirement to collate information, provide information in a particular format, or disclose current pricing information or indicative water charges on invoices during the establishment period.

If a council fails to comply, then the Department of Internal Affairs may apply to the District Court for an order to compel the council to comply.

The Bill includes exceptions to the Local Government Act 2002 requirements relating to requirements for councils to consult on significant or material variations to its long-term plan, annual plan, and obligations to maintain water services.

Transitional Matters Relating to Employment

The Bill includes requirements on the Department of Internal Affairs, and the new entities relating to the employment of staff who are employed by council on water services.

This includes the entity being required to offer an employee of a council an employment position when the primary functions of the role will transfer to the new entity, provided the employee does not have a senior management role.

Where an employee transitions to a role in the new entity, the terms and conditions of the position offered must:

- Involve the same or similar duties and responsibilities.
- Core terms no less favourable than existed immediately before being identified as a staff member for transition by the entity. Core terms includes salary, leave entitlement, and redundancy compensation.
- Be in the same general locality or within reasonable commute of the current location of work.
- Involve similar hours and days of work.
- Recognise the transition to the entity as if it were continuous service.

Employment with the entity will commence on 1 July 2024.

Staff have no obligation to accept an offer from the new entity. Where staff do not accept an offer, then they will not be eligible for any compensation if council no longer has a role for them. The entity can also offer positions to others.

Transitional Arrangements relating to Oversight of Council Decisions

During the establishment period the Department of Internal Affairs must review Council's decisions and meeting agendas. The Department must be provided with information of an intended decision that relates to the provision or may affect the provision of water services. Council's chief executive must ensure that any decision of Council relating to water services is confirmed by the Department of Internal Affairs in writing before it is implemented.

This applies to a decision that may, directly or because of its consequences:

- a) significantly prejudice the water services reform; or
- b) significantly constrain the powers or capacity of the water services entities following reform; or
- c) have a significant negative impact on the assets, liabilities, or other matters that are transferred to the water services entities as a result of the water services reform.

This includes a decision to:

- To adopt or amend a Long-Term Plan or to adopt an Annual Plan.
- To adopt a policy required by the Local Government Act 2002.
- That is significantly inconsistent with any policy or plan adopted by council under the Local Government Act 2002.
- To purchase or dispose of assets other than in accordance with its Long-Term Plan.
- To purchase or dispose of an asset if the purchase or disposal will have a material impact on the capacity to provide water services or the financial well-being of the organisation.
- To enter any contract (other than employment) that imposes or will continue to impose any obligation on the council after a date, and for an amount to be set by the chief executive of the Department of Internal Affairs.
- To borrow money for a period that extends beyond a date set by the chief executive of the Department of Internal Affairs.

4. Discussion

Local Government New Zealand, and Taituarā are preparing submissions on behalf of local government. The Otago and Southland councils have also agreed to share their draft submissions, and common themes from these will be collated and shared. All organisations are currently working on their review and submission outlines, and there is limited information available to share on 6 July.

Council provided feedback to Local Government New Zealand in 2021 as part of the Consultative process regarding the Governments Three Waters Reform Proposal at that time. This is attached in Appendix 1 and covers the following headings. How the Bill addresses these concerns (or not) is outlined below:

Privatisation – The entities will be a body corporate, and a separate entity that is co-owned by the local authorities within the entity area. Each local authority will have shares allocated, based on 1 share per 50,000 population, or part thereof. A proposal to divest the ownership is required to be supported by a majority of 75% of the Regional Representative Group, in order to then be referred to the local authority owners. The local authorities must then unanimously agree to refer the proposal to the Local Government Commission to poll electors in the entity area. There is required to be a majority of 75% votes in support of divestment. The provisions within the Bill are considered to cover the risk of privatisation. The remaining concern is that subsequent Governments could change this approach.

Meeting the Needs of Growth – this is covered through several mechanisms in the Bill. These include the requirement to partner and engage early and meaningfully with local authorities, and co-operating with and supporting local authorities, and other infrastructure providers.

The entities are also required to prepare an asset management plan, and a 30- year infrastructure strategy, as suggested in council's feedback. While there is no explicit mention of responding to growth in the Bill, consideration of growth is a core input into the development of asset management plans and infrastructure strategies.

The annual report is also specifically required to separate the actual and budgeted expenditure required to meet increased demand (growth), improve level of service performance, and replace assets. This would provide the basis for a funding mechanism like development contributions to be included in further legislation relating to pricing and charging.

Consumer Protections, Standardised Charging, and Local Procurement – these fall outside of the scope of this Bill, and would more appropriately sit in other proposed legislation that will follow relating to:

- Specific powers, functions, and responsibilities of the new water services entities, and pricing and charging arrangements.
- Economic regulation and consumer protection regimes relating to the new water services system.

Rating Legislation – The issues that council raised relating to the uniform annual charge 30% cap has not been addressed, and no reference to changes to Rating Legislation have been proposed. This should continue to be highlighted in Councils' submission to the Bill.

Governance - There will be a regional representative group for each entity which will be responsible for appointing and removing the entity board members (using a board appointment committee), participating in setting strategic direction and performance expectations of the entity, and reviewing performance.

Councils may only appoint people to the regional representative group who are elected members, chief executives, or senior managers of councils. Each regional representative group will have between 12 and 14 people, and an equal number of council and mana whenua representatives.

The proposals in the Bill do not extend to specifying that the members must reflect both the rural and urban communities they represent, and Council may wish to submit again on this. The other suggestions that council provided regarding the eligibility for appointment have been included.

Local Government New Zealand Submission

An outline of the Local Government New Zealand proposed submission has been circulated to councils and is attached in Appendix 2. One of the suggestions from Local Government New Zealand is that the transition of councils into the new entity be staged, along with stormwater functions. Council officers suggest that this approach could be detrimental to staff wellbeing and morale and would impact on the retention and recruitment of staff due to an increased period of uncertainty. The new entities would also require resourcing at the same time, which would put increased demand on an already resource constrained industry.

Council has negotiated an interim maintenance contract arrangements in place to cover the transition period. Extending the transition period would place further uncertainty on the duration of this contract which will impact on contractor investment into the contract resourcing.

There are onerous reporting and approval processes placed on council during the transition period which will increase timeframes to implement decisions. Staging the transition of councils into the new entities would increase the period that council would be working under the oversight of the Department of Internal Affairs.

5. Financial Considerations

It is anticipated that there will be funding provided to councils to cover the costs of extra staff to provide the required information and to be seconded to the establishment entities. We are unsure as to the amount to be provided, but this may not meet the costs of engaging

consultants and contractors to backfill existing staff roles in business as usual while they do this work.

This additional work could potentially be funded as an operational overspend against the water services budgets. Depending on the significance of this amount, it may require the written approval of the Department of Internal Affairs.

6. Options

Option 1 – (Recommended)

Council prepares a submission to the Water Services Entities, using the submissions prepared by Local Government New Zealand, Taituarā, Central Otago District Council Mayor, and other Otago/Southland councils as a starting point. This submission would be circulated to councillors for agreement prior to 15 July.

Advantages:

- Enables council to utilise the specialist expertise that is available in these organisations to help formulate its submission.
- Where there are different viewpoints then these will.

Disadvantages:

- There will be a short timeframe of one week for councillors to provide comment on the submission and have the submission amended.

Option 2

Council does not submit on the Water Services Bill

Advantages:

- Nil

Disadvantages:

- The issues that are important to the Central Otago District Council and communities may not be raised by others.
- Less weight will be given to the submissions by other Local Government organisations if councils do not submit in support of these, where appropriate.

7. Compliance

Local Government Act 2002 Purpose Provisions	This decision enables democratic local decision making and action by, and on behalf of communities by ensuring the views of councillors elected by the community are included in a submission on the Water Services Entities Bill.
Decision consistent with other Council plans and policies? Such	Yes

as the District Plan, Economic Development Strategy etc.	
Considerations as to sustainability, the environment and climate change impacts	The water reform is being implemented by government to support increased investment to respond to sustainability, the environment, and climate change impacts.
Risks Analysis	<p>The Governments Water Reform proposals are controversial and may not be widely supported within the community. There are members of the community who may not accept that submitting in order to try and improve community outcomes from the Bill is acceptable, and may believe that submitting to not proceed with the reform is the only appropriate response.</p> <p>Aside from reputational risk, there is minimal risks in submitting on behalf of the Central Otago community on the Water Services Bill.</p>
Significance, Consultation and Engagement (internal and external)	Submitting on the Water Services Bill does not trigger Council's significance and engagement threshold.

8. Next Steps

Council staff will prepare a draft submission for circulating to elected members by 15 July.
Councillors will provide feedback by 20 July.
The Final Submission will be drafted incorporating feedback and submitted by 22 July.

9. Attachments

Appendix 1 - Council August 2021 feedback to Local Government New Zealand regarding the Governments Three Waters Reform Community Consultation Proposal [↓](#)

Appendix 2 - Local Government New Zealand Submission Outline [↓](#)

Report author:



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Lead
30/06/2022

Reviewed and authorised by:



Sanchia Jacobs
Chief Executive Officer

1/07/2022



Appendix 1 – August 2021

Central Otago District Council feedback to the Governments Three Waters Reform Proposal For Consultation with the Community - further clarification and/or suggestions sought on the following:

Privatisation

Central Otago District Council is supportive of the current proposed mechanisms to protect against future privatisation of the entities. However, as we understand it the provisions setting out these protections will not themselves be protected. Without this additional layer of protection in the legislation these provisions could be overturned by a simple majority of parliament which would go against the intent of what has been proposed. We propose that consideration be given to entrenching the provision in legislation that sets out these protections.

Meeting the Needs of Growth

The entities to provide adequate support to meet local planning needs for growth. This expertise needs to be able located throughout the entity area, where developers and councils have ready access to it, particularly in those parts of the entity which are experiencing strong growth, such as Queenstown and Central Otago. This will enable strong relationships to be developed with the local councils and provide greater insight into local growth issues and demands.

The Council growth projections and spatial plans should be required to be used as a basis for hydraulic modelling of infrastructure upgrades and renewals and be incorporated into all forward work planning. This requirement should be written in the legislation. This would ensure that the cumulative effects of growth are effectively planned for, and that infrastructure capacity does not negatively impact on the availability of land for development and housing affordability. This would also enable cost effective capacity upgrades to be undertaken as part of routine renewal and improvement programs instead of this needing to be retrofitted, at greater cost.

The entity should be required to produce infrastructure strategies with a planning period for 30+ years. These strategies should be audited to ensure that they have incorporated robust growth projections and are consistent with local spatial plans and growth projections.

We suggest that the entities be required to implement a funding mechanism similar to development contributions to enable cumulative effects of growth to be funded in an equitable manner across the entity area. This will ensure that individual developments are not unfairly burdened with costly capacity upgrades of existing infrastructure that benefit previous and future development.



Consumer Protections

Central Otago District Council supports the establishment of a consumer body and believe that consumers need to continue to have a strong voice in the provision of water. It will be important that the rights of consumers are protected under this model. We suggest the government considers the establishment of a water ombudsman, as well as further legislative mechanisms that ensure consumer rights.

Standardised Charging

Central Otago District Council is particularly concerned about the lack of certainty on pricing mechanisms in the model. While all councils have received modelling on their 30-year outlook under reform or if they opt out, there has been little comment on what the approach to charging will be. The model should have standardised pricing for baseline services that is a level of service that meets minimum compliance requirements irrespective of location. The Council proposes that service levels higher than baseline could be paid for by the specific community who receives that benefit. We recommend that this requirement is written into legislation to protect the consumers.

Rating legislation

Many councils rating mechanism for three waters is not an annual charge, and so falls outside of the rating cap. Once this revenue is removed the uniform annual charges collectively exceed the 30% cap. This will be a challenge to meet, and we suggest this issue is considered under the 'no councils worse off' aspect of this proposed reform. It is proposed that Central Government review the rating legislation around the 30% uniform annual charges cap. This will need to be reviewed with consideration given to increasing the cap to possibly 40%. Alternatively, Central Government may need to consider funding rating reviews for all councils that will breach the 30% cap under the current regime.

Local Procurement

Under Central Otago District Council's procurement policy there is an expectation that the council support local businesses and a weighting is applied to this measure when tenders are considered (alongside other relevant factors such as cost and experience). Local delivery supports our community wellbeing, and assists us in delivering on the wellbeings required of us under the Local Government Act 2002. The Council would like to see the model provide some certainty to local providers to ensure there is no negative financial or economic impact on our local economy.

Governance



We note the need to separate out the balance sheet and governance, and note the governance model is quite complex. We would like to make suggestions in particular around the non-iwi appointments to the governance board for each entity. We believe they should all competency-based appointments and should reflect the community in which they deliver services to (such as rural and urban representatives). We believe individuals who have local government experience (such as former mayors and local government staff) should be eligible for appointment. This will ensure the best outcomes in appointments for the job ahead.

WSE Bill: LGNZ submission outline

This is an outline of LGNZ's proposed submission for sector feedback. The outline provides our commentary on the Bill and initial thinking on the points we propose to make. The points in the outline will be fleshed out in more detail in our draft submission, which will be shared with the sector on 13 July.

Please provide feedback on the draft outline below, especially in response to the questions listed in **appendix 1**. You can provide your feedback to submission@lgnz.co.nz with the subject "WSE Bill feedback" by Friday 8 July.

We know this is a tight turnaround – we are driven by the Select Committee timetable.

Executive Summary:

- *This section will summarise the submission's recommendations*

Introduction:

- LGNZ's role and function.
- Sector involvement with Government's policy development process to date, including background on LGNZ's previous engagement with sector and our feedback to the Government.
- Diversity of views across the sector on Government policy choices and bottom lines – including the fact a number of our members are opposed to the four entity model in its entirety.
- Common concerns across the sector on some key themes – the focus of this submission.
- This submission addresses the workability of the model currently on the table.

Context/Background:

- Sector as a whole acknowledges the need for reform – broader system failure has created longstanding water issues affecting many communities and their wellbeing, and these issues have worsened with time.
- Sector is unified in seeking reform and better outcomes for communities (including better outcomes for health, climate change mitigation and adaptation, the Treaty partnership, and community wellbeing).
- Acknowledge that major reform is challenging but the current system settings combined with inaction over many years have created the current situation.
- The interactions and inter-dependencies relevant to 3W are many and complex – this complexity is unavoidable and a feature of the current system as well as any new model.
- The Heads of Agreement acknowledged that councils are leaders in community wellbeing and placemaking. Any new system must recognise and uphold this, and the legislation must reflect this.
- Any major institutional reform will draw support and criticism from a sector as diverse as ours – this is to be expected.
- Major institutional reform quite naturally engages ideological and political interests about the best way to deliver on outcomes/objectives.

- This reform is difficult for the sector to engage with because there is so much detail still to come – in Bill 2, the constitutions, and via other Government reform programmes.
- The sector needs clarity, especially about the transition.

Intent and scope of LGNZ's submission:

- Our submission is focused on the legislation, specifically the model that is on the table.
- Key concerns and how those concerns could be addressed through the legislation and broader reform programme.
- Specific comment on certain aspects of the legislation – with a focus on ensuring the legislation is workable.
- Reference Beca advice on how the WSE Bill will (or will not) enable and support councils to continue to play their critical placemaking role.

Relationship to submissions by member councils:

- Individual councils' perspectives are important because they reflect how the proposed reform will work for unique communities – based on their specific preferences and circumstances.
- Our submission captures commonly held concerns across the sector – a national perspective.

Engagement with councils and communities:

- Given the significance of the Bill and community interest in this reform, we encourage the Select Committee to travel to hear oral submissions.

Substantive feedback on the Bill:

Area/theme	Points
Concerns around four entity model	<ul style="list-style-type: none"> • Model needs to work for councils and their communities. • Recognise variety of inputs that have fed into the current model, including previous sector feedback. • However, range of high-level concerns remain: not all councils directly represented on RRG; large, bureaucratic, complex entities involving multiple layers; how communities will engage with large-scale entities; absence of conventional LG accountability mechanisms; etc. Concerns are explored in detail in relevant sections below. • The WSEs will have a singular focus on three waters – but three waters services and infrastructure are closely connected to many other activities councils perform, including supporting community wellbeing, development and placemaking. Councils need greater clarity around how WSEs will connect into the broader system.
Centralisation must be balanced with increased local voice	<ul style="list-style-type: none"> • This legislation, like RM reform, sets out a shift to an aggregated, regional approach to planning and delivery. This must be balanced with local consultation and democratic input from the communities that are effectively pooling resources to access the advantages of greater scale and expertise. • Communities must still have their say on things that matter to them, and the right level of influence over decisions that affect them. This is a critical concern for councils. In other words, the regional/aggregated

	<p>approach of the WSEs should not leave communities worse off than they are under the current system.</p> <ul style="list-style-type: none"> The legislation proposes a range of mechanisms for allowing councils and communities to have input on things that matter to them. But this potentially creates a system that is more complex and bureaucratic. Introducing additional administrative layers means effective channels to communities and consumers must be created. It must be demonstrated that their introduction will (over time) support and enable better outcomes for communities/consumers than they experience now (or would experience in the future under the current system).
Community wellbeing must remain central	<ul style="list-style-type: none"> Councils are leaders in community wellbeing and placemaking – and the WSEs must support councils to continue to play that role. Concerned by the absence of any reference to community wellbeing in the Bill. Three waters services are integral to community wellbeing and promoting the wellbeing of communities is a critical role for councils. Recommend explicit reference to community wellbeing in the legislation's objectives and operating principles.
Councils' placemaking role is critical	<ul style="list-style-type: none"> How the WSEs integrate with other council planning processes (eg long-term planning, broader council asset management planning, resource management planning) is a key concern. WSEs' place in the wider system relative to councils (and other bodies) should be explicit. It must make clear that WSEs are an implementer of wider plans for community wellbeing, growth and development. Concerned at the lack of priority given to supporting and enabling councils' critical placemaking role. Want to see a specific objective and operating principles addressing this included in the legislation. The focus in the Bill's objectives around housing and urban development doesn't capture the breadth of councils' placemaking roles. Would the focus on housing and urban development be better addressed through the GPS mechanism? Concerned by the lack of consideration given to the interface with current (and new) RM systems. Having to submit on this Bill before we know key details of new RM legislation and other parts of the 3W framework is far from ideal. We're concerned by the lack of clarity about which part of the system will end up determining particular matters that other parts of the system need to adopt or comply with. Concerned by the lack of consideration given to how to resolve competing priorities of WSE and individual councils/communities. Support the operating principle around WSEs partnering and engaging early and meaningfully with councils and their communities. But how will this work in practice to create clear and reliable connections between 3W decisions by WSEs and the broader system? This will be critical to councils' continuing to play their placemaking role. Also support the operating principle of WSEs co-operating with, and supporting, other WSEs, infrastructure providers, local authorities, and the transport sector – all are critical to placemaking outcomes and influence or depend on the provision of 3W services. Again, how will this work in practice? See our supporting paper on placemaking

Transition should be phased	<ul style="list-style-type: none"> Entities should be transitioned into operation when they (and their constituent councils) are ready. To ensure progress is made, timeframes and deadlines should be agreed to in advance. One entity could be piloted first. Concern there may not be the capacity/capability to cope with universal change simultaneously – especially with other reforms going on. A staged approach to implementing the new RM system is being contemplated (tranches of regions shifting to the new planning system). A similar approach should be considered for 3W reform.
Potential staged approach to stormwater	<ul style="list-style-type: none"> The proposals for stormwater are under-developed and the scope/impacts are uncertain. There is some concern that stormwater represents a source of material risk for WSEs and councils that is hard to quantify and therefore hard to justify. This is complicated by the timeframe for RM reform. It's not entirely clear how stormwater can be designed to fit with that regime. There is a risk of 'double-change' in a short period. Stormwater is intrinsically linked to placemaking and closely connects with a number of other council roles and functions. Many of these involve material overlaps: they serve different functions at different times. Stormwater can be intrinsically linked with other council services, which may it difficult to immediately transfer to the WSEs. The transfer of 3W staff to WSEs could mean councils aren't left with any capacity to manage stormwater. A "joint arrangement" (between WSE and council/s) could be put in place initially with its own transition pathway.
Te Mana o Te Wai	<ul style="list-style-type: none"> Support the focus on Te Mana o te Wai – the health of water is fundamental to all New Zealanders and their communities Support the requirements around Te Mana o te Wai statements. Also support the need for transparent accountability around the Te Mana o te Wai statements through strategic planning and reporting documents. Need to think about how these obligations (particularly around giving effect to Te Tiriti/The Treaty) are reflected in other LG legislation. There needs to be consistency across all activities that impact on communities – especially given the shift to giving effect to Te Tiriti in the RM space, and potential for Te Mana o te Wai to be incorporated into the Natural and Built Environments Act (in addition to Te Oranga o te Taiao, which was included in the exposure draft of the NBA). Support the requirements around maintaining systems and processes for continuing education of all Board members to gain knowledge of, and experience and expertise in relation to, the principles of Te Tiriti/the Treaty. To truly realise Te Mana o te Wai, WSEs will need to partner closely with mana whenua in the same way some councils already are. Te Mana o te Wai statements should be woven into transition arrangements and be there from day 1. Mana whenua will need resourcing support from central government or the WSEs to develop these statements. How will the Government hold entities to account when there is non-compliance? For example, conflict between giving effect to Te Tiriti and

	Te Mana o te Wai and meeting commercial goals/objectives. Who regulates and upholds Te Mana o te Wai?
Central policy direction must come with central investment	<ul style="list-style-type: none"> • We support in principle the Government Policy Statement on Water Services. Councils and communities must have opportunities to feed into this. There are lessons from experience of Waka Kotahi and councils with Land Transport GPS (including the impact of change on long run planning and funding). • There could be a specific requirement to consult with all councils around the development of the GPS – particularly given its connection to environmental matters, placemaking etc. • In time there may be a need for consultation with the joint committees established via RM Reform. • How will the GPS integrate with other national direction that will be developed under the proposed National Planning Framework? • We recognise the need for the Crown intervention framework and the importance of overall system oversight. But this means a significant amount of power is concentrated in the centre. The legislation needs to strike the right balance between local/multi-regional needs and priorities vs national control. • Ultimately, if there is to be more central policy direction, we'd also expect to see greater central government investment. We're disappointed the Government didn't pick up on the Governance Working Group's recommendation #44¹ and see this as a necessary element in justifying CG ability to set expectations through a GPS. Any other approach risks an unfunded mandate. • We strongly disagree with the introduction of clause 26 of Schedule 1 to the Bill. This represents a cost-transfer (dis-investment) by Government, on top of the ongoing cost of running the WSE model once established.
Communities need assurance of service when things go wrong – locally and quickly	<ul style="list-style-type: none"> • Concerns around whether communities will genuinely and meaningfully connect with large multi-regional entities. Communities have existing connections to and relationships with councils. How will that connection feed into (or ultimately be replicated by) the WSEs? • Currently no certainty around on-the-ground presence in different locations – and this is needed. For example, who will respond quickly to broken pipes/blockages when things go wrong? There must be dedicated on the ground local delivery and maintenance teams; 24/7 responsiveness through support centres etc. The legislation (or constitutions) should guarantee that local contractors be used and retained for scheduled and reactive works. • Does section 117 mean that WSEs could contract the delivery of water services out to councils? This needs to be clarified.
Existing mechanisms capturing local voice must feed in	<ul style="list-style-type: none"> • Currently councils have the democratic mandate to make decisions on behalf of their communities across their portfolio of responsibilities. It needs to be clearer how councils (and communities) will feed into key WSE planning/accountability documents aside from councils having input via RRGs (and potentially RAPs). How can existing council

¹ **Recommendation 44:** The Crown confirm to iwi and councils the size of investment required to address issues of historic degradation of waterways and inequalities in the provision of water services for their consideration, along with a plan as to how addressing these issues will be funded.

	<p>engagement with communities (via long-term plans, asset management plans, infrastructure strategies and community plans) inform the various planning documents that the WSEs will be responsible for preparing?</p> <ul style="list-style-type: none"> • Recommend that there's a specific requirement for the various WSEs' planning/accountability documents to take into account council planning/strategy documents. Where possible the WSEs documents should adopt and give effect to council planning/strategy documents.
Feedback on Regional Representative Groups	<ul style="list-style-type: none"> • Representation of council views and needs in the new system is critical. • In principle, we support these and support the arrangements around both local government and mana whenua representation. • Important in terms of understanding and applying Te Mana o te Wai and giving effect to Te Tiriti/The Treaty. • There needs to be scope to build on existing successful partnerships between councils and mana whenua. • The role and function of the RRG and its members (including what they will not be doing or responsible for) needs to be clear and understood by all stakeholders. That means stakeholders know where to go in the overall WSE/3W system to seek influence or accountability for particular matters. For example, should they go the water regulator, the economic regulator, the WSE board/management, the RRG or their council. • Pleased to see stronger accountability between the WSE Boards and RRGs – including the RRG appointing the board, approving the Statement of Intent that will guide the board, and setting a Statement of Strategic and Performance Expectations that the Board must give effect to together with performance reporting and monitoring. These additional accountability tools also create a direct link back to local voice/input. • Good to see that the RRGs have appropriate clout in terms of their ability to set strategic direction. • Subject to there being sufficient other direct links between the WSEs and the individual councils/communities they serve, RRGs may need to play more of a role in ensuring there are connections with the communities they represent. • Is it the role/function of an RRG to engage with all communities in the area covered by a WSE and, if so, how will they achieve this for communities that do not have a council representative on the RRG? • Flexibility around the appointment of RRG chairpersons/deputy chairpersons/co-chairpersons and deputy chairpersons is positive. • Pleased to see all councils will be involved in making appointments to the RRG (and will be able to establish their own rules to govern that appointment process). • Should RRG membership be subject to competency requirements linked to the role/function of an RRG, to make sure an RRG can effectively perform its role in the overall system? • In terms of resignations from the RRG, need to specify what happens if a council representative who is an elected member is not re-elected in local government elections.
The role of Regional Advisory Panels	<ul style="list-style-type: none"> • These are a potentially useful mechanism for ensuring that advice on local needs/preferences, views and concerns are fed up to the RRG. However, the role and function of RAPs and their members (including

	<p>what they will not be doing or responsible for) needs to be clear and understood by all stakeholders so that appropriate expectations are set.</p> <ul style="list-style-type: none"> • The RRG and WSE board will still need to apply a regional lens to the inputs received from a RAP to ensure that the overall WSE plan can be delivered within the overall available funding, resources and other operating constraints. • Leaving these Panels optional means local communities could determine what will work for them. However, requiring RAPs for every city/district covered by a WSE would be one way of guaranteeing that there is a way for all TAs and the communities they represent to feed into the decision-making of an RRG. • There should be flexibility to determine the geographical areas that the RAPs represent – but it's an open question whether there should be some mechanism for guaranteeing representation of all geographic areas/takiwā, to ensure local voice across WSE areas is captured.
WSE Boards' composition and accountability	<ul style="list-style-type: none"> • Agree that the Boards should be competency-based. • This is a marked departure from the status quo, where elected members together perform that governance role. As such they bring local voice to this role, although 3W is not their singular focus nor may it be an area in which they have knowledge, experience or expertise. Because this form of local voice will be absent from the Board, it's critical there's local voice input at other layers of the system. This needs to be at least as effective as provided under the status quo. • In terms of knowledge and expertise requirements, would like to see some knowledge and expertise of local government and broader placemaking. • Accountability of board members to the RRG is a good way of creating a direct link back to democratic, local input. • Agree with the need for the boards to have a minimum number of public meetings – this is a good accountability mechanism.
Constitutions and their development	<ul style="list-style-type: none"> • Support the approach to constitutions and the ability for there to be local customisation. • Agree that the WSEs should compensate local authority representatives and local authorities for their time. • Agree that the Minister should engage with councils on the development of constitutions. Suggest all council owners should have input, and that the timeframes for providing input are meaningful. • Support the ability of RRGs to make changes to constitutions, so that they can address relevant local matters, including as circumstances might change over time.
Planning and strategic documents	<ul style="list-style-type: none"> • How WSEs integrate with other council planning roles and functions is a key concern. WSEs should be seen as an enabler and implementer within the wider planning environment, which includes community wellbeing, growth and development. While they may be 'plan makers' for the water piece, they should not dictate the shape of other plans. • Support the <i>Statement of Strategic and Performance Expectations</i> being prepared by the RRG to ensure (and be reflective of) local input. Need to ensure constituent local authorities and communities are involved too. Same goes for Statements of Intent

	<ul style="list-style-type: none"> • Individual council/community input pathways will need to exist for asset management plans, funding and pricing plans and infrastructure strategies. • The Statement of Strategic and Performance Expectations will need to strike an appropriate balance between the scale and priority of work required by WSEs to address current deficits (including to ensure compliance) and new investment to enable growth. • Water services are intrinsically linked to other council assets and infrastructure – and to growth. This must be recognised. Although we recognise there'll be a need for WSEs to address deficits with existing infrastructure, this shouldn't be at the expense of stifling growth and development where that's needed. • Want to avoid WSEs and developers making ad hoc decisions about where growth and development happens. WSEs need to operate in a way that recognises councils' broader leadership role in placemaking and community wellbeing. This includes respect for decisions already made by councils and communities. • Question how the existing strategic documents/plans that councils have prepared with their communities feed into the preparation of all of these documents (eg LTPs, asset management plans, infrastructure strategies, community plans, regional policy statements and district plans etc). And how the new regional spatial strategies and natural and built environments plans will feed in, once RM Reform is implemented. Could there be a requirement for the WSEs' planning/accountability documents to take into account other strategic planning documents that councils (and joint committees under the new RM system) have prepared? • How will the WSEs' infrastructure strategies align with the NZ Infrastructure Strategy? • How will communities have genuine input into the development of these different documents? WSEs will inevitably rely on councils to help collect/co-ordinate views from their constituency – given their democratic mandate to engage with and represent the views of communities, and their knowledge and oversight of other inter-dependencies with water service delivery. If councils are relied upon by the WSEs to do this (including to avoid duplication of effort), their costs should be met by the WSEs, otherwise there is an unfunded mandate. • Reflecting community preferences will need to be balanced with compliance with regulatory standards (set by both Taumata Arowai and the economic regulator).
Funding and pricing	<ul style="list-style-type: none"> • Want to see more detail on how funding and pricing decisions are made. • There is an absence of reference to affordability in the objectives and operating principles of the Bill. This is in the context of councils continuing to make rating decisions. Councils have broader concerns around affordability, equity and communities' ability to pay for different services (which may also include IFF levies). • The sequencing of the Bills mean that when submitting on the core model (reflected in this Bill), councils are being asked to 'assume' that these pricing/funding elements (including issues like price harmonisation or the ability to socialise costs and adopt differential pricing to support social equity) will be resolved satisfactorily down the track.

	<ul style="list-style-type: none"> • The longstanding historical deficit in infrastructure investment and the legacy of central government decisions impacting water services need to be addressed – and funded. Central Government must develop a funding plan – otherwise we run the risk of setting up new entities that will continue to underinvest, or be unable to address the existing deficit, or costs will fall regionally rather than nationally. • Councils should be given a choice about whether they're involved in billing for water or not.
Debt transfer	<ul style="list-style-type: none"> • To be able to assess the impact of the new WSE model (including the post-transfer shape of a council's balance sheet), councils require certainty about how the debt transfer will work. This includes what borrowing will be eligible and the process to identify and confirm amounts, as well as transfer mechanics. This needs to be clarified quickly.
Community engagement provisions	<ul style="list-style-type: none"> • Agree with the requirements to consult and seek input. • The engagement provisions seem sufficiently broad and appear to allow engagement in a wide range of ways. • There could be more explicit reference to the need for engagement with councils. An explicit requirement would provide an added layer of protection/accountability mechanism. • Agree with the establishment of consumer forums – the breadth of communities covered by WSE areas must be represented. Specifically requiring this in the legislation/constitutions this would add another accountability mechanism. • Support the need for a consumer engagement stocktake and agree this should be made public. Councils should have input into this stocktake because they will inevitably continue to receive feedback on how the entities are performing – even if the responsibilities for water service delivery sit elsewhere. WSEs should meet the costs of councils in performing that role to avoid an unfunded mandate issue. • Need to be mindful here also of what other actors in the system are doing (for example, regulators are monitoring WSE performance in this respect too).
Protections against privatisation	<ul style="list-style-type: none"> • This is a key area of concern for councils and communities – so we support these features (including the changes made as a result of the Working Group recommendations). • Would support entrenchment of these clauses but recognise the absence of cross-party support.
Transition and implementation at a high level	<ul style="list-style-type: none"> • The reform's success depends on a smooth, well-managed transition. Central government must work closely with local government on this. • Resourcing the transition is critical. Again, we're concerned that the Governance Working Group's recommendation #44 hasn't been picked up by the Government. • The sector is concerned about clauses that remove councils' autonomy during the transition period. For example, around councils' ability to deliver or accelerate existing approved plans and to negotiate requests to second staff and information requests. These clauses signal a lack of trust and confidence. The demands of 'business as usual' (water services included) continue unabated for councils, who also face a pressured and resource constrained environment. Because of this, DIA's ability to restrict and direct should be limited to circumstances where there is

	<p>deliberate obstruction or attempts to undermine the success of the reform.</p> <ul style="list-style-type: none"> • Community education and engagement needs to be built into the transition, including supporting councils to engage with their communities to help them understand that water services are now the responsibility of the WSEs, not councils. • Support commissioning a review of the operation and effectiveness of the governance and accountability arrangements under the Act. We agree this should include looking at how the WSEs interact with councils and communities. It should also cover the operation and effectiveness of the legislation. It's important that such reviews recognise local government as a key stakeholder. • The review of the WSE legislation should specifically consider how that legislation is integrating with other key legislation (eg Local Government Act, Rating Act, Resource Management Act, new RM legislation).
Connections with other reform programmes	<ul style="list-style-type: none"> • Bill is drafted on the premise that current local government structures, roles and responsibilities remain the same. • However, the RM Reform and FFLG Review may necessitate ongoing amendments to the Bill (and Bill 2). • Good to see a focus on climate change mitigation and mitigating the impacts of natural hazards – but how will this be managed alongside other, potentially competing objectives and priorities (for example, more housing and urban development)? Central government must give clear direction around how trade-offs are managed. • We support regional councils (and territorial authorities where that's the case) remaining responsible for flood protection infrastructure. Co-investment needs to be seriously explored.

[see questions for feedback on next page]

Appendix 1: Targeted questions for feedback

1. Do you support a phased transition to the new entities? What factors should influence which entities get stood up first and when?
2. Could a phased approach to transitioning stormwater to the WSEs work? Would you support phasing the transition of stormwater? What do you think about the idea of a “joint arrangement” (between WSE and council/s) with its own transition pathway?
3. Water services are intrinsically linked with placemaking outcomes. We’re concerned that the WSE Bill doesn’t adequately reflect the important placemaking role that councils play. How could the Bill be improved to ensure that the Water Services Entities support councils to continue to play their critical placemaking role?
4. What do you think about the draft piece on placemaking that we’ve commissioned from Beca – is there any aspects you’d like to see strengthened to support our submission?
5. Do you think there are sufficient mechanisms for communities to feed their concerns and preferences into the Water Services Entities? How could the proposed mechanisms be improved?
6. The Bill provides for CEs and council officers to be territorial authority representatives on the proposed Regional Representation Groups. Do you support this or would you prefer these representatives to be democratically elected members? Should there be any competency requirements?
7. Would you support a requirement that the WSEs, RRGs and Boards take certain local government planning and strategic documents into account when preparing a WSE’s strategic, planning and accountability documents? If so, which documents?
8. Councils gather feedback from their communities that will be just as relevant to WSEs as it is to councils. What mechanisms could ensure that this feedback informs the work of the WSEs?
9. The Bill currently provides flexibility around the establishment of Regional Advisory Panels. Do you think this should be left up to the WSE or should the legislation/constitutions require that every city/district covered by a WSE area be represented on a RAP? This would add a material additional cost for the WSE – is that cost warranted? Or, to avoid duplication of resource/effort, should this be held in reserve and only be used if other mechanisms fail to achieve the outcomes this would support?
10. While more national direction and greater accountability should improve the quality of water services, we are concerned about the shift to regional aggregation. Do you agree that it’s critical that the Crown has a role in funding the establishment and ongoing operation of the new three waters system?
11. How do you think the proposed model will or will not support areas experiencing growth to meet their needs?
12. Assuming the preference is that flood protection infrastructure remains in regional council (and in some cases unitary/territorial authority) control, would you support us making a recommendation in our submission that central government (and/or the WSEs) should adopt the Te Uru Kahika proposals for central government co-investment in flood protection infrastructure?

22.5.31 THREE WATERS REFORM BETTER OFF FUNDING (TRANCHE 1)

Doc ID: 582846

1. Purpose of Report

To consider projects to be included in the Funding Proposal for the Three Waters Reform Better Off Funding (Tranche 1).

Recommendations

That the Council

- A. Receives the report and accepts the level of significance.
 - B. Notes that the Better Off Funding will be split into two tranches, with Tranche 1, \$3.21M, being available from 1 October 2022, and Tranche 2, \$9.63M, expected to be available from 1 July 2024.
 - C. Notes that to receive this funding, Council needs to supply a list of projects/initiatives to the Department of Internal Affairs for approval.
 - D. Authorises the Chief Executive to sign the Funding Agreement in Appendix 1.
 - E. Approves projects to the value of \$3.21M to be put forward in the Funding Proposal.
 - F. Approves a list of contingency projects to be included in the Funding Proposal.
-

2. Background

Central Government is undertaking a reform process for Three Waters (water, wastewater, and stormwater) services which seeks to address significant challenges facing the delivery of these services. In July 2021, the Government announced the Three Waters Better Off Support Package, which includes a total of \$2 billion of funding. The \$2 billion of funding consists of \$1 billion of Crown funding and \$1 billion to be funded from the new Water Services Entities.

The funding allocation from the Better Off Support Package for Central Otago District Council is \$12.84M with \$3.21M of this being available in Tranche 1 from the 1 October 2022, and the remaining \$9.63M to be made available in Tranche 2, from the 1 July 2024.

Information was released about the Better Off funding in April 2022, including how local authorities can access the funding.

Council does not have to apply for the full Tranche 1 funding amount. Any funds not applied for in Tranche 1 will be made available in Tranche 2. However, all the Better Off funding needs to be spent within five years by the 30 June 2027. This is regardless of which Tranche the funding is allocated under.

There is a greater risk of not being able to spend all the money within the 5-year timeframe if the maximum amount of funding available is not applied for in Tranche 1. Tranche 2 will require a separate application, although it is expected to follow a similar process.

3. Discussion

To apply for this funding, council needs to sign the Funding Agreement (Appendix 1) and complete a Funding Proposal.

Funding Agreement

The Funding Agreement sets out the terms and conditions of the funding (Appendix 1).

Under the section General Terms Clause 2.10, the Funding Proposal states that: *“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.”*

The Department of Internal Affairs has further clarified that: *“DIA acknowledges the importance of councils independently expressing their views of the reform programme. The Funding Agreement for the better off package does not prevent or prohibit councils from doing this. For the avoidance of doubt, publicly criticising or expressing opinions on reform cannot reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of the Department or the New Zealand Government, and would not represent a breach of the funding agreement.”*

Under Schedule 2, in signing the funding agreement council would be agreeing to collaborate and cooperate with the Department of Internal Affairs, including its National Transition Unit, to provide for the implementation and carrying out of certain parts of the Three Waters Reform Programme. In making any requests under this agreement the Department of Internal Affairs will have regard to available resources and competing demands on those resources.

Funding Proposal

The Funding Proposal needs to include a range of details including:

- A programme overview (including work to be undertaken, summary of costs, relevant milestones, and dates).
- Demonstration that engagement was undertaken with Iwi/Māori on the use of funding.
- How the Programme meets one or more of the better off package funding criteria and conditions.
- A brief wellbeing assessment setting out the expected benefits of the Programme.

The programme overview will need to include projects up to the value of \$3.21M to be completed before 30 June 2027. It is recommended that Council also puts forward a list of contingency projects which can be substituted should any projects come in under budget or become unlikely to be completed within the required timeframe for any reason.

Funding Criteria

The Programme must support one or more of the following Better Off Support Package criteria. These are:

1. Supporting communities to transition to a sustainable and low-emissions economy, including by building resilience to climate change and natural hazards.

2. Delivery of infrastructure and/or services that enable housing development and growth, with a focus on brownfield and infill development opportunities where those are available.
3. Delivery of infrastructure and/or services that support local place-making and improvements in community well-being.

It must be used for new initiatives/projects; and/or to accelerate, scale up and/or enhance the quality of planned investment. The duration of the Programme Expenditure must be 5 years or less (completion date on or before 30 June 2027). Funding will only be provided equal to or less than the total funding allocation to Council. This means that if projects cost more than the difference will need to be funded by Council.

Iwi/Māori Engagement

Local authorities are expected to engage with iwi/Māori in deciding how to use its funding allocation. For Tranche 1 of the funding, it is expected that genuine engagement is demonstrated and any issues or concerns arising are identified and what steps are being taken in response to these.

The requirements for Tranche 2 are much more extensive. The expectation is that Council will have built a relationship based on trust and mutual respect and the Funding Proposals will be co-designed and co-implemented from inception. Iwi/Māori will also need to be involved in decision-making on initiatives to fund and prioritisation.

Given the requirements of the Tranche 2 program of work regarding engagement with iwi/Māori, significant engagement will need to be undertaken to access this funding. This work will need to commence in advance of any future Funding Proposal to allow plenty of time for relationship building and working together.

		1 Current State			2 Future State
		Inform	Consult	Collaborate	Partner
Principles of Effective Engagement	Engage early	► Advise iwi/Māori of what is happening			
	Be inclusive	► Provide information to iwi/Māori	► Keep iwi/Māori informed ► Seek feedback from iwi/Māori	► Work together with iwi/Māori	► Pre-existing relationship with iwi/Māori
	Think broadly		► Listen to iwi/Māori ► Acknowledge iwi/Māori concerns & aspirations	► Determine issues/problems together	► Determine issues/problems together
Principles of Partnership	Plan and co-design together			► Develop solutions together	► Develop the solution together
	Share decision-making			► Involve iwi/Māori in the decision-making process	► Co-design the process
	Relationship built on trust and respect				
		Weak Strong			

Tranche 1 Minimum Expectations (Current State):

- Identify Māori impacted by the kaupapa (purpose) of the work, with a focus on hapū, iwi, post-settlement government entities, other mana whenua
- Evidence of genuine engagement, extending beyond standing committees
- Identify issues/concerns arising from the engagement, and steps taken to accommodate and support these interests.

Tranche 2 Minimum Expectations (Target State):

- Relationships built on trust and mutual respect
- Funding Proposals have been co-designed and co-implemented from inception
- Decision-making on initiatives to fund and prioritise have been made jointly.

Monitoring and Reporting Requirements

Reporting is required half-yearly (periods ending 30 June and 31 December). Crown Infrastructure Partners will monitor progress against the Funding Proposal to provide assurance that the funding is being spent as intended and that projects are progressing within a reasonable timeframe. The half-yearly reporting will also include monitoring of the achievement of outcomes as specified in the Funding Proposal.

It is important that the information in the Funding Proposal is robust as council will be reporting against it throughout the process. It will also be advisable to use a common project management system for management and regular reporting against projects to streamline preparation of reports for the Department of Internal Affairs.

Staff across council have looked at existing work programmes and proposals that have come to Council and identified a list of projects that meet one or more of the funding criteria. Council's Long-Term Plan either partially or fully funds a number of these projects. Some new projects have also been identified. If any project is partially funded by the Long-Term Plan, and delivered within the same timing as in the Long Term Plan, then only the additional cost can receive funding.

If projects are being accelerated, they are eligible for the full funding amount. Accelerating projects and completely funding them with the Better Off Funding, frees up the capital budget for other initiatives and/or could lead to future cost savings for Council.

Tranche 1 of the funding can also be used to help support investigation and preparation of funding proposals for Tranche 2. This allows for early investigation and design for projects where it is more effective to target Tranche 2 funding due to the time required before the project will be able to commence. The information from this preliminary work will improve the quality of the information included in the Tranche 2 Funding Proposal, and will ensure they are ready to commence, and can be delivered within the 3-year Tranche 2 delivery period.

If projects investigated or designed during Tranche 1 are not progressed as Tranche 2 projects, then this information will still be useful for development of the 2024 Long Term Plan or for applications for other funding sources.

Following experience in delivering the Water Stimulus work programme, staff have included the following additional factors in the analysis:

- Readiness to proceed (consent requirements, status of investigation and design work.
- Risks to delivery (risk of material delays, resources to deliver, procurement risks and timelines, robustness of estimates, cost estimate optimism, contingency provisions).
- Future operational or capital cost savings (through improved efficiency, or accelerating work required in future Long-Term Plan).
- No other potential funding sources available (e.g. Waka Kotahi, Ministry for Environment).

Failure to meet any of the above criteria is likely to place increased risks on delivery of the program.

4. Financial Considerations

Following approval of the Funding Proposal and an executed Funding Agreement, 10% of the amount will be released. Following this council can submit a progress payment request, along with a progress report, up to once a month. Further funding will be released upon approval of this request.

While the water stimulus funding was largely funded in advance, the Better-Off funding will largely be retrospectively funded in a similar manner to the way Waka Kotahi fund roading.

The Department of Internal Affairs will not increase the funding allocation if projects exceed the total agreed allocation.

5. Projects Put Forward but Not Ready to Proceed

Council staff provided projects for consideration with a total estimated value of \$14,506,466. These have been reviewed for their readiness to proceed as Tranche 1 projects, robustness of estimates, ability to be completed by 30 June 2024, the ability to access other government funding for the project, and future savings.

A large amount of the work requires further planning, investigation, and cost estimating to have confidence that it can be undertaken for the costs presented, and within two years.

Investigations to enable projects to be progressed in Tranche 2 or through the 2024 Long-term Plan have been included for consideration in Tranche 1.

The following list of projects were put forward by staff and are recommended for consideration in the Tranche 2 application process. Staff will be encouraged to provide further analysis and detail on these, including a review of the cost estimates and contingency amounts.

Programme	Project	Amount
Community Facility Upgrades.	Alexandra Community Centre. Earthquake Strengthening & Stage Upgrade.	\$3,215,166
	Clyde Hall Kitchen and Accessible Bathroom.	
	Tarras Community Hall. Earthquake strengthening, Accessibility upgrades.	
	Roxburgh Entertainment Centre. Maintenance and upgrades including fire system, earthquake strengthening, LED lighting.	
	Water Treatment Plants for Mānīatoto Rural Halls – Waipiata and Wedderburn.	
	Mānīatoto Park Stadium. Upgrade Stadium Lights to LED, Earthquake strengthening work and new ramp, Clubrooms Double Glazing and Code Locks.	
	Ranfurly Service Centre. Earthquake strengthening, Double glazing, New door back ramp, Replace Diesel Boiler, Upgrade KVA Capacity.	
	Mānīatoto Art Centre. Encapsulate or remove asbestos ceiling panels in meeting room.	
Public Toilets.	Naseby Public Toilets. New Triple Unisex Block.	\$1,038,800
	Cromwell Bike Park Toilets.	
	Molyneux Park New Public Toilets.	
	Ranfurly Public Toilets New Public Toilets.	
Eden Hore Central Otago.	Mobile pop-up visitor experience.	\$750,000
Omakau Community Hub.	New kitchen and dining area for camping and recreational use at the Omakau Recreational Reserve.	\$450,000
Development of Reserves.	Half Mile Reserve. Source of wildling conifers removed. Site is redeveloped as an open friendly space.	\$1,150,000
	Boothill Reserve. Source of wildling conifers removed. Site is redeveloped as an open and friendly space.	
	Grovers Hill Redevelopment. Grovers Hill Forest Park accessible to the community for a wide range of recreational activities.	
	River Track Planting in Teviot. The track in many places is overgrown with weed species. Planting in natives will provide a native corridor along the river's edge.	
Support to fibre installation projects.	Installation of fibre to Millers Flat or Ettrick community. The Ettrick and Millers Flat communities lack fibre connectivity and have been working with Yrless to deliver a fibre solution. Funding would be used to mee the funding gap between the total cost and the contribution from Yrless and households and businesses in one of these communities.	\$925,000

	Alexandra/Clyde – Cromwell Fibre link. The current Clyde-Cromwell fibre link is aging and at capacity. The addition of a new fibre link would increase resilience to natural events, deliver faster speeds, provide capacity for future growth, and enable new opportunities for council, community, and business.	
Secondary school's pathways to work – pilot.	Support a 2-year pilot programme aimed at raising awareness and connecting youth with local employers and employment options.	\$100,000
Purchase and rollout of new kerbside bins.	Reducing the size of the rubbish bins, repurposing of large rubbish bin to organics bin with change of lid, installation of latches on kerbside recycling bins to reduce litter.	\$750,000
	New Emergency Management Operations Centre/CODC Archive/Museum Storage Facility Building.	\$1,000,000
	New Central Otago District Council Dog Pound.	\$320,000

6. Projects for Consideration

The following projects have been reviewed and identified as being able to be delivered by 30 June 2024, will support the larger Tranche 2 application, and have no other government funding opportunities.

Community Wellbeing Framework and Dataset - \$90,000

Council is required to identify wellbeing metrics for measuring each programme of work. Department of Internal Affairs and Crown Infrastructure Partners recommend that Councils community wellbeing framework and dataset used in its annual reports is used for this.

Central Otago District does not have a wellbeing framework or indicator dataset that is used for annual reporting. Staff have recommended that this be developed as a project in Tranche 1. This can then be used to support projects for funding approval for Tranche 2, and for the 2024 Long Term Plan.

Iwi/Māori Engagement for Tranche 2 - \$90,000

Council is required to demonstrate that it has consulted with iwi for the Tranche 1 funding application, and how any issues that have been raised will be addressed. Iwi is required to actively participate in the development of the Tranche 2 programme of work. The recently approved partnership agreement will form the basis for this. Iwi will need to provide greater resources to support council's Tranche 2 application than was anticipated when setting up the partnership agreement. Additional funding is proposed in Tranche 1 to support this resource requirement.

Supplementary Funding to Progress 2021 – 24 Long Term Plan Projects - \$800,000

There have been significant increases in costs as a result of Covid-19 impacting on the ability to complete work programmes during lock-downs and staff absences, inflation, material supply, and resourcing cost increases. Several projects that were in the 2021 Long Term Plan to be delivered in 2022/23 and 2023/24 will require additional funding to enable

these to progress. These projects are ready to proceed and can be completed before Tranche 2 becomes available in July 2024. These are:

- Alexandra Library Upgrade
- Digitisation of property records

Emergency Management and Building Seismic Resilience Assessments - \$650,000

There is currently a mobile generator located in the Teviot area to provide back-up power for emergency management in this area. A further three generators could be purchased for the Mānīatoto, Vincent, and Cromwell wards. This would include wiring of emergency management centres in these areas for generator use. It is proposed that four Starlink communication systems also be installed at these centres.

Further work to complete seismic assessments of community facilities and prepare design and tender document is also proposed. This would provide robust information on which to prepare an application in Tranche 2 for undertaking this work, or alternatively to feed into the 2024 Long Term Plan. There are several associated upgrades on these facilities that could be more effectively undertaken at the same time as the seismic upgrades on these buildings in Tranche 2. This includes energy efficiency improvements, accessibility improvements, water supply upgrades, and replacement of dated fixtures and fittings.

Strategies and Investigation Work

Several strategies and investigation projects were proposed by staff. These are not currently funded in the Long-term Plan.

- Housing Needs Assessment - \$200,000.
- Feasibility Study into high-speed internet connectivity - \$65,000.
- Destination Management Plan Project Scoping & Business Case Development - \$200,000.
- Molyneux Stadium Renewals Assessment - \$50,000.
- Video employers can use to attract people into the district for work – \$20,000.

Libraries

There are two projects put forward for libraries, these are to install Radio Frequency Identification (RFID) which provides automated scanning of books and is aligned with the systems used in other neighbouring councils. This would improve the health and safety of staff, improve operational efficiency, and free up staff time. The estimated cost of this is \$400,000.

The second project is to install new book shelving and furniture in the libraries. The estimated cost of this is \$560,000.

Recreational Facilities and Public Spaces – up to \$2,100,000

There are a number of projects that could collectively form a programme of work. The total estimated value for the projects submitted is \$2,100,000. This includes work on swimming

pools, playgrounds, parks, tennis courts and public spaces. Some of this work is in later years of the 2021 Long Term Plan but could be accelerated.

Council could provide a sum of money which balances the programme to \$3.21 million for this programme of work. Further information on the individual projects within this programme can be provided and prioritised by Council between July and November.

Any projects that do not meet the \$3.21million funding line limit, may be able to be funded as contingency projects.

7. Options

Option 1 – (Recommended)

Agree to sign the Funding Agreement and approve a programme of work using the priorities suggested in the table below, to the value of \$3.21M, to include in the Funding Proposal.

Programme of Work	Value
Community Wellbeing Framework and Dataset	\$90,000
Iwi/Māori Engagement for Tranche 2	\$90,000
Supplementary Funding to Progress 2021 – 24 Long Term Plan Projects	\$900,000
Emergency Management and Building Seismic Resilience Assessments	\$650,000
Libraries RFID	\$400,000
Total	\$2,130,000 (\$1,080,000 remaining)
Strategies	Up to \$535,000
Library bookshelves and furniture	\$560,000
Recreational Facilities and Public Spaces	Remaining amount & contingency projects from \$2,100,000 of projects presented

Advantages:

- Council receives additional funding to spend on projects that benefit the community.
- Projects that are ready to proceed can be completed by 30 June 2024, prior to Tranche 2 funding becoming available.
- Work to enable projects to be ready to proceed for Tranche 2 will be completed, reducing the risk of non-delivery and over expenditure on Tranche 2 projects.
- Less work will need to be undertaken within the 3 year Tranche 2 period.
- Tranche 1 funding application can be submitted and approved by Department of Internal Affairs by the 30 September 2022 deadline.
- The proposed structuring of the Tranche 1 projects into programmes will streamline reporting requirements.
- Opportunities to improve project management across the broader organisation and understanding of reporting requirements for these types of funding allocations.

Disadvantages:

- There may be work which is of higher importance to the community.

Option 2

Agree to sign the Funding Agreement and approve a different list of individual projects to the value of \$3.21M, to include in the Funding Proposal.

Advantages:

- Council receives additional funding to spend on projects that benefit the community.
- Opportunities to improve project management across the broader organisation and understanding of reporting requirements for these types of funding allocations.

Disadvantages:

- Projects may not be completed by 30 June 2024, and will carry into the Tranche 2 delivery period.
- Work to enable Tranche 2 projects to be shovel ready may not be undertaken.
- More work may need to be undertaken within the 3 year Tranche 2 period.
- The Tranche 1 funding application may not be submitted and approved by Department of Internal Affairs by the 30 September 2022 deadline.
- The reporting requirements will be onerous, difficult to meet and will have a high administrative work requirement.
- If individual specific projects are included in the funding agreement, then there will be no flexibility in adjusting the work that is undertake if costs increase, or the ability to deliver changes. An application to change the scope of the project will be required to be submitted and approved by Department of Internal Affairs.

Option 3

Do not sign the Funding Agreement and receive any funding from Tranche 1. Any funding available to Council would transfer to Tranche 2.

Advantages:

- Less work to do during the water reform transition period.

Disadvantages:

- Council receives no additional funding to spend on projects that benefit the community. There may be a change in Government policy before Tranche 2 is implemented, and the funding could be lost, or have different requirement placed on it.
- Tranche 2 will require a larger amount of money to be spent in a shorter time.
- Increased risk of not delivering the programme of work within the time required.
- Work to enable Tranche 2 projects to be shovel ready will not be undertaken, increasing the risk of non-delivery and cost over-runs.
- Opportunities to improve project management across the broader organisation and understanding of reporting requirements for these types of funding allocations will be lost.

8. Compliance

Local Government Act 2002 Purpose Provisions	This decision enables democratic local decision making and action by, and on behalf of communities by allowing Council to spend additional funds on work that directly benefits the community.
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	<p>AND</p> <p>This decision promotes the social/cultural/economic/environmental wellbeing of communities, in the present and for the future by committing to projects that benefit one or more of the wellbeings.</p>
Decision consistent with other Council plans and policies? Such as the District Plan, Economic Development Strategy etc.	Yes.
Considerations as to sustainability, the environment and climate change impacts	Some of the projects listed will have a positive impact on these as sustainability is one of the key criteria for this funding.
Risks Analysis	There is a risk to Council of not receiving the funding if the Funding Agreement and Funding Proposal are not signed and accepted by the DIA prior to 30 September 2022.
Significance, Consultation and Engagement (internal and external)	Engagement with Iwi/Māori is required to access both Tranches of funding, particularly Tranche 2 of the funding.

9. Next Steps

Funding Proposal will be prepared.

10. Attachments

Appendix 1 - Better Off Package Funding Agreement April 2022.pdf [↓](#)

Report author:



Chantal Green
Infrastructure Finance Officer

30/06/2022

Reviewed and authorised by:



Julie Muir
Executive Manager - Infrastructure Services
and Water Reform Lead

30/06/2022



FUNDING AGREEMENT

BETWEEN

DEPARTMENT OF INTERNAL AFFAIRS

AND

[NAME OF RECIPIENT]

AND

**CROWN INFRASTRUCTURE PARTNERS
LIMITED (AS MONITOR)**

FOR

**THREE WATERS REFORM – BETTER OFF
PACKAGE (TRANCHE 1 FUNDING)**

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), Schedule 1 (Permitted Funding Activities) and Schedule 2 (Transition Support Arrangements).

PART 1: KEY DETAILS

- 1 **Parties**

The Sovereign in right of New Zealand, acting by and through the [Deputy Chief Executive] of the Department of Internal Affairs (**DIA**)

[NAME OF RECIPIENT] (**Recipient**)

Crown Infrastructure Partners Limited (**Monitor**)
- 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**).

The Crown entered into a Heads of Agreement with New Zealand Local Government Association Incorporated Te Kahui Kaunihera ō Aotearoa (**LGNZ**) under which, amongst other things, the Crown proposed that a Three Waters Reform financial support package be provided to local authorities, comprising:

 1. a “no worse off” package which will seek to ensure that financially, no local authority is in a materially worse off position to provide services to its community directly because of the Three Waters Reform Programme and associated transfer of responsibility for the provision of water services (including the transfer of assets and liabilities) to the Water Services Entities; and
 2. a “better off” package of \$2 billion which supports the goals of the Three Waters Reform Programme by supporting local government to invest in the wellbeing of their communities in a manner that meets the priorities of both the central and local government, and is consistent with the agreed criteria for such investment set out in the Heads of Agreement,

to be given effect in agreements between each local authority and the Crown (through DIA).

The better off package will comprise:

 1. \$1 billion of Crown funding, \$500 million of which is intended to be provided to local authorities from 1 July 2022 to enable early investment (“**Tranche 1 Funding**”); and
 2. the remaining \$1 billion to be funded by the new Water Services Entities.

This Agreement relates to the provision of funding to the Recipient from the Tranche 1 Funding of \$500 million.

The Crown’s objectives with the better off package are, acknowledging the Reform Objectives, to demonstrate central government confidence in the future for local government by providing the sector with additional funds to support local wellbeing outcomes in a way that aligns with the priorities of central and local government, including through meeting some or all of the following criteria:

 1. supporting communities to transition to a sustainable and low-emissions economy, including by building resilience to climate change and natural hazards;

2. delivery of infrastructure and/or services that:

- a. enable housing development and growth, with a focus on brownfield and infill development opportunities where those are available;
- b. support local place-making and improvements in community well-being.

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.

Crown Infrastructure Partners Limited is party to this Agreement to undertake a review and monitoring role on behalf of the DIA, as further described in this Agreement.

DIA has agreed to contribute funding to the Recipient on the terms and conditions of this Agreement (**Agreement**). This funding is being provided to enable the Recipient to undertake the activities described in Schedule 1.

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.
2. The final Funding Proposal prepared by the Recipient, in a form approved by DIA.

The Recipient is responsible for the content of the Funding Proposal and approval by DIA for the purposes of this Agreement shall not impose any obligations on DIA in respect of the Funding Proposal 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 30 September 2022. 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 **Permitted Funding Activities**

The Recipient may only use the Funding:

1. for the purposes set out in Schedule 1; and
2. for any other purpose with DIA or the Monitor's prior written approval,

(each a **Permitted Funding Activity**).

5 **Funding Proposal**

The Recipient is to undertake the Permitted Funding Activities in accordance with the Funding Proposal approved by the DIA (or otherwise with DIA or the Monitor's prior written approval).

6 **End Date**

The End Date is [1 July 2027], or such later date determined by DIA in its discretion. **[Note: Recipients may propose an End Date having regard to the funding activities covered by this agreement, no later than 30 June 2027. DIA intend that the End Date is to be confirmed for each agreement]**

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 (NZ\$[insert] plus GST (if any)) 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 Recipient may submit progress payment claims for the balance of the Funding under this Agreement, 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) DIA receiving and being satisfied with the six-monthly reports specified in the Key Details, together with the other information required in this Agreement.
- (c) DIA being satisfied that the Recipient is using reasonable endeavours to comply with the Transition Support Arrangements set out in Schedule 2.
- (d) DIA being satisfied that the Recipient is complying with the requirements of any Remedial Plan.
- (e) No Termination Event, or event entitling DIA to suspend funding under this Agreement, subsisting.

The first Payment Request may be submitted upon the Commencement Date occurring. Each subsequent Payment Request may be submitted at any time, but no more than one such Payment Request may be submitted in any month, except (in each case) to the extent agreed by DIA in its sole discretion.

8 Reporting

The Recipient will provide DIA via the DIA's Grant Management System portal with six-monthly reports by the 15th Business Day following the end of each six month period ending on 30 June and 31 December), with effect from the Commencement Date. Each six-monthly report must include the information set out below, in the standard reporting form specified by DIA.

If the frequency of reporting is changed to quarterly, as further described in clause 2.14, then the obligations described in this Agreement in respect of each six-monthly report will equally apply to the required quarterly reports (to be provided by the 15th Business Day following the end of each Quarter).

The Recipient will also provide DIA via the DIA's Grant Management System portal with a final report by the 15th Business Day following the End Date. 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 six-monthly report must include the following information:

- (a) Description of activities undertaken during the relevant six month period (including progress against relevant milestones);
- (b) A summary of expenditure for the relevant six month period (including any co-funding by the Recipient);
- (c) Plans for the next six month period (including a financial forecast for cashflow purposes);
- (d) Any major risks arising or expected to arise with the Permitted Funding Activities, costs or performance of this Agreement, together with actual or proposed mitigations for those risks (including, where the Permitted Funding Activities) costs are forecast to exceed budgeted

costs, how the shortfall is to be funded);

- (e) A summary of the outcomes achieved as a result of the Permitted Funding Activities; and
- (f) Any other information relevant to this Agreement and/or DIA's involvement in connection with the Permitted Funding Activities that is notified by DIA or the Monitor in writing to the Recipient.

The final report must include the following information:

- (a) Description of activities undertaken during the term of this Agreement;
- (b) A summary of expenditure on the Permitted Funding Activities (including any co-funding by the Recipient);
- (c) A summary of the outcomes achieved as a result of the Permitted Funding Activities;
- (d) Any specific reporting requirements set out in this Agreement; and
- (e) Any other information relevant to this Agreement and/or DIA's involvement in connection with the Permitted Funding Activities that is notified by DIA or the Monitor in writing to the Recipient.

9 Special Terms During the term of this Agreement the Recipient shall use reasonable endeavours to comply with the Transition Support Arrangements, as set out in Schedule 2.

10 Representative DIA's Representative:
Name: Michael Lovett
Email: threewaters@dia.govt.nz

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

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

11 Address for Notices To DIA:
Three Waters Reform
Level 7, 45 Pipitea Street
Wellington 6011
Attention: Michael Lovett
Email: threewaters@dia.govt.nz, with a copy to legalnotices@dia.govt.nz

To the Recipient:

[address]

Attention: [name]

Email: [email]

To the Monitor:

[address]

Attention: [name]

Email: [email]

SIGNATURES

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

Name: Michael Lovett

Position: Deputy Chief Executive, Local Government

Date:

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:

SIGNED for and on behalf of **CROWN INFRASTRUCTURE PARTNERS LIMITED** by the person(s) named below, being a person(s) duly authorised to enter into obligations on behalf of the Monitor:

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 for DIA's approval a Payment Request via the DIA's Grant Management System portal at the time specified in, and otherwise in accordance with, Item 7 in the Key Details.
- 1.3 Each Payment Request must include the amount of Funding requested, be authorised by the Chief Executive or an authorised representative of the Recipient, and be accompanied by the following supporting documentation:
- (a) a breakdown / total transaction listing of total Eligible Costs that have been or will be incurred to undertake the Permitted Funding Activities, substantiated by invoices and cost details;
 - (b) for the first Payment Request submitted following payment of the first instalment of Funding, a breakdown / total transaction listing of expenditure related to the first instalment, substantiated by invoices and cost details;
 - (c) a summary of the number of jobs created through people employed in the relation to the Permitted Funding Activities; and
 - (d) any other reasonable information or evidence requested by DIA or the Monitor in relation to summary project information or Eligible Costs that have been incurred or will be incurred.
- 1.4 DIA is not required to pay any Funding in respect of a Payment Request:
- (a) if any reports specified in the Key Details have not been provided or are not in form and substance satisfactory to DIA or the Monitor in its sole discretion;
 - (b) if the Conditions specified in Item 7 of the Key Details relating to that instalment have not been satisfied;
 - (c) if payment will result in the Funding exceeding the "Total Maximum Amount Payable" specified in the Key Details;
 - (d) if this Agreement has expired or been terminated; and/or
 - (e) while the Recipient is in material 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.

- 1.5 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 relevant Payment Request is approved by the DIA, and if such day is not a Business Day, on the next Business Day. DIA will pay the Funding to the Recipient's nominated Bank Account.

- 1.6 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.
- 1.7 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.

Permitted Funding Activities

- 2.2 The Recipient must not, without DIA's or the Monitor's prior written consent, make any Material Variation to the Permitted Funding Activities (including their description and scope).
- 2.3 The Recipient must ensure that the Permitted Funding Activities are carried out:
- (a) promptly with due diligence, care and skill, and in a manner that is consistent with Best Industry Practice; and
 - (b) by appropriately trained, qualified, experienced and supervised persons; and in accordance with any directions of DIA or the Monitor, notified by DIA or the Monitor in writing from time to time.
- 2.4 The Recipient must use reasonable endeavours to ensure that the Permitted Funding Activities are completed by the End Date.
- 2.5 The Recipient is solely responsible for the activities and matters carried out as Permitted Funding Activities, including being solely responsible for the acts and omissions of any contractors and subcontractors in connection with the same.
- 2.6 The Recipient must ensure that all agreements it enters into with any contractors or any other party in connection with the Permitted Funding Activities 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 and the Monitor 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 and the Monitor with any other information about the Permitted Funding Activities requested by DIA and/or the Monitor within the timeframe set out in the request.
- 2.9 The Recipient must promptly notify DIA and the Monitor 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 the Permitted Funding Activities 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 Monitor has been appointed by DIA to undertake a review and monitoring role under this Agreement, including by:
 - (a) reviewing and confirming satisfaction with the reports specified in the Key Details;
 - (b) reviewing and approving Payment Requests submitted by the Recipient;
 - (c) seeking, reviewing and confirming satisfaction with further information from the Recipient; and
 - (d) 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 will be made with DIA or, to the extent directed by DIA or provided for above, 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 Permitted Funding Activities and retain them for at least 7 years after the last payment of Funding under this Agreement. The Recipient must permit DIA or the Monitor (or any auditor nominated by DIA or the Monitor) to inspect all records relating to the Permitted Funding Activities and must allow DIA, the Monitor and/or the auditor access to the Recipient's premises, systems, information 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.

Monitoring

- 2.14 Without limiting anything in clause 2.15, at the request of the DIA (or the Monitor), the Recipient and the DIA and/or the Monitor shall meet by the 15th Business Day following the end of each six month period, to jointly discuss the Recipient's compliance with its obligations under this Agreement during the relevant six-month period (including its obligations under Items 5 and 9 of the Key Details). Where the DIA (or the Monitor)

considers (acting reasonably) that the Recipient has not complied with its obligations under this Agreement during the relevant six-month period:

- (a) DIA (or the Monitor) and the Recipient shall in good faith discuss:
 - (i) the identified areas of non-compliance and agree the steps that the Recipient will take to address such areas of non-compliance going forwards (**Remedial Plan**). If the parties are unable to agree a Remedial Plan by the 30th Business Day following the end of the relevant six month period, then DIA (or the Monitor) shall (acting reasonably and having regard to the matters raised by the Recipient in such discussions) provide the Recipient with a remedial plan which shall, for the purpose of this Agreement, be deemed to be the Remedial Plan. The Recipient shall comply with the requirements of any Remedial Plan;
 - (ii) acknowledging the commitment of resources (including staff) required by the Recipient to comply with its obligations under this Agreement (including the Transition Support Arrangements set out in Schedule 2), how the parties can work together to ensure such obligations are appropriately managed by all parties; and
 - (b) DIA (or the Monitor) may increase the frequency of the reports required under Item 8 of the Key Details from six-monthly to quarterly.
- 2.15 At the request of the DIA (or the Monitor) at any time after the occurrence of a Relevant Event, the Recipient and the DIA and/or the Monitor shall meet promptly to jointly discuss the circumstances relating to that event. DIA (or the Monitor) and the Recipient shall in good faith discuss the steps that the Recipient will take to address that event (a **Response Plan**). If the parties are unable to agree a Response Plan within 20 Business Days following a request under this clause, then DIA (or the Monitor) shall (acting reasonably and having regard to the matters raised by the Recipient in such discussions) provide the Recipient with a response plan which shall, for the purpose of this Agreement, be deemed to be the Response Plan. The Recipient shall comply with the requirements of any Response Plan and non-compliance by the Recipient shall entitle DIA to suspend funding under this Agreement until such time as the non-compliance is remedied to DIA's satisfaction (acting reasonably).

3 INTELLECTUAL PROPERTY

- 3.1 DIA acknowledges that the Recipient and its licensors own all pre-existing intellectual property which they contribute to the Permitted Funding Activities , and all new intellectual property which they create in the course of the Permitted Funding Activities.
- 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 Permitted Funding Activities 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 all 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; or
 - (c) subject to clause 4.4, while any one or more of the following 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 a Permitted Funding Activity 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 a Permitted Funding Activity without the prior written consent of DIA (or the Monitor);
 - (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(c) 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 a Permitted Funding Activity, exceeds the amount required to perform the Permitted Funding Activity, the Recipient must upon request refund to DIA the excess amount.
- 4.6 At any time DIA may recover the amount of any Funding that has been spent or used other than in accordance with this Agreement, or not applied to Eligible Costs by the End Date, together with interest on all such amounts calculated at 10% per annum from the date of the mispending to the date the money is repaid.
- 4.7 Clauses 1.2, 1.4, 1.5, 2.1, 2.7, 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 Permitted Funding Activities, 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 Permitted Funding Activities, 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 the Funding has been or will be applied solely to Eligible Costs

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 Permitted Funding Activities, 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 Permitted Funding Activities 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 Permitted Funding Activities.
- 6.3 DIA is not liable for any claim under or in connection with this Agreement or the Permitted Funding Activities, 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.
- 6.4 The Monitor will not have any liability whatsoever under or in connection with this Agreement to DIA or the Recipient. The limitation of liability set out in this clause does not apply to the Monitor's liability for any fraudulent, malicious or criminal act or omission of the Monitor to the extent that such liability cannot be limited or excluded by law.

7 CONFIDENTIALITY

- 7.1 Subject to clause 7.2 and 7.3, each party must keep the other parties' 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 relevant 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 or the Monitor 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 or the Monitor (as applicable) 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 and/or the Monitor's ability to:

- (a) discuss, and provide all information in respect of, any matters concerning the Recipient, the Permitted Funding Activities 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 Permitted Funding Activities, on websites; in media releases; general announcements and annual reports.

7.3 The Recipient acknowledges that:

- (a) the contents of this Agreement; 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 The Recipient will keep DIA informed on a "no surprises" basis in relation to any media statements or press releases (including social media posts) to be made by the Recipient regarding this Agreement and/or DIA's involvement in connection with the Permitted Funding Activities.

- 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 Permitted Funding Activities in accordance with funding acknowledgement guidelines agreed with DIA.
- 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 parties 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 parties 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 to the dispute.
- 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 parties.

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 parties. 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 by the parties, provided that the Monitor's agreement will not be required in respect of (and the Monitor will be deemed to have agreed to) any amendment to this Agreement that does not relate to the scope of the Monitor's review and monitoring role under this Agreement (including, for example, the Transition Support Arrangements).
- 11.6 Neither the Recipient nor the Monitor may assign or transfer any of their 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 other parties' 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 Permitted Funding Activities 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.

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 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 or the Monitor under this Agreement; or
 - (ii) the interests of the Recipient in relation to this Agreement and/or the undertaking of the Permitted Funding Activities; or

- (b) otherwise impairs or might appear to impair the ability of the Recipient (or any of its personnel or contractors) to carry out the Permitted Funding Activities diligently and independently in accordance with this Agreement.

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 undertake a Permitted Funding Activity in accordance with this Agreement, excluding overhead and management time that is not directly attributable to undertaking a Permitted Funding Activity.

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.

Funding Proposal means the Funding Proposal setting out the scope of the Permitted Funding Activities(s) to which Funding is to be applied, in the form approved by DIA.

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.

Material Variation means, in respect of a Permitted Funding Activity, 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 a Permitted Funding Activity being materially delayed, or any variation that materially amends the scope, specifications or function of a Permitted Funding Activity.

Monitor means Crown Infrastructure Partners Limited, appointed by the DIA to assist in managing the Funding by undertaking a review and monitoring role.

Payment Request means a request submitted to DIA by the Recipient seeking payment of Funding.

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

Relevant Event means actual or forecast failure to materially achieve an outcome(s) of the Funding Proposal (as determined by DIA or the Monitor acting reasonably), including where arising from unfunded cost overruns, material unapproved scope changes, material delay in achieving the delivery timeframes, or failure to meet the End Date for completion of the Permitted Funding Activities.

Reform Objectives means the following:

- (a) that there are safeguards (including legislative protection) against privatisation and mechanisms that provide for continued public ownership;
- (b) significantly improving the safety and quality of drinking water services, and the environmental performance of drinking water, wastewater and stormwater systems (which are crucial to good public health and wellbeing, and achieving good environmental outcomes);
- (c) ensuring all New Zealanders have equitable access to affordable three waters services and that the Water Services Entities will listen, and take account of, local community and consumer voices;
- (d) improving the coordination of resources, planning, and unlocking strategic opportunities to consider New Zealand's infrastructure and environmental needs at a larger scale;
- (e) ensuring the overall integration and coherence of the wider regulatory and institutional settings (including the economic regulation of water services and resource management and planning reforms) in which the local

- government sector and their communities must operate;
- (f) increasing the resilience of three waters service provision to both short- and long-term risks and events, particularly climate change and natural hazards;
 - (g) 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 local authorities;
 - (h) improving transparency about, and accountability for, the planning, delivery and costs of three waters services, including the ability to benchmark the performance of the new Water Services Entities; and
 - (i) 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.

Remedial Plan has the meaning given in clause 2.14(a) of Part 2.

Response Plan has the meaning given in clause 2.15 of Part 2.

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

Transition Support Arrangements means the obligations set out in Schedule 2.

Water Services Entity means:

- (j) the new water services entities to be established by legislation giving effect to the Three Waters Reform Programme; and
- (k) the local establishment entities to be established by legislation in advance of the establishment of the new water services entities.

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;

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 1: PERMITTED FUNDING ACTIVITIES

[Note: Permitted activities on which the Recipient may spend the Funding on, as described in the Recipient's approved Funding Proposa will be inserted by DIA]

SCHEDULE 2: TRANSITION SUPPORT ARRANGEMENTS

The Recipient will collaborate and co-operate with the DIA (including through the DIA's National Transition Unit (**NTU**)) to provide for the implementation and carrying out of certain parts of the Three Waters Reform Programme, as further described below.

In making requests under these arrangements, DIA (including the NTU) will have regard to the Recipient's available resources and the competing demands on those resources. It is intended that such requests are made and considered by DIA, the NTU and the Recipient in a collaborative and co-operative manner with a view to achieving the Reform Objectives and ensuring the Recipient is able to continue to carry out its other functions and activities.

The Recipient agrees to provide the collaboration and co-operation requested. If a council controlled organisation (**CCO**) of the Recipient is involved in the delivery of water services then the Recipient agrees to ensure that its CCO does the same.

1. The Recipient will collaborate and co-operate with the DIA (including the NTU) to facilitate the Three Waters Reform Programme (to the extent the law permits).
2. Subject to the consent of any affected employee (and in compliance with the Recipient's employment law and health and safety obligations), the Recipient will:
 - (a) comply with any reasonable request by the Executive Director of the DIA's National Transition Unit (**NTU**) for employees of the Recipient to be seconded to, or otherwise facilitate the engagement of employees with, the DIA for the purpose of assisting the DIA with the Three Waters Reform Programme; and
 - (b) enable, and where necessary facilitate, the participation of the Recipient's staff in any process or engagement with the NTU that relates to their potential employment with a Water Services Entity, including (but not limited to) attending information sessions, accessing NTU channels such as the "People Platform", providing input into the Water Services Entity organisational design and role design, engaging in unions and professional body processes developed to engage and support staff through transition.
3. The Recipient will respond to and comply with any reasonable request by the Executive Director of the NTU for information that the Recipient holds for the purpose of assisting the DIA with the Three Waters Reform Programme.
4. The Recipient acknowledges and agrees that its obligation to provide information under paragraph 3:
 - (a) may include, subject to compliance with applicable laws including the Privacy Act 2020, a requirement to provide information in relation to the assets, liabilities, contracts, property, employees, customers, processes, pricing information relating to water services fees and associated costs, and any other matters that relate to water services delivery;
 - (b) includes a requirement to comply with any reasonable request to research and collate information; and
 - (c) includes a requirement to comply with any reasonable request to provide information in a particular format and within a particular timeframe.
5. The Recipient will notify, and respond to requests for information by, DIA of intended decisions:
 - (a) that relate to the provision of water services; or
 - (b) that may affect (other than in an immaterial way) the provision of water services.

The Recipient acknowledges that such decisions include a decision:

- (c) to adopt or amend a long-term plan or to adopt an annual plan, in each case as contemplated by the Local Government Act 2002;
 - (d) to adopt a policy required by the Local Government Act 2002;
 - (e) that is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy or plan adopted by the Recipient under the Local Government Act 2002;
 - (f) to purchase or dispose of assets other than in accordance with its long-term plan;
 - (g) to purchase or dispose of an asset, if the purchase or disposal of the asset will have a material impact on the capacity to provide water services or on the financial well-being of the Recipient;
 - (h) to enter into any contract (other than an employment agreement) that imposes, or will continue to impose, any obligation in relation to the delivery of water services on the existing local authority after 30 June 2024 and the consideration for which is material in the context of the three water services or operations of the Recipient; or
 - (i) to borrow money for a period that extends beyond 30 June 2024.
6. The Recipient must not act inconsistently with its long-term plan and its annual plan as it relates to the provision of water services.
7. The Recipient shall include estimated and indicative prices for water services on invoices to consumers on an information only basis, based on a water revenue discovery process undertaken by the DIA. This disclosure obligation will not apply until the DIA has completed this discovery process and notified the Recipient of the basis of disclosure.
8. The Recipient must respond to and comply with any reasonable request by the Executive Director of the NTU to assist DIA and the NTU in the preparation of asset management plans and pricing plans for the Water Services Entities. The Recipient acknowledges that such requests may include:
- (a) a request to compile certain categories of information as part of an information base to inform the preparation of such plans (including, for example, existing water services assets held by or on behalf of the Recipient, current sources of funding for water services and details of employee roles within the Recipient's region or district that are involved in providing water services); and
 - (b) a request to consider particular options or matters for the Recipient's region or district to inform the preparation of such plans.