



Date: Tuesday, 25 August 2020

Time: 9.30am

**Location: Council Chambers
Fairlie**

AGENDA

Late Items

Extraordinary Council Meeting

25 August 2020

Note: This meeting may be digitally recorded by the minute-taker.

Order Of Business

5 Reports 3

 5.1 Three Waters Service Delivery Reform and Stimulus Package 3






5 REPORTS

5.1 THREE WATERS SERVICE DELIVERY REFORM AND STIMULUS PACKAGE

Author: Tim Harty, General Manager Operations

Authoriser: Suzette van Aswegen, Chief Executive Officer

Attachments:

1. 3 Waters Reform MOU [↓](#) 
2. Terms of Reference 3 Waters Steering Committee [↓](#) 
3. 3 Waters Stimulus Funding Agreement [↓](#) 
4. 3 Waters Stimulus Delivery Plan [↓](#) 
5. Simpson Grierson Advice to SOLGM on MOU - Confidential
6. Canterbury Mayoral Forum-three-waters-minutes_2020-08-14 [↓](#) 

Council Role:

- ☐ **Advocacy** When Council or Committee advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- ☒ **Executive** The substantial direction setting and oversight role of the Council or Committee e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- ☐ **Legislative** Includes adopting District Plans and plan changes, bylaws and policies.
- ☐ **Review** When Council or Committee reviews decisions made by officers.
- ☐ **Quasi-judicial** When Council determines an application/matter that directly affects a person's rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice, e.g. resource consent or planning applications or objections, consents or other permits/licences (e.g. under Health Act, Dog Control Act) and other decisions that may be appealable to the Court including the Environment Court.
- ☐ **Not applicable** (Not applicable to Community Boards).

PURPOSE OF REPORT

To update Council on the Three Waters Reform process and to seek direction on whether Council wishes to participate in the initial stages of the formal review by signing a Memorandum of Understanding (MoU) with the Crown.

STAFF RECOMMENDATIONS

1. That the report be received, and that,

2. Council approves signing of the non-binding MOU and delegates the Chief Executive to sign on Council's behalf, and that,
3. Council supports the approach of the Mayoral Forum that recommends the allocation of Regional funds on the same basis as the Local Authority allocation, and further that,
4. Council requests that staff develop the Funding Agreement and Delivery Plan and delegate sign off of these documents to the Chief Executive, and further that,
5. Council endorses the Bottom Lines as outlined below:
 - (a) Local representation and voice in any future water entity – Any Water entity developed through the process must enable both local and equal representation and Council must not lose its ability to influence and represent its community.
 - (b) Control on the Price of water – Pricing structures and controls on pricing must ensue.
 - (c) The transfer of asset and debt must not negatively impact on Councils ability to be a viable organisation (i.e. is not reform by stealth).
 - (d) Costs and management of any stranded assets must be considered and catered for, alongside central government speeding up the process that are looking at what might "fill the gap" left by Waters, and further that,
6. Staff develop a Partnership and Consultation plan to accompany the roll out of the works associated with the Tranche 1 process, and this be delivered in parallel with the delivery plan.

BACKGROUND

Note – The contents of this paper are in part drawn from the Model Report supplied by the Crown. The purpose of the model report is to facilitate information sharing and to ease the process for informing Councils for decision making processes. Parts of that report have been modified and localised for use in this report. The draft report template is attached in appendix 1.

ISSUES FACING THE THREE WATERS SYSTEM

National Context

Over the past three years both central and local government have been considering the issues and opportunities facing the system for regulating and managing the three waters (drinking water, wastewater, and stormwater). This was largely brought on following the 2016 Havelock North Drinking Water failure where 5500 cases of campylobacter was seen in the community, resulting in a significant public health emergency, widespread illness and was potentially attributed to at least 4 deaths. A Government review of the outbreak identified a widespread, systemic failure of the suppliers to meet the standards required for the safe supply of drinking water to the public. It made a number of urgent and longer-term recommendations to address these significant systemic and regulatory failures.

In parallel to the Havelock North review, the Government launched a National Three Waters Review. This review highlighted that, in many parts of the country, communities cannot be confident that drinking water is safe, or that good environmental outcomes are being achieved. The work also raised concerns about the regulation, sustainability, capacity and capability of the wider 3 Waters system with a large number of localised providers, many of which are funded by relatively small populations.

The local government sector's own work has highlighted similar issues. For example, in 2014, LGNZ identified an information gap relating to three waters infrastructure. A 2015 position paper, argued for a refresh of the regulatory framework to ensure delivery of quality drinking water and wastewater services, and outlined what stronger performance in the three waters sector would look like.

Both central and local government acknowledge that there are many challenges facing the delivery of water services and infrastructure.

These challenges include:

- Underinvestment in three waters infrastructure in parts of the country, and substantial infrastructure deficits. For example, it is estimated that between \$300 to \$570 million is required to upgrade networked drinking water treatment plants to meet drinking water standards; and up to \$4 billion is required to upgrade wastewater plants to meet new consent requirements. These deficits are likely to be underestimates, given the variable quality of asset management data.
- Persistent funding and affordability challenges, particularly for communities with small rating bases, or high-growth areas that have reached their prudential borrowing limits.
- Additional investment required to increase public confidence in the safety of drinking water, improve freshwater outcomes, and as a critical component of a collective response to climate change and increasing resilience of local communities.

COVID-19 has made the situation even more challenging. Prior to COVID-19, territorial authorities were planning on spending \$8.3 billion in capital over the next five years on water infrastructure. However, COVID-19 is likely to cause significant decreases in revenue in the short term. As a result, borrowing will be constrained due to lower debt limits that flow from lower revenues, and opportunities to raise revenue through rates, fees and charges will be limited.

Local Context

Locally Council owns and operates a number of Water, Wastewater and to a lesser degree, stormwater systems district wide. The 2018/28 Long Term Plan (LTP) outlines several challenges faced in this area. Council responded to these challenges by putting in place an affordable investment program to address the issues. Given the scale of the challenges, the size of the rating base and the costs associated with addressing some of the issues, the investment program is spread over several years, meaning that some risks will remain in place until such time as the works program can consider and address.

In summary, the matters for consideration in relation to the Water and Wastewater networks are as follows (excluding stormwater, as the 3 Waters Review is doing):

Water

Both the Tekapo and Twizel water supplies comply with Drinking Water Standards in New Zealand (DWS) 2012.

The Fairlie water supply does not meet the requirements of the DWS and Council has a \$2.5m investment programmed for completion over the 202/21 financial year to address the issue. A heightened level of risk exists with this supply until such time as the upgrade is completed.

Overall the districts water reticulation is in good order with the main exception of asbestos cement (AC) pipes, predominantly in Twizel. The 2020/21 Annual Plan has allocated approximately \$7.5m to address this issue and planning for the works is underway.

Wastewater

Councils wastewater reticulation and treatment plants are in varying states of repair and, as outlined within the 2018/28 LTP, further investment over the short term, is needed.

All wastewater treatment plants have consent compliance challenges ranging from minor reporting matters to more major issues around ability to meet discharge consent parameters. All of Councils treatment plants are founded on basic pond technology, which, given the direction that environmental standards and public expectations are headed, are not likely to be sustainable long term solutions. Transitioning away from these types of plants to more modern alternatives is a significant and costly exercise.

At the time of drafting this report, Council staff are in discussions with ECan regarding these issues and will be developing up a program of works to be included into the 2021/31 LTP, or addressed earlier, through the funding process outlined within this report.

Overall the district wastewater reticulation network is in good order.

Progress with three waters regulatory reforms

Significant progress has been made in addressing the regulatory issues raised by the Havelock North Inquiry and Three Waters Review. The Government has implemented a package of reforms to the three waters regulatory system, which is designed to:

- Improve national-level leadership, oversight, and support relating to the three waters – through the creation of Taumata Arowai, a new, dedicated Water Services Regulator;
- Significantly strengthen compliance, monitoring, and enforcement relating to drinking water regulation;
- Manage risks to drinking water safety and ensure sources of drinking water are protected;
- Improve the environmental performance and transparency of wastewater and stormwater networks.

Legislation to create Taumata Arowai has been passed. The new Crown entity is currently being built, and will become responsible for drinking water regulation once a separate Water Services Bill is passed (anticipated mid 2021).

However, there is general acknowledgment that regulatory reforms alone will not be sufficient to address many of the issues facing the three waters system. Reforms to the way that service delivery functions and how funding is arranged also need to be explored. To do this, a further reform process has commenced and is outlined below.

PROPOSAL – CENTRAL/LOCAL GOVERNMENT THREE WATERS REFORM PROGRAMME**Overview of proposed approach to three waters investment and service delivery reform**

Discussions on how to roll out reforms across the 3 Waters sector have been ongoing for some time. To facilitate multi-party/multi-level open discussions on the process, a Joint Central/Local Government Three Waters Steering Committee (the Committee) has been established. The Committee has a mandate to provide oversight and guidance to support further reform. Details of Committees terms of reference are provided in Attachment 1.

Through this discussion process all parties have considered it timely to apply a targeted infrastructure stimulus investment to enable improvements to water service delivery, progress service delivery reform in partnership, and ensure the period of economic recovery following COVID-19 supports a transition to a productive, sustainable economy. With this in mind, in July 2020, the Government announced an initial funding package of \$761 million. This was aimed at supporting the proposed three-year programme of reform of local government water service delivery arrangements and also supports the establishment and operation of Taumata Arowai.

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

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

While the Government's starting intention is for publicly-owned multi-regional models for water service delivery (with a preference for local authority ownership), final decisions on a service delivery model will be informed by discussion with the local government sector and the work of the Joint Steering Committee.

Further information on the reform objectives, and the core design features of any new service delivery model, are provided in pages 3 to 4 of the MoU at Attachment 2.

Reform process and indicative timetable

Government has three-year programme to reform three waters service delivery arrangements, which is being delivered in conjunction with an economic stimulus package of Crown investment in water infrastructure. The reform programme will be undertaken in 3 Tranches, as outlined in the diagram below.

The initial stage (Tranche 1) is an opt in, non-binding approach, which involves councils taking the actions and signing the documents described below (MoU, Funding Agreement, and Delivery Plan).

The process is current at this point.

Councils that agree to opt in by the end of August 2020 will receive a share of the initial funding package. Any further tranches of funding will be at the discretion of the Government and may depend on progress against reform objectives.

An indicative timetable for the full reform programme is provided below. While this is subject to change as the reforms progress, and subject to future Government budget decisions, it provides an overview of the longer-term reform pathway. Further details on how central and local government will work together and the processes for these discussions is outlined within the MOU.



COUNCIL BOTTOM LINES

Council may also wish to consider setting its own “bottom lines” with regards to participating in the next stage discussions.

By setting parameters by which it will consider moving through the tranche one process and potentially consideration of Tranche 2 participation, Council sets a bottom line for staff and Councillors alike, who will all be participating in these discussions, albeit at different levels and times.

A set of consistent bottom lines will ensure a joint and clear position from Council on the reform process as progress is made through Tranche 1 works. These bottom lines may include the following:

- Local representation and voice in any future water entity – Any Water entity developed through the process must enable both local and equal representation and Council must not lose its ability to influence and represent its community
- Control on the Price of water – Pricing structures and controls on pricing must ensure
- The transfer of asset and debt must not negatively impact on Councils ability to be a viable organisation (i.e. is not reform by stealth)
- Costs and management of any stranded assets must be considered and catered for, alongside central government speeding up the process that are looking at what might “fill the gap” left by Waters

ALLOCATION OF THE INVESTMENT PACKAGE

To allocate the funding package, Government has determined a notional allocation framework based on a nationally consistent formula. Details of the formula can be made available, on request.

The investment package was structured into two components:

- A direct allocation to each territorial authority, comprising 50% of that territorial authority's notional allocation; and
- A regional allocation, comprising the sum of the remaining 50% of the notional allocations for each territorial authority in the relevant region

The relevant allocations Council are:

- \$2.56m (excluding GST) direct allocation
- \$50 (excluding GST) Canterbury regional allocation

The purpose of the Government’s regional allocation is to establish collective participation by councils in the reform programme. Each regional group of councils has until 30 September to agree on how best to apportion the regional funds to the individual territorial authorities that make up the region. Appendix F includes a hypothetical example of how a regional allocation decision-making process could work

Notwithstanding this, the Steering Committee has recommended a preferred approach to the allocation of regional funding, being the same formula that is used to determine the direct allocations to territorial authorities. This has been supported by the Canterbury Mayoral Forum at its meeting on 14th August with a resolution from that meeting to write to both the Minister of Local Government and the Joint Three Waters Steering Group advocating this process. If this was to occur, Council would receive funds in the order of \$5.0 million to support the delivery of 3 waters related projects.

At the same meeting the Mayoral Forum also authorised the Canterbury Mayoral Forum Three Waters Steering Group to:

- Approve a scope of works for the review of Three Waters service delivery options in Canterbury
- Approve an assessment process and principles for determining a preferred service delivery option for Canterbury

At the same meeting, members of Ngāi Tahu were invited to join the Three Waters Steering Group. Minute of this meeting are shown in attachment 6.

Staff recommend delegating decisions about the allocation of regional funding to the Chief Executive, with the understanding that the minimum level of funding to the Council be based upon the formula used to calculate the direct council allocations, and noting that participation by two-thirds of territorial authorities within the Canterbury region is required to access the regional allocation. At this stage there is no evidence to show that this two-thirds majority level will not be reached and the Mayoral forum has endorsed this approach.

COUNCIL COMMITMENT REQUIRED

To opt into the initial stage of the reform programme involves Councils commitment and approval of three core elements:

- Memorandum of Understanding (Attachment 2);
- Funding Agreement (Attachment 3);
- Delivery Plan (Attachment 4).

Initial funding will be made once Council sign the MoU, and deliver the associated Funding Agreement and Delivery Plan. This initial funding will be provided in two components: a direct allocation to individual councils, alongside the regional allocation. The participating councils in each region are required to agree an approach to distributing the regional allocation. If the Mayoral forums proposal is agreed to, and this appears likely as supported by the Steering Committee, this will be distributed on the same formula as is being used regionally.

The MoU is a voluntary 'opt in' to the first stage of the reform and stimulus programme. The MoU does need to be signed and submitted by the end of August 2020. The Funding Agreement and Delivery Plan need to be submitted by the end of September 2020, to access the stimulus funding, Councils that do not opt in by the end August 2020 deadline will not receive a share of the stimulus funding. Councils will still be able to opt in to the reform programme at a later date, but will not have access to the initial funding package, retrospectively.

Memorandum of Understanding

A MoU has been developed by the Steering Group, for each council to enter into with the Crown. This is a standardised document, which cannot be amended or modified by either party.

Signing the MoU commits councils to:

- Engage in the first stage of the reform programme – including a willingness to accept the reform objectives and the core design features set out in the MoU;
- Embrace the principles of working together with central government and the Steering Committee;
- Work with neighbouring councils to consider the creation of multi-regional entities;
- Share information and analysis on their three waters assets and service delivery arrangements.

Exact details of what these commitments mean moving forward are not available at this time, as many of the next stages of the process are still under development. This makes the signing of the MOU somewhat a “leap of faith”, however, it is noted that this stage is non-binding and Council is not the sole participant in the process. As a non-binding agreement, it does not require councils to commit to future phases of the reform programme, to transfer their assets and/or liabilities, or establish new water entities.

The MoU is effective from the date of agreement until 30 June 2021, unless terminated by agreement or by replacement with another document relating to the reform programme.

A legal opinion by Simpson Grierson, commissioned by SOLGM on behalf of the Steering Committee, advises that the MoU does not contain any explicit triggers for consultation under the Local Government Act 2002. (see Attachment 5). This does not mean that Council should not consult with Iwi partners and the wider community, and in fact this is encouraged and recommended.

Funding Agreement

This Council has been allocated \$2.56 million by the Crown, if it opts in to the reform programme. A further \$50 million has been allocated to the Canterbury Region to agree an appropriate distribution between participating Councils. This funding will be provided as a grant, which does not need to be repaid if the Council does not ultimately commit to reform at later stages of the process.

There are several options for how the regional funding could be allocated between councils as has noted previously in this report. The joint central-local government Three Waters Steering Committee preferred approach is to apply the same formula¹ used to calculate the direct allocations. Under this approach, the Council would receive an additional \$2.56 million, contributing to a total funding allocation of \$5.12 million.

The Funding Agreement is one of the mechanisms for accessing the funding package. Like the MoU, it is a standardised document, for agreement between each council and the Crown. It cannot be amended.

The Funding Agreement guides the release and use of funding. It sets out:

- The funding amount allocated to the Council;
- Funding conditions;
- Public accountability requirements, including the Public Finance Act;
- Reporting milestones.

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

While there is some local flexibility around how the funding can be applied, the Government has indicated that this investment is intended to support economic recovery, enable improvements in water service delivery, and progress the service delivery reform programme. Further details of the criteria for use and projects suggested by staff, will be made once it is known that Councils supports the process, will sign the MOU and staff are required to develop and bring to Council the Funding Agreement (and Delivery plan, see below) for approval.

The Funding Agreement will be supplemented by a Delivery Plan, which is the document that sets out how the grant funding is to be applied by the Council.

Delivery Plan

The Delivery Plan is the other document required for accessing the funding package.

This Delivery Plan must show that the funding allocation is to be applied to operating and/or capital expenditure relating to three waters infrastructure and service delivery, and which:

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

The Delivery Plan is a short-form template, which sets out:

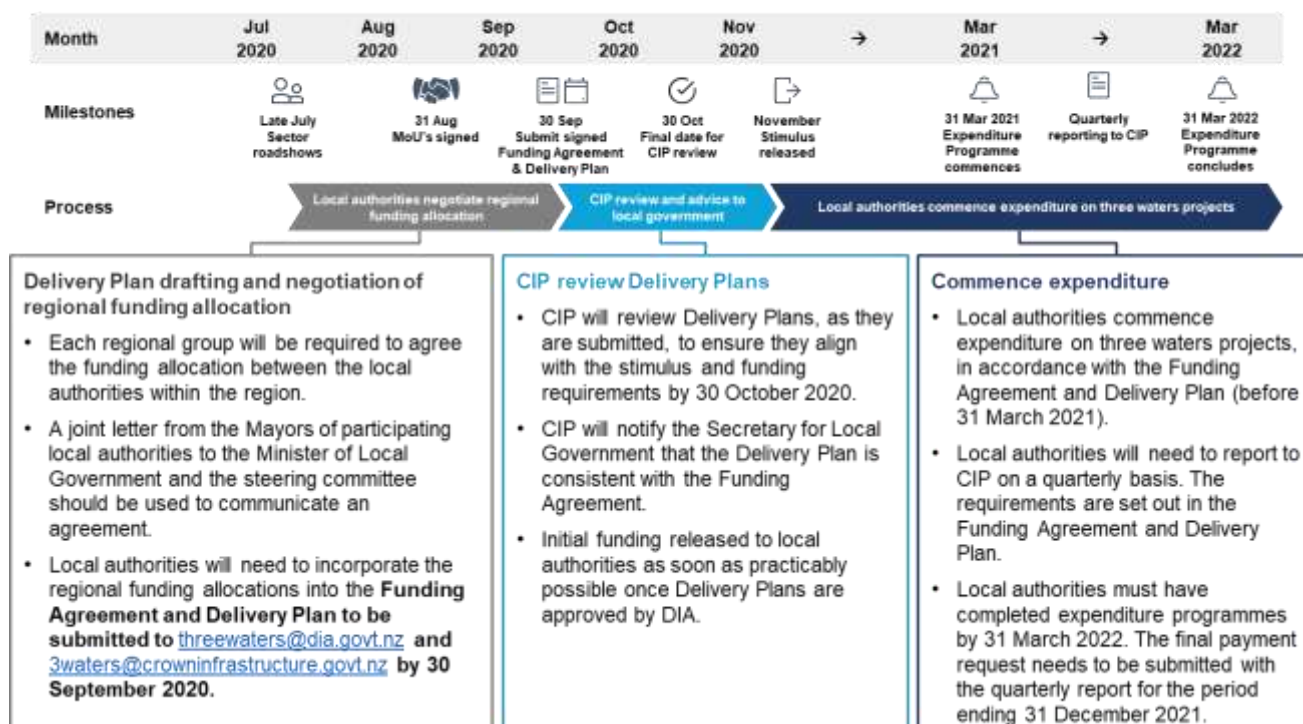
- a summary of the works to be funded, including location, estimated associated costs, and expected benefits/outcomes;
- the number of people to be employed in these works;
- an assessment of how the works support the reform objectives in the MoU;
- reporting obligations.

The Delivery Plan will be supplied to Crown Infrastructure Partners (and other organisations as agreed between the Council and Crown), for review and approval. Crown Infrastructure Partners will monitor progress against the Delivery Plan, to ensure spending has been undertaken with public sector financial management requirements.

TIMEFRAMES

For clarity, the following timeframes and key dates apply to this process:

The indicative process for the stimulus funding is presented below. Detailed process guidance will be provided prior to 31 August 2020.



CONSULTATION

Council has been provided advice from Simpson Grierson (attachment 5), via DIA, indicating that there is no explicit triggers for consultation before territorial authorities sign the MOU. Whilst this may be the case and this advice allows Council to approve signing of the MOU through the resolutions of this report, consultation post signing is highly recommended. Coupled with that, the Mayoral Forum received a submission from Ngāi Tahu and have invited them to be part of the Three Waters Steering Group looking to develop and deliver a review of Three Waters service delivery options in Canterbury.

Given this, it is recommended that Council proactively invite local Rununga partners to participate in the process of development of the local works program and also look to develop a wider stakeholder and community consultation process to support the roll out of the program and educate on the wider reform process.

SIGNIFICANCE OF DECISION

Council has a Significance and Engagement Policy dated 2014.

The purpose of the Policy is to:

- Enable the Council and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions and activities
- Provide clarity about how and when communities can expect to be engaged in decisions about different issues, assets or other matters
- Inform the Council from the beginning of a decision making process about the extent, form and type of engagement required

The threshold for a decision to be considered significant is set out below:

- **Monetary** - Any decision not highlighted in either the Long-Term Plan or the Annual Plan and with a cost greater than \$400,000 will be regarded as significant.
- **Strategic Assets** - Any decision to sell, abandon or dispose of any of Councils' strategic assets will be regarded as significant

Whilst the matters set out within this report relate to the 3 Waters Assets which are considered significant, the process Council is being asked to endorse is non-binding and does not commit Council to progressing into a process which sells or disposes of any asset. Also, whilst the process is not outlined within the Annual or Long Term Plan, there is no costs associated with the process that exceed \$400,000.

Therefore, this decision is not considered significant.

OPTIONS

There are two options available to Council:

Option 1: Agree to Sign the MOU and Participate in the Tranche One process

Under this option Council will approve and delegate authority to sign the attached MOU to the Chief Executive.

Under this option staff will be required to work on the development of the Funding Agreement and Delivery Plan for Council agreement and submission prior to the cut of date indicated within this report.

Staff recommend that a workshop be held prior to the above agreement and plans being completed to gain Councils feedback and input into the works proposed with the funding allocated.

As noted, agreement to participate in this process by signing the MOU does not commit Council to any further stages of the process. It does, however commit Council and staff to work Regionally and Sub Regionally with parties, cooperate with the DIA Three Waters Review team and actively participate in the process moving forward. This will be an added draw on staff time and extra resources may be needed to meet existing delivery expectations and workloads.

Option 2: Do not Sign the MOU

Council can elect to not sign the MOU and therefore not participate in the process.

Under this option, no further works nor actions are required. At the time of drafting this report, it is understood, via feedback from the Mayoral Forum, that all Canterbury Councils are likely to be part of the process.

Staff recommend Option 1

CONSIDERATIONS

Legal

DIA has supplied all relevant documents and processes. It is assumed that all documents have been legally reviewed and are sound and fit for purpose for the use intended.

It is not recommended to seek independent legal advice at this stage of the process.

Financial

If Council signs the MOU, significant funding will be coming to Council via the grant process. At this point in time it is not known how this income will be delivered or managed from a financial perspective.

Further work is needed to understand this process.

Other

The injection of extra funds of the magnitude in question represents a significant workload for staff, given the \$9.5m program of works. When developing the Delivery Plan, staff will consider the best option to meet the funding expectations and request Council support of that mechanism.

CONCLUSION

The Three Waters Review is progressing as an issue of National significance. This first tranche of the process requires Council to sign a non-binding MOU which commits them to work collaboratively with central government, unlocks significant funding and but does not bind council to continue with the process past this stage.

Parallel to this, the Canterbury Mayoral Forum has endorsed the formation of a Three Waters Steering Group, including Iwi Partners, to look to develop a Business Case or Process outlining what a Canterbury Regional Water entity would look like.

Council signing the MOU is considered the recommended option to move forward.

MODEL

Memorandum of Understanding Three Waters Services Reform

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

Date

PURPOSE

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

BACKGROUND

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

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

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

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

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

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

PRINCIPLES FOR WORKING TOGETHER

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

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

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

REFORM OBJECTIVES AND CORE DESIGN FEATURES

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

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

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

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

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

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

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

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

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

FUNDING ARRANGEMENTS

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

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

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

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

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

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

FUTURE AGREEMENTS

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

PROGRAMME MANAGEMENT

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

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

TERM

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

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

INTERACTIONS, MONITORING, INFORMATION AND RECORDS

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

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

It is the responsibility of these representatives to:

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

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

CONFIDENTIALITY

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

DISPUTE RESOLUTION

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

.....
SIGNED on behalf of the Crown

by [insert name - DELETE TEXT]

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

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

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

.....
Witness signature

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

Witness address [insert address - DELETE
TEXT]

.....
Witness signature

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

Witness address [insert address - DELETE
TEXT]

Terms of Reference

Three Waters Steering Committee

Purpose of this Terms of Reference

This Terms of Reference sets out the mutual intentions and understanding of representatives from the Department of Internal Affairs, Treasury, Local Government New Zealand and the New Zealand Society of Local Government Managers in forming a Steering Committee that will work closely to support a programme of reform for the delivery of three waters services.

Background

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

While addressing the regulatory issues, both central and local government acknowledge that there are broader challenges facing local government water services and infrastructure, and the communities that fund and rely on these services. There has been underinvestment in three waters infrastructure in parts of the local government sector, persistent affordability challenges, and additional investment required to meet improvement in freshwater outcomes.

The Steering Committee has been convened to ensure that the perspectives, interests and expertise of both central and local government, and of communities throughout New Zealand, are accommodated as reform progresses. This will include periods of engagement with the local government sector, details of which will be provided soon.

The Committee will build on the constructive collaboration modelled by the COVID-19 Local Government Response Unit and will adopt its general principles of regular updates, advice and communications to the sector and other stakeholders as appropriate. There is a shared understanding that a partnership approach will best support the wider community and ensure that any transition to any eventual new arrangements is well managed and as smooth as possible.

Objectives of the reform programme

The following objectives will underpin the reform programme and creation of a new aggregated water services delivery model:

- 1 significantly improving the safety and quality of drinking water services, and the environmental performance of drinking water and wastewater systems (which are crucial to good public health and wellbeing, and achieving good environmental outcomes)
- 2 ensuring all New Zealanders have equitable access to affordable three waters services
- 3 improving the coordination of resources, planning, and unlocking strategic opportunities to consider New Zealand's infrastructure and environmental needs at a larger scale
- 4 increasing the resilience of three waters service provision to both short- and long-term risks and events, particularly climate change and natural hazards

- 5 moving the supply of three waters services to a more financially sustainable footing, and addressing the affordability and capability challenges faced by small suppliers and councils
- 6 improving transparency about, and accountability for, the delivery and costs of three waters services, including the ability to benchmark the performance of service providers
- 7 undertaking the reform in a manner that enables local government to continue delivering on its broader “wellbeing mandates” as set out in the Local Government Act 2002.

Key requirements of the reform programme

Government has agreed that its starting intention is to form multi-regional models for water service delivery to realise benefits of scale in water services delivery to communities. Final decisions on a delivery model will be informed by discussion with the local government sector and the work of the Steering Committee.

The new delivery model will need to include the following safeguards:

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

The Crown will also be undertaking further work to consider and address Treaty-related rights and interests and a plan for working with Treaty partners throughout this programme.

The benefits of aggregation when applied to stormwater are less well established. It is proposed that the merits of including stormwater in the scope of the new delivery model also be examined through the course of the reform.

Role of the Steering Committee

This Steering Committee has been formed to support the design and implementation of this programme of reform.

The Department of Internal Affairs will act as Convenor of the Secretariat for the Steering Committee, providing secretariat support and leading reporting from the Steering Committee to the Minister of Local Government and Three Waters Ministers.

The Steering Committee will work collaboratively and constructively to ensure that the design and implementation of the reform programme and associated activities gives effect to the objectives and key requirements of the Government and local government sector stated above, while bringing the lens of local government expertise and experience to the work.

It is envisaged that the Steering Committee will, at various times, be called on to provide advice on issues, commission and oversee workstreams, test policy development, and support local government and iwi engagement.

Participation in the Steering Committee does not preclude or replace normal decision-making processes by individuals, or their organisations related to the proposed reform.

Timing and key deliverables

The Central Government/Local Government Forum has tasked the Steering Committee with preparing by the end of June:

- 1 A protocol for how the parties to work together on the proposed reform (this Terms of Reference)
- 2 A model Memorandum of Understanding between Crown and councils
- 3 Agreed work programme and process for progressing key policy issues (including, but not limited to, planning efficiency, rights and interests of Māori/Iwi, ownership, governance, funding) and core reform timetable
- 4 Local government sector engagement approach.

After this work is complete, we anticipate an ongoing role for the Steering Committee in supporting the reform programme. The parties will discuss and agree the nature, scope and parameters for this role at the appropriate time and amend this Terms of Reference, if required.

Relationship principles

The Steering Committee will agree an appropriate working pattern, governance structure and reporting arrangements that balance timely delivery with maintaining broad consensus through the development and implementation of the reform programme.

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

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

Any disputes arising over the course of this programme are to be settled by full and frank discussion within the Steering Committee.

Communications protocols

It is acknowledged that the Central and Local Government parties to the Steering Committee may at times have distinct obligations in terms of communications with respective stakeholders. However, as it works through the programme of reform it is critical for the credibility of the group and the integrity of its processes that it communicates with one voice. Communications channels will be established by the secretariat to provide updates and working group messaging to the local government sector and other stakeholders including the media. Where there is a potential conflict between principles of openness and transparency and confidentiality, working group members will be expected to raise and discuss this with the governance group. Communications will be signed off by the governance group prior to distribution.

Confidentiality

The Steering Committee agrees not to disclose, directly or indirectly, any confidential information received from others through this programme without written consent, unless required by processes under the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987 (whichever applies), in which case the relevant party is to inform the other party prior to disclosure. Materials will remain confidential to the group unless indicated otherwise as part of a wider communication plan.

Membership

The Three Waters Steering Committee comprises the following members:

Independent Chair: Brian Hanna

Local Government: Rachel Reese (Mayor, Nelson City Council), Alex Walker (Mayor, Central Hawke's Bay District Council), Stuart Crosby (Councillor, Bay of Plenty Regional Council), Bayden Barber (Councillor, Hastings District Council), Vaughan Payne (Chief Executive, Waikato Regional Council), Monique Davidson (Chief Executive, Central Hawke's Bay), Pat Dougherty (Chief Executive, Nelson City Council), Hamish Riach (Chief Executive - Ashburton District Council), Steve Ruru (Chief Executive Officer - Southland District Council), Miriam Taris (Chief Executive, Western Bay of Plenty District Council), Heather Shotter (Chief Executive Officer - Palmerston North City Council), Alastair Cameron (CCO Governance and External Partnerships, Auckland Council), Craig McIlroy (General Manager Healthy Waters - Auckland Council)

SOLGM: Karen Thomas (Chief Executive), Kevin Lavery

LGNZ: Jason Krupp (Deputy Chief Executive Advocacy)

DIA officials and advisors: Paul James (Chief Executive, DIA, Secretary for Local Government), Allan Prangnell, Richard Ward, Michael Chatterley, Nick Davis, Natalie McClew

Taumata Arowai: Bill Bayfield (Establishment Chief Executive)

Treasury: Morgan Dryburgh



FUNDING AGREEMENT

BETWEEN

DEPARTMENT OF INTERNAL AFFAIRS

AND

[NAME OF RECIPIENT]

FOR

THREE WATERS SERVICES REFORMS

AGREEMENT

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

PART 1: KEY DETAILS

- 1 **Parties**

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

[NAME OF RECIPIENT] (**Recipient**)
- 2 **Background**

The New Zealand Government is undertaking a reform programme for “Three Waters” (drinking water, wastewater and stormwater) service delivery for communities (**Three Waters Reform Programme**). In conjunction with the Three Waters Reform Programme, the New Zealand Government is investing in water service delivery. The investment’s objectives are to:

 1. improve the safety and quality of drinking water services, and the environmental performance of drinking water and wastewater systems, by maintaining, increasing or accelerating investment in core water infrastructure renewals and maintenance; and
 2. support New Zealand’s economic recovery from the COVID-19 pandemic through job creation, by enabling investment to continue at a time when council revenues are uncertain and they face immediate cashflow challenges.

The New Zealand Government has mandated DIA to manage the provision of Government funding to local authorities to support investment in water infrastructure that supports its public health and environmental management objectives. Provision of such funding supports the objectives of the reform programme, by creating positive momentum toward reform of delivery arrangements for drinking water and wastewater services and infrastructure (with stormwater as a secondary priority).

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

The Recipient is a territorial authority with statutory responsibility for delivering Three Waters services within its own district or city. The Recipient will work collaboratively with the New Zealand Government in connection with the Three Waters Reform Programme.

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

Key details of this Agreement are set out in this **Part 1**. The full terms and conditions are set out in **Part 2**. Defined terms and rules of interpretation are set out in **Part 3**.
- 3 **Conditions Precedent**

No Funding is payable under this Agreement until DIA has confirmed to the Recipient in writing that it has received, and found, in its sole discretion, to be satisfactory to it in form and substance, the following documents and evidence:

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

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

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

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

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

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

- | | | |
|---|--|--|
| 4 | Expenditure Programme(s) | The Recipient may only use the Funding to complete the expenditure programme(s) described in the Delivery Plan (each an Expenditure Programme). |
| 5 | Expenditure Programme Milestones and Completion Dates | The Recipient is to complete the Expenditure Programme Milestones set out in the Delivery Plan to the satisfaction of DIA by the Completion Dates set out therein. |
| 6 | End Date | The End Date is 31 March 2022, or such later date determined by DIA in its discretion. |
| 7 | Funding | <p>The total Funding available under this Agreement is up to NZ\$[INSERT HERE] plus GST (if any). This is the Total Maximum Amount Payable.</p> <p>The first instalment of Funding under this Agreement is subject to satisfaction of the Conditions Precedent set out in Item 3 above and receipt of a duly completed Payment Request in accordance with clause 1 of Part 2.</p> <p>The balance of the Funding under this Agreement will be paid in instalments as specified in the Delivery Plan, subject to satisfaction of the conditions set out below and the other terms and conditions of this Agreement.</p> <p>Each instalment of Funding under this Agreement, following payment of the first instalment, is subject to:</p> <ul style="list-style-type: none"> (a) Receipt of a duly completed Payment Request in accordance with clause 1 of Part 2. (b) The Expenditure Programme(s) having commenced no later than 31 March 2021. (c) DIA receiving and being satisfied with the quarterly reports specified in the Key Details, together with the other information required in this Agreement. (d) No Termination Event, or event entitling DIA to suspend funding under this Agreement, subsisting. (e) Any further conditions relating to that instalment of Funding as specified in the Delivery Plan. |

The first Payment Request may be submitted upon the Commencement Date

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

8 Reporting

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

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

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

Each quarterly report must include the following information:

- (a) Description and analysis of actual progress of the Expenditure Programme(s) against planned progress for the relevant Quarter;
- (b) A summary of expenditure, actual against budgeted (including underspend and cash float), for the relevant Quarter;
- (c) Plans for the next Quarter;
- (d) Forecast cashflows and forecast of the costs to complete the Expenditure Programme(s);
- (e) Any major risks arising or expected to arise with the Expenditure Programme(s), costs or performance of this Agreement, together with actual or proposed mitigations for those risks (including, where the actual Expenditure Programme(s) costs are forecast to exceed budgeted costs, how the shortfall is to be funded);
- (f) A summary of the number of jobs created, actual against expected, through people employed in the Expenditure Programme(s);
- (g) Any specific reporting requirements set out in the Delivery Plan; and
- (h) Any other information that is notified by DIA in writing to the Recipient.

The final report must include the following information:

- (a) Description and analysis of completion of the Expenditure Programme(s) against the original programme;
- (b) A summary of expenditure, actual against budgeted (including underspend), for the full Expenditure Programme(s);
- (c) Detail of the Recipient's proposed next steps;
- (d) An update on media, marketing and communication activities for the Expenditure Programme(s);
- (e) A summary of the number of jobs created, actual against expected, through people employed in the Expenditure Programme(s);
- (f) Any specific reporting requirements set out in the Delivery Plan; and
- (g) Any other information that is notified by DIA in writing to the Recipient.

9 Special Terms

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

10 Recipient's Bank Account	[xx-xxxx-xxxxxxxx-xxx]	
11 Representative	DIA's Representative: Name: Allan Prangnell Email: threewaters@dia.govt.nz	Recipient's Representative: Name: [name] Email: [email]
12 Address for Notices	To DIA: Three Waters Reform Level 7, 45 Pipitea Street Wellington 6011 Attention: Allan Prangnell Email: threewaters@dia.govt.nz , with a copy to legalnotices@dia.govt.nz To the Monitor: Attention: Anthony Wilson Email: 3waters@crowinfrastucture.govt.nz	To the Recipient: [address] Attention: [name] Email: [email]
SIGNATURES	SIGNED by the SOVEREIGN IN RIGHT OF NEW ZEALAND acting by and through the Chief Executive of the Department of Internal Affairs or his or her authorised delegate: _____ Name: Position: 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:

END OF PART 1

PART 2: GENERAL TERMS

1 FUNDING

- 1.1 DIA must pay the Funding (up to the "Total Maximum Amount Payable" specified in the Key Details) to the Recipient, subject to the terms of this Agreement. Unless stated otherwise in this Agreement, the Recipient may only claim the Funding to the extent necessary to cover Eligible Costs that have been or will be incurred by the Recipient, and the Recipient must use the Funding solely on Eligible Costs.
- 1.2 The Recipient must submit a Payment Request to threewaters@dia.govt.nz and copying in DIA's Representative and the Monitor on completion of one or more Expenditure Programme Milestones specified in the Delivery Plan. Such Payment Request must be submitted at the time specified in, and otherwise in accordance with, item 7 (Funding) in the Key Details.
- 1.3 Each Payment Request is to be signed by the Chief Executive and an authorised signatory of the Recipient and must be in the form set out in the Schedule and include the confirmations set out therein, and must include:
- (a) the amount of Funding requested, which must not exceed the aggregate maximum Funding instalment amounts set out in the Delivery Plan for the Expenditure Programme Milestone(s) to which that Payment Request relates; and
 - (b) contain any other information required by DIA.
- 1.4 Once DIA has reviewed the Payment Request and the information enclosed with it, it will request the Recipient to provide (and the Recipient will provide) a valid GST invoice complying with the Goods and Services Tax Act 1985.
- 1.5 DIA is not required to pay any Funding in respect of a Payment Request:
- (a) if any Expenditure Programme Milestone(s) have not been completed by the relevant "Completion Date" specified in the Delivery Plan;
 - (b) if any reports specified in the Key Details have not been provided or are not in form and substance satisfactory to DIA in its sole discretion;
 - (c) if the Conditions specified in Item 7 of the Key Details relating to that instalment have not been satisfied;
 - (d) if payment will result in the Funding exceeding the "Total Maximum Amount Payable" specified in the Key Details;
 - (e) if this Agreement has expired or been terminated; and/or
 - (f) while the Recipient is in breach of this Agreement.
- For the avoidance of doubt, DIA's obligation to make Funding available under this Agreement is strictly subject to clause 6.2.
- 1.6 Subject to the terms of this Agreement, DIA must pay each valid Payment Request by the 20th day of the month after the month the GST invoice referred to in clause 1.4 is dated, and if such day is not a Business Day, on the next Business Day. DIA will pay the Funding to the Bank Account of the Recipient specified in Item 10 of the Key Details.

- 1.7 The Funding made available under this Agreement comprises grant funding and does not comprise an equity investment or loan. It is only repayable in the specific circumstances set out in this Agreement.

- 1.8 DIA may, at its discretion, notify the Recipient in writing that it wishes to enter into a GST Offset Agreement in connection with the payment of GST on any Funding. The Recipient must, where applicable, take all such steps as are reasonably required to achieve that GST offset in accordance with the Goods and Services Tax Act 1985.

2 RECIPIENT'S RESPONSIBILITIES

Standards and compliance with laws

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

Expenditure Programme(s) and Contractors

- 2.2 The Recipient must not, without DIA's prior written consent, make any Material Variation to the Expenditure Programme(s) (including its description and scope) as set out in the Delivery Plan.

- 2.3 The Recipient must ensure that the Expenditure Programme(s) are carried out:

- (a) promptly with due diligence, care and skill, and in a manner that meets or exceeds Best Industry Practice;
- (b) by appropriately trained, qualified, experienced and supervised persons; and
- (c) in accordance with any directions of DIA, notified by DIA in writing from time to time.

- 2.4 The Recipient must use reasonable endeavours to ensure that the Expenditure Programme Milestones are completed by the relevant "Completion Date" specified in the Delivery Plan.

- 2.5 The Recipient is responsible for the acts and omissions of any contractors and subcontractors.

- 2.6 The Recipient must ensure (and will procure that the head contractor when engaging with any other contractor ensures) that all agreements it enters into with any contractors or any other party in connection with the Expenditure Programme(s) are on an "arm's length" basis, provide value-for-money and do not give rise to any Conflict of Interest. The Recipient must provide DIA with reasonable evidence of compliance with this clause 2.6 in response to any request by DIA from time to time.

Information Undertakings

- 2.7 The Recipient must provide DIA with the reports specified in the Key Details, in accordance with the timeframes and reporting requirements set out in the Key Details.

- 2.8 The Recipient must provide DIA with any other information about the Expenditure Programme(s) requested by DIA within the timeframe set out in the request.

- 2.9 The Recipient must promptly notify DIA if:

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

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

- 2.10 The Recipient must not at any time do anything that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of DIA or the New Zealand Government. The Recipient must keep DIA informed of any matter known to the Recipient which could reasonably be expected to have such an effect.
- 2.11 The parties acknowledge and agree that CIP (or any other Monitor) may, to the extent directed by DIA, undertake a reviewing and monitoring role under this Agreement, including by:
- (a) reviewing and confirming satisfaction with the Delivery Plan and with the reports specified in the Key Details;
 - (b) seeking, reviewing and confirming satisfaction with further information from the Recipient; and
 - (c) making recommendations to DIA and the New Zealand Government in respect of the Funding and the Agreement.

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

Funding, records and auditors

- 2.12 The Recipient must receive and manage all Funding in accordance with good financial management and accounting practices and to a high standard that demonstrates appropriate use of public funds.
- 2.13 The Recipient must keep full and accurate records (including accounting records) of the Expenditure Programme(s) and retain them for at least 7 years after the last payment of Funding under this Agreement. The Recipient must permit DIA (or any auditor nominated by DIA) to inspect all records relating to the Expenditure Programme(s) and must allow DIA and/or the auditor access to the Recipient's premises, systems and personnel for the purposes of this inspection. DIA shall bear any third party costs arising from such inspection, unless the inspection reveals a breach of this Agreement, in which case the Recipient shall bear such costs.

Reform

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

3 INTELLECTUAL PROPERTY

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

4 TERM AND TERMINATION

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

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

5 WARRANTIES AND UNDERTAKINGS

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

- (d) it has disclosed to DIA all matters known to the Recipient (relating to the Expenditure Programme(s), the Recipient or its personnel) that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of DIA or the New Zealand Government; and
- (e) it is not aware of any material information that has not been disclosed to DIA which may, if disclosed, materially adversely affect the decision of DIA whether to provide the Funding.

5.3 The Recipient warrants that:

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

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

5.4 DIA warrants that, as at the date of this Agreement, it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.

5.5 The Recipient acknowledges that DIA has entered into this Agreement in reliance on these warranties and undertakings.

5.6 The Recipient acknowledges and agrees that DIA has made no warranty or representation that any funding or financial support is or will be available to the Recipient in respect of the Expenditure Programme(s), other than the Funding.

6 LIABILITY

6.1 The maximum liability of DIA under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, is limited to the total amount of Funding paid or payable under this Agreement.

6.2 The Recipient undertakes to pay any and all cost overruns of the Expenditure Programme(s) and any funding shortfall, and DIA and the New Zealand Government have no obligations or responsibility whatsoever in respect of such cost overruns and funding shortfall and accept no financial risk in the Expenditure Programme(s).

6.3 DIA is not liable for any claim under or in connection with this Agreement or the Expenditure Programme(s), whether arising in contract, tort (including negligence) or otherwise, where such claim is or relates to any loss of profit, loss of revenue, loss of use, loss of reputation, loss of goodwill, loss of opportunity (in each case whether direct, indirect or consequential) or any other indirect, consequential or incidental loss or damages of any kind whatsoever.

7 CONFIDENTIALITY

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

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

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

8 MEDIA AND COMMUNICATIONS

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

9 DISPUTES

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

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

10 REPRESENTATIVES

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

11 GENERAL

- 11.1 Each notice or other communication given under this Agreement (each a **notice**) must be in writing and delivered personally or sent by post or email to the address of the relevant party set out in the Key Details or to any other address from time to time designated for that purpose by at least 10 Business Days' prior written notice to the other party. A notice under this Agreement is deemed to be received if:
- (a) **Delivery:** delivered personally, when delivered;
 - (b) **Post:** posted, 5 Business Days after posting or, in the case of international post, 7 Business Days after posting; and
 - (c) **Email:** sent by email:
 - (i) If sent between the hours of 9am and 5pm (local time) on a Business Day, at the time of transmission; or
 - (ii) If subclause (i) does not apply, at 9am (local time) on the Business Day most immediately after the time of sending,provided that an email is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.
- 11.2 The Recipient agrees to execute and deliver any documents and to do all things as may be required by DIA to obtain the full benefit of this Agreement according to its true intent.

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

END OF PART 2

PART 3: DEFINITIONS AND CONSTRUCTION**Defined terms**

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

Authorisation means:

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

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

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

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

Completion Date is the date that the relevant Expenditure Programme Milestone is to be completed by the Recipient, described in the Delivery Plan, and includes any amendment to the date which may be agreed in writing (including by email but only when DIA's Representative expressly confirms in writing

that they have received approval of the change from the correct DIA delegation holder) between the parties from time to time.

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

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

- (a) was originally acquired by the Holder in connection with this Agreement through disclosures made by or at the request of the Owner; and/or
- (b) was originally acquired by the Holder in connection with this Agreement through any access to, or viewing, inspection or evaluation of, the premises, facilities, documents, systems or other assets owned or controlled by the Owner; and/or
- (c) is derived from information of a kind described in paragraph (a) or (b) above; but excludes any information which the Holder can show:
- (d) was lawfully acquired by the Holder, entirely independently of its activities in connection with this Agreement, and is free of any other obligation of confidence owed to the Owner; and/or
- (e) has been independently developed by the Holder without reference to the Owner's Confidential Information, and without breaching any other obligation of confidence owed to the Owner.

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

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

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

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

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

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

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

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

Key Details means Part 1 of this Agreement.

Memorandum of Understanding means the memorandum of understanding relating to Three Waters Services Reform between DIA

and the Recipient, in the form provided by DIA.

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

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

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

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

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

Construction

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

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

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

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

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

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

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

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

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

Precedence with Memorandum of Understanding: if there is any conflict

between this Agreement and the Memorandum of Understanding, then unless specifically stated otherwise, this Agreement will prevail;

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

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

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

END OF PART 3

SCHEDULE: PAYMENT REQUEST

To: DEPARTMENT OF INTERNAL AFFAIRS

Dated: [•]

PAYMENT REQUEST

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

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

By and on behalf of the Recipient by

NAME OF RECIPIENT

Chief Executive

Authorised Officer



THREE WATERS STIMULUS GRANT DELIVERY PLAN

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

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

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

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

Territorial Authority information

1. Programme Title:	<input type="text"/>
2. Territorial Authority:	<input type="text"/>
3. Total Maximum Amount Payable (NZ\$M):	\$ <input type="text"/>
4. Organisation Lead Contact:	
Name:	<input type="text"/>
Position:	<input type="text"/>
Email:	<input type="text"/>

Expenditure Programme overview

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

6. Location/address of the programme:

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

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

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

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

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

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

Expenditure Programme commencement

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

Expenditure Programme completion

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

Expenditure Programme funding status

13. Please indicate below the expenditure programme funding status:

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

14. Please set out the key milestones of the expenditure programme to be undertaken, and for each milestone the planned completion date and budget:¹

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

¹ All figures should be GST exclusive.

² You may choose to determine each maximum Funding instalment amount for a milestone on the basis of seeking funds either for application towards costs incurred for that milestone, or for application towards costs to be incurred for the following milestone.

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

15. Briefly outline the final expected outcomes/objectives of the expenditure programme:

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

DIA USE ONLY

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

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

SIGNATURES

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

Name:

Position:

Date:

SIGNED for and on behalf of

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

Name:

Position:

Date:

Name:

Position:

Date:

Canterbury Mayoral Forum

Draft

Minutes

Date:	14 August 2020, 1pm
Venue:	via Zoom
Attendance:	<p>Mayors/Chair: Sam Broughton (Selwyn, Chair), Neil Brown (Ashburton), Marie Black (Hurunui), Graham Smith (Mackenzie), Nigel Bowen (Timaru), Dan Gordon (Waimakariri), Jenny Hughey (Environment Canterbury), Andrew Turner (Acting, Christchurch), Gary Kircher (Waitaki).</p> <p>Chief Executives: Jim Palmer (Waimakariri, CEs Forum Chair), Hamish Riach (Ashburton), Dawn Baxendale (Christchurch), Hamish Dobbie (Hurunui), David Ward (Selwyn), Suzette van Aswegen (Mackenzie), Fergus Power (Waitaki).</p> <p>In attendance: Te Maire Tau, Gabrielle Huria, Jessica Nandu-Templeton (Ngāi Tahu) Maree McNeilly, Rosa Wakefield (Secretariat) Sean Tully, advisor to the Chair Murray Washington (Selwyn) David Adamson (Christchurch)</p>
Apologies:	Craig Rowley (Waimate); Bede Carran (Timaru); Stefanie Rixecker (acting, Environment Canterbury) Craig Mackle (Kaikōura), Angela Oosthuizen (Kaikōura)

AGENDA ITEM	KEY POINTS DISCUSSED / RESOLVED	ACTION POINTS (Who will action, when?)
1	<p>The Chair welcomed Te Maire Tau, Gabrielle Huria and Jessica Nandu-Templeton from Ngāi Tahu to the meeting.</p> <p>The Chair offered sympathies to Mayor Lianne Dalziel, on the passing of her husband Rob Davidson.</p> <p>Apologies were noted from Craig Rowley, Bede Carran and Stefanie Rixecker.</p>	
2	The agenda was confirmed and there were no items of general business.	
3	<p>Jim Palmer spoke to the paper.</p> <p>The steering group welcomes mana whenua to join the conversation and decision-making process.</p>	

AGENDA ITEM	KEY POINTS DISCUSSED / RESOLVED	ACTION POINTS (Who will action, when?)
	<p>Ngāi Tahu is very keen to participate in the three waters steering group. Proposed that the Ngāi Tahu Tuahuriri Upoko and two other tribal politicians sit on the steering group, with officials supporting and contributing to advisory groups.</p> <p>Agreed to add provision to steering group terms of reference for deputy to attend for mayors and chairs if unavailable, as for the Mayoral Forum.</p> <p>Te Maire has prepared a paper on co-governance (attached). Ngāi Tahu see a co-governing structure between iwi, the regional authority and local government authorities.</p> <p>Ngāi Tahu considers that it doesn't make sense to have two authorities within the South Island. One authority that aligns with the Ngāi Tahu takiwā will be easier for Ngāi Tahu and the Forum.</p> <p>The settlement legislation for Ngāi Tahu is unique; it's the only tribe which essentially has its own sovereignty. This is a big leverage point and Ngāi Tahu consider the settlement act will be useful here as it binds the Crown to Ngāi Tahu territory and principles.</p> <p>Iwi see the ownership of water as different and will engage with Crown over legal issue with this.</p> <p>Ngāi Tahu submitted against Taumata Arowai bill, as they believe local communities understand what is needed with water within the community and are very concerned about this.</p> <p>Te Maire has met with Minister Nanaia Mahuta and discussed the potential for the Ngāi Tahu takiwā to be a single authority. Minister Mahuta was clear that there was potential for it to be a single authority, and that the area at the top of the south outside Ngāi Tahu's takiwā could be separate.</p> <p>Ngāi Tahu thinks councils should commit to the MOU, but use the treaty settlement as leverage point to the benefit of the Canterbury region, and that a tactical plan should be agreed before engaging with Government.</p> <p>If we can maintain unity will have much more strength, and if we get in early we may be able to tweak policies to work for us. Canterbury has one iwi, the bulk of New Zealand's water, and we need to protect this.</p> <p>The Mayoral Forum may need more frequent meetings to drive decision making and stay updated. The steering group will need to drive this.</p>	

AGENDA ITEM	KEY POINTS DISCUSSED / RESOLVED	ACTION POINTS (Who will action, when?)
	<p>Local government will continue to hold relationship with rūnanga, while the steering group engages with Ngāi Tahu to ensure best outcome across Canterbury.</p> <p>Regional allocation options were discussed.</p> <p>Waitaki is contributing to the Otago Southland review as well as with Canterbury and is concerned about spending too much on studies while also ensuring equity for the district. All agreed to discount Waitaki's contribution by 50% to take account for the shared obligation.</p> <p>Chatham Islands haven't been allocated much funding and the work there will cost more. All agreed to include them in study without requiring them to pay.</p> <p>\$1m is indicative only, spread over several stages. If it ends up being more than \$1m will come back to the forum.</p> <p>Most members preferred to keep the \$1m aside from the outset, but if the full amount is not spent the remainder would go back to the Government rather than to the councils.</p> <p>The Forum agreed on option 3, to agree there will be a contribution along the lines of what is in the paper once funds are received by the councils. This removed the risk of losing funds if the study is less than \$1m.</p> <p>Each council has to say in their delivery plan what they will spend the money on.</p> <p>The Forum will make a recommendation on allocation to each council; acceptance lies with the councils.</p> <p>Agreed to work with what other regions are doing, ensure we are not duplicating work.</p> <p>The next meeting for the working group is not yet set. In the meantime the scope of works will be circulated to councils.</p> <p>Mayors gave an indication on their expectations of whether they will be signing the MOU for tranche 1, and all indicated they are likely to sign.</p> <p>The Forum agreed to:</p> <p>1 partner with Ngāi Tahu in the development of a preferred service delivery option</p>	

AGENDA ITEM	KEY POINTS DISCUSSED / RESOLVED	ACTION POINTS (Who will action, when?)
	<ul style="list-style-type: none"> 1.1 invite Upoko of Ngāi Tahu Tūāhuriri Rūnanga Dr Te Maire Tau and two other representatives from Ngāi Tahu to join the Canterbury Mayoral Forum Three Waters Steering Group as representatives of Ngāi Tahu 1.2 invite two representatives from Ngāi Tahu to join the Three Waters Working Group 2 authorise the Canterbury Mayoral Forum Three Waters Steering Group to: <ul style="list-style-type: none"> 2.1 approve a scope of works for the review of Three Waters service delivery options in Canterbury 2.2 approve an assessment process and principles for determining a preferred service delivery option for Canterbury 3 write to the Minister of Local Government and the Joint Three Waters Steering Group to advise that the regional allocation should be dispersed on the same basis as the territorial authority notional allocation 	
	Meeting closed at 1.57pm. The next meeting of the Mayoral Forum is on 4 September.	