

**AUDIT & RISK
COMMITTEE MEETING**

ORDER PAPER

**EXTRAORDINARY MEETING
THURSDAY, 20 AUGUST 2020, 9.00AM**

**COUNCIL CHAMBER, RANGITĪKEI DISTRICT COUNCIL
46 HIGH STREET, MARTON**

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Chair - Mr Craig O'Connell

Deputy Chair – Councillor Nigel Belsham

Membership

Councillors Angus Gordon and Dave Wilson.

His Worship the Mayor, Andy Watson.

Please Note: Items in this agenda may be subject to amendments or withdrawal at the meeting. It is recommended therefore that items not be reported upon until after adoption by the Council. Reporters who do not attend the meeting are requested to seek confirmation of the agenda material or proceedings of the meeting from the Chief Executive prior to any media reports being filed.

Making this place home.





Rangitikei District Council

Audit and Risk Committee Meeting

Agenda – Thursday 20 August 2020 – 9:00 am

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The quorum for the Audit and Risk Committee is 3.

Council's Standing Orders (adopted 31 October 2019) 11.2 provide: The quorum for Council committees and sub-committees is as for Council, i.e. half the number of members if the number of members (including vacancies) is even or a majority if the number of members is odd.

1 Welcome

2 Council prayer

3 Apologies/Leave of Absence

4 Extraordinary meeting

This extraordinary meeting is called to consider the Government's three waters reform programme and to advise Council on whether to sign the Memorandum of Understanding

5 Confirmation of minutes

The Minutes of the Audit/Risk Committee meeting held on 31 July 2020 are attached.

File ref: 3-CT-17-2

Recommendation:

That the Minutes of the Audit/Risk Committee meeting held on 31 July 2020 [as amended/without amendment] be taken as read and verified as an accurate and correct record of the meeting.

6 Memorandum of Understanding – Three Waters Reform

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

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

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

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

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

signed by the end of August 2020, with the Funding Agreement and Delivery Plan submitted and approved by the end of September 2020.

At its meeting on 30 July 2020, by resolution 20/RDC/255, Council delegated to the Audit/Risk Committee authority to commit (or not) Council to signing the Memorandum of Understanding for the first stage of the Government's Three Waters Services Reform.

Council has called an additional meeting of Te Rōpu Ahi Kā (Council's standing Iwi Advisory Committee) to consider the matter. This acknowledges the critical partnership which Council has with Iwi. The outcome of that meeting will be reported to the Audit/Risk Committee meeting.

The Summary Proposal (provided to the last meeting), Simpson Grierson legal advice and the Memorandum of Understanding are attached. Also attached is 'Three Waters Reform Programme – Guide to stimulus funding for local authorities' which sets out what happens if the Memorandum of Understanding is signed.

Recommendation:

1. That documentation on the Government's three waters reform programme, including the Memorandum of Understanding, to the 31 July 2020 Audit/Risk Committee be received.
2. That, in terms of the delegation made by Council at its meeting on 30 July 2020 (20/RDC/255), the Audit/Risk Committee resolves that His Worship the Mayor and the Chief Executive

EITHER sign the Memorandum of Understanding, on behalf of the Rangitikei District Council, for the first stage of the Government's Three Waters Services Reform

OR do not sign the Memorandum of Understanding, on behalf of the Rangitikei District Council, for the first stage of the Government's Three Waters Services Reform.

7 Next meeting

Thursday 24 September 2020, 9.00am

8 Meeting closed

Attachment 1



Rangitikei District Council

Audit and Risk Committee Meeting

Minutes – Friday 31 July 2020 – 10:00 a.m.

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Present: Mr Craig O'Connell (Chair)
Cr Nigel Belsham
Cr Dave Wilson
His Worship the Mayor, Andy Watson

In attendance: Mr Peter Beggs, Chief Executive
Mr Michael Hodder, Community & Regulatory Services Group Manager
Mr Chris Webby, Audit New Zealand
Ms Jo Devine, Group Manager, Finance & Business Support
Ms Bonnie Clayton, Governance Administrator

Tabled Document: Work programme matrix - update

1 Welcome

The Chair welcomed everyone to the meeting at 10.00am

2 Council prayer

Mr O'Connell read the Council Prayer.

3 Public Forum

Nil

4 Apologies/Leave of Absence

That the apology for absence for Cr Angus Gordon be received.

5 Members' conflict of interest

There were no conflicts of interest declared.

6 Confirmation of order of business

Items 9 and 10 were addressed in item 9, where the Committee had a robust discussion.

7 Confirmation of minutes

Resolved minute number	20/ARK/005	File Ref	3-CT-17-2
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That the Minutes of the Audit/Risk Committee meeting held on 27 February 2020 without amendment be taken as read and verified as an accurate and correct record of the meeting.

Cr Belsham/Cr Wilson. Carried

8 Chair's report

Mr O'Connell updated the Committee on activities within the sector over the past few months since lockdown from Covid-19. He noted that Auckland City Council (who work under different legislation to other Councils) suspended their governance body and Finance Committee and set up an emergency Council. Prior to Covid-19, Auckland City Council identified their top risk as a pandemic, however only planned for 500 staff to work from home, not 6000 employees.

Ms Devine followed on from Mr O'Connell, expressing positive changes for Rangitikei District Council from lock-down such as a drop in paper and printing use, as well as from a records perspective where all documents have been loaded online.

9 Work programme matrix – update

Mr Hodder presented the updated tabled Work programme matrix.

The Committee agreed that the matrix may require updating due to strategic risks identified from Covid-19. Mr O’Connell will follow up on how internal audits of the MWLASS Councils are going, noting Cotton Kelly are not only engaged by Rangitikei, but by other councils in the MWLASS region.

Mr Beggs updated the Committee that with key Executive Management team due to leave in September – Michael Hodder and Jo Devine – Council is undergoing an organisational change. This will be consulted on with staff in the coming weeks, with the revised structure in place by the end of September; this will build resilience within the organisation.

Resolved minute number	20/ARK/006	File Ref
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That the tabled ‘Work programme matrix – update’ to the 31 July 2020 Audit/Risk Committee be received.

Mr O’Connell/Cr Belsham. Carried

10 Strategic risks – from a COVID-19 perspective

The Committee received and discussed item 10 as a block in item 9.

11 Audit plan Rangitikei District Council, for the year ended 30 June 2020

Mr Webby took the Audit plan letters as read and explained the process:

- The Audit Engagement Letter, Proposal to conduct the audit of Rangitikei District Council and Audit Plan are presented 3 yearly.
- The attached Proposal letter is for 1 year of fees, and will return at a later date to propose the fees for years 2 and 3.
- Years 2 and 3 are currently signalling at 14% fee, with exclusions of Long Term Plan (a separate fee), four well-beings and Three Waters.
- If costs were less than the proposed fee, then a refund of the difference would be organised.
- Audits are taking 30-40% more time due to Covid-19.

His Worship the Mayor noted the high expense for Councils to face should they sign the proposal.

Mr Webby advised that no Council uses an independent Auditor, all Auditors fall under the Auditor-General, as required by the Public Finance Act.

Resolved minute number **20/ARK/007** **File Ref**

That the report 'Audit plan Rangitikei District Council, for the year ended 30 June 2020' to the 31 July 2020 Audit/Risk Committee be received.

His Worship the Mayor/Cr Wilson. Carried

12 Insights into local government: 2019

The Auditor-General's insight into local government was taken as read. Regulatory Practice will be flagged for a future item for the Committee to discuss.

It was highlighted the risks within the current 3 year election cycle, where Councils have potential inability to progress with projects and make decisions.

Resolved minute number **20/ARK/008** **File Ref**

That the 'Insights into local government: 2019' to the 31 July 2020 Audit/Risk Committee be received.

Cr Belsham/Mr O'Connell. Carried

13 2021-31 Long Term Plans

The letter from the Auditor-General was taken as read. As other guidance is released it will be circulated amongst Elected Members, specifically to bring new Councillors up to speed.

Resolved minute number **20/ARK/009** **File Ref**

That the letter '2021-31 Long Term Plans' from the Auditor-General to the 31 July 2020 Audit/Risk Committee be received.

Cr Belsham/His Worship the Mayor. Carried

14 Three Waters Reform Programme

The Committee agreed there is need to have an extraordinary meeting to discuss the Three Waters Reform Programme once Elected Members have attended the workshop on the 4th of August 2020.

This will allow Committee member's time to seek clarification on what will be required from Council and the potential risks involved on signing of the MOU for tranche one, which must be signed before 31 August 2020.

Resolved minute number**20/ARK/010****File Ref**

That the 'Three Waters Reform Programme' to the 31 July 2020 Audit/Risk Committee be received.

Cr Wilson/Mr O'Connell. Carried

15 Late items

Nil

16 Future items for the agenda

Insurance

Payroll system review

Regulatory practice – this will be a greater area of focus for the Auditor-General

Health and Safety implications on private assets / club assets on our parks

17 Next meeting

A further meeting date in August is to be confirmed to discuss the Three Waters Reform Programme.

Thursday 24 September 2020, 9.00am

18 Meeting closed

12.08pm

Confirmed/Chair: _____

Date:

Attachment 2

Our advice

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

PRIVILEGED AND CONFIDENTIAL

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

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

Our reasons

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

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

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

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

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

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

these do not strongly indicate that consultation is required

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

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

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

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

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

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

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

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

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

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

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

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Appendix 1

Three Waters Reform Programme

A proposal to transform the delivery of three waters services

1. BACKGROUND

Over the past three years central and local government have been considering solutions to challenges facing the regulation and delivery of three waters services. This has seen the development of new legislation and the creation of Taumata Arowai, the new water services regulator.

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.

Iwi/Māori also have a significant interest in te mana o te wai. Both central and local government acknowledge the importance of rights and interests under the Treaty of Waitangi and the role of the Treaty partners in progressing these issues.

Additional investment is required to increase public confidence in the safety of drinking water, and to improve environmental outcomes. The reform of three waters services will also support increased sustainability and resilience of communities to natural hazards and climate change.

2. CHALLENGES

THE EXISTING INFRASTRUCTURE DEFICIT

Quantifying the precise infrastructure gap remains challenging. The Office of the Auditor General (OAG) has raised concerns about relevant and reliable information about assets remaining a challenge.

UNGRADED ASSETS

Potable & wastewater45%

Stormwater categorised as upgraded52%

RENEWAL GAPS

Forecast average renewals as proportion of forecast average depreciation for:

Water supply82%

Wastewater67%

Stormwater52%

While unquantified in New Zealand due to limited asset quality data, experience from places like Scotland that have undertaken significant water services reforms indicates the bulk of asset replacement value (potentially up to 80%) and the accumulated infrastructure deficit likely lies in renewal of pipes rather than treatment plants.

FURTHER RESEARCH COMMISSIONED BY DIA FOUND:

\$309-\$574 million

Estimated cost for upgrading networked drinking water treatment plants to meet drinking water standards, with an additional annual operating cost of \$11-\$21 million.

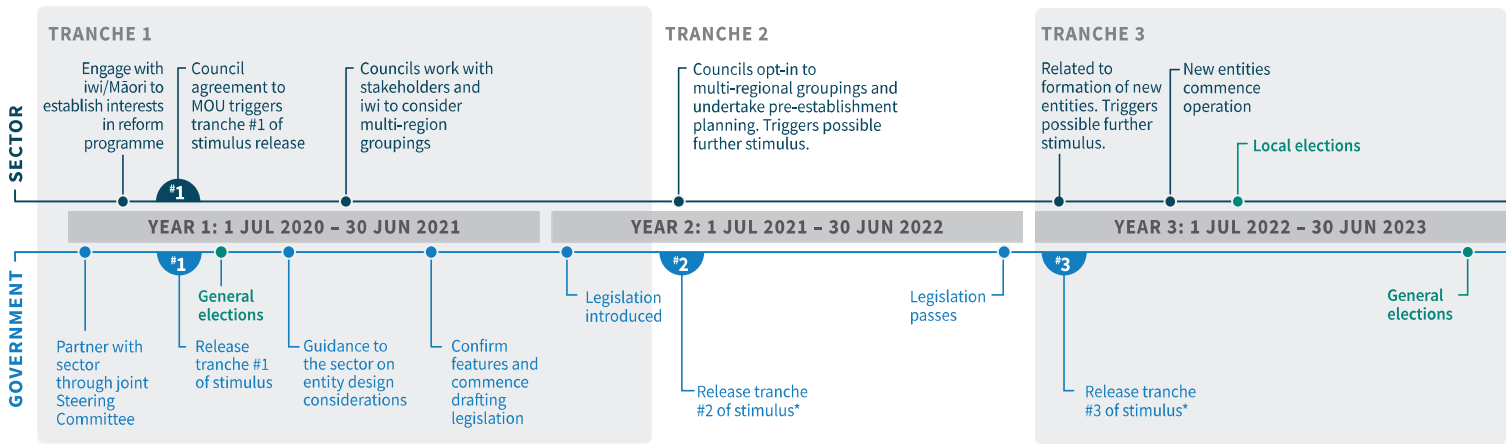
\$3-\$4 billion

Estimated cost for upgrading wastewater treatment systems that discharge to coastal and freshwater bodies to meet national minimum discharge standards, with an annualised operating cost of \$126-\$193 million.

3. OBJECTIVES

- A** Significantly improving safety and quality of drinking water services, and the environmental performance of wastewater and stormwater systems.
- B** Ensuring all New Zealanders have equitable access to affordable three waters services.
- C** Improving resource coordination and unlocking strategic opportunities to consider national infrastructure needs at a larger scale.
- D** Increasing resilience of three waters service provision to both short- and long-term risks and events, particularly climate change and natural hazards.
- E** Moving three waters services to a financially sustainable footing, and addressing the affordability and capability challenges faced by small suppliers and councils.
- F** Improving transparency and accountability in cost and delivery of three waters services, including the ability to benchmark performance of service providers.

5. INDICATIVE REFORM PATHWAY



6. PROPOSED PROCESS

An opt-in reform and funding programme to:

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

Progressed in phases:

- Three phases of reform with three tranches of investment proposed (as set out above). The first phase of the programme includes a Memorandum of Understanding between central and local government to progress the reform in partnership. Reform will be guided by a joint Steering Committee at key stages.

Memorandum of understanding:

- Non-binding MOU between each Council and Government.
- Does not commit Councils to reforming water services or transferring assets.
- Enables Councils to access funding for three waters through an associated Funding Agreement and Delivery Plan.

4. KEY FEATURES

- Design features of the proposed reform programme should examine, as a minimum:
- A** Water service delivery entities that are:
 - of significant scale (most likely multi-regional) to enable benefits from aggregation to be achieved over the medium- to long-term;
 - asset-owning entities with balance sheet separation, to support improved access to capital, alternative funding instruments and improved balance sheet strength; and
 - structured as statutory entities with appropriate and relevant commercial disciplines and competency-based boards.
- B** Delivery of drinking water and wastewater services as a priority, with the ability to extend to stormwater service provision only where effective and efficient to do so.
- C** Publicly owned entities, with a preference for collective council ownership.
- D** Mechanisms for enabling iwi /Māori and communities to provide input in relation to the new entities.

7. FUNDING AND IMPACT

Government funding	\$761 million
Jobs protected or created	(direct) 2,288 jobs
	(direct, indirect, induced) 7,230 jobs
GDP increase	(direct) \$236 million
	(direct, indirect, induced) \$800 million

ALLOCATION OF FUNDING

First tranche funding provided as a grant to Councils who opt-in to participate in the reform process.

Allocation is based on a simple formula applied on a nationally consistent basis.

Future additional funding will be subject to Government decision-making and reliant on progress against the reform objectives.

INDICATIVE ALLOCATION SUBJECT TO CONFIRMATION

LEGEND

- Metropolitan Councils (50%)
- Provincial Councils (37%)
- Rural Councils (13%)

Appendix 2

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]

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Witness signature

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Appendix 3

Three Waters Reform Programme

Guide to stimulus funding for local
authorities



Te Tari Taiwhenua
Internal Affairs

We are.
LGNZ.
Te Kāhui Kaunihera o Aotearoa.

29

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

About this guide

This is a guide only. It sets out the information needed for council officers and elected members to engage with the Funding Agreement and Delivery Plan template, and should be read alongside these documents and the Memorandum of Understanding. These are available on the Three Waters Reform webpage at: <https://www.dia.govt.nz/Three-Waters-Reform-Programme>

Detailed process guidance on submitting a completed Funding Agreement and Delivery Plan will be released shortly.

Key Dates:

- **31 August 2020** – Memorandum of Understanding signed and submitted to: threewaters@dia.govt.nz
- **30 September 2020**

Funding Agreement signed and submitted to DIA: threewaters@dia.govt.nz

Delivery Plan compiled and submitted to DIA and CIP: threewaters@dia.govt.nz and 3waters@crowinfrastucture.govt.nz

Reform objectives

The following reform objectives have been agreed by Cabinet.



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



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



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



Improving the coordination of resources and unlocking strategic opportunities to consider New Zealand's infrastructure needs **at a larger scale**.



Moving the supply of three waters services to a more **financially sustainable footing**, and **addressing the affordability and capability challenges** faced across the sector and particularly by some small suppliers and councils.



Improving transparency about, and accountability for, the delivery and costs of three waters services, including the ability to benchmark the performance of service suppliers.



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.

Memorandum of Understanding, Funding Agreement and Delivery Plan

MoU

The MoU is a **non-binding agreement between the Crown and local authorities**, which provides the **basis for collaboratively working together to progress the broader reform process**.

Under the MoU, councils agree to:

- Participate in a process to agree the principles, structures, process and timetable that support the reform programme.
- Working cooperatively together to promote a relationship based upon mutual trust, respect and openness.
- Sharing of information.
- The funding arrangements.

Funding Agreement

The Funding Agreement is a **pro-forma agreement** that sets out the **purpose of the funding**, requirements and conditions that local authorities will need to meet to access the funding.

Local authorities will choose the expenditure programme they wish to apply funding to, via the Delivery Plan.

The Funding Agreement includes detail on the following:

- Funding objectives.
- Overview of what the funding stimulus may be spent on.
- Conditions attached to the funding.
- Reporting and other requirements.

Delivery Plan

The Delivery Plan will be **prepared by local authorities** and **submitted to DIA and CIP for review**. Application of funds will need to be consistent with Delivery Plans.

The Delivery Plan will need to cover the following elements:

- A summary of the work to be undertaken.
- Confirmation of costs (excl GST).
- Proposed milestones and associated disbursement profile.
- Location of the physical works.
- Estimate of the number of people employed in works.
- Reporting milestones.
- An assessment of how it supports the reform objectives set out in the MoU.

Stimulus funding released following signing of MoU and Funding Agreement, and Delivery Plan approval

Key principles for funding stimulus

The key principles that relate to the provision and application of the funding stimulus are provided below.



The investment package is designed to:

- **Support investment across the economy**, helping to stimulate economic activity and jobs in all regions of New Zealand.
- **Support the objectives of the three waters services reform** by encouraging as many councils as possible to participate in the reform programme.



Release of allocations:

- Following the confirmation of allocations, an initial disbursement of **50% of the total funding allocated** to each local authority will be **released upon signing the MoU and Funding Agreement, and approval of the Delivery Plan** (refer page 9).
- The remainder will be **disbursed on a quarterly basis, subject to appropriate progress** being made against the approved Delivery Plan.



Monitoring and reporting:

- The Funding Agreement and Delivery Plan will outline the **reporting requirements** for local authorities. Reporting is quarterly and a template will be provided.
- CIP will monitor local authorities' progress against the Delivery Plan to **provide assurance that Crown funding is being spent as intended** and that projects are progressing within a reasonable timeframe.



Funding shortfalls:

- Funding allocations **will not be 'topped up' to meet any shortfalls** experienced by councils.

Application of funding

Local authorities have flexibility to apply stimulus funding as they deem appropriate, provided it is consistent with the reform objectives and Funding Agreement and confirmed via the Delivery Plan.

What funding can be applied to:

Funding stimulus may be applied to **operating or capital expenditure** on three waters service delivery, consistent with the requirements below:

Support the reform objectives
(refer page 2)

AND

Support stimulus objectives

- **Supporting economic recovery through job creation.**
- **Maintaining*, increasing and/or accelerating investment** in core water infrastructure delivery, renewals and maintenance.

Some examples of investment that would qualify are provided on page 7.

Additional considerations of funding stimulus:

- **Priority** is drinking water and wastewater investment, followed by stormwater.
- Expenditure will need to **commence before 31 March 2021, and must be completed before 31 March 2022.**
- **Councils will retain flexibility** in terms of how they will apply the expenditure if it meets the high-level parameters.

* What does maintain mean?










Maintain refers to previously planned investment that may have otherwise been deferred as a result of COVID-19. It is seeking to allow investment in water related infrastructure at pre-COVID levels and cover investment, maintenance, renewals and other three waters spend deferred due to COVID-19.

The intention is that funding supports economic stimulus, and therefore is additional to planned investment. As a general rule, activities funded in annual plans are not eligible. However, some expenditure that is included within already approved annual plans may be eligible for funding. For example, where a project was included in the annual plan on the basis of receiving shovel ready funding, but has not done so.

Examples based on discussions at roadshow workshops

Some examples of what funding may be applied to is provided in the table below.

Recent workshops have raised questions around the ability to apply stimulus funding to various forms of expenditure. The table below provides an indication of the applicability of these, noting this is by no means an exhaustive list.

Application	Meets reform objectives	Meets stimulus objective	Expenditure is not funded in the Annual Plan*	<u>Allowable expenditure?</u>
 Delivery of a new drinking water treatment plant (deferred or brought forward)	✓	✓	✓	✓
 Upgrades of wastewater reticulation network (deferred or brought forward)	✓	✓	✓	✓
 Undertake maintenance work for a wastewater treatment plant that was deferred due to COVID-19	✓	✓	✓	✓
 Training and development programme for staff	✓	~	✓	✓
 Resource Mātauranga Māori	✓	~	✓	✓
 Fund non-council owned water assets	✓	✓	✓	✓
 Development of centres of excellence	✓	~	✓	✓
 Community tanks for water storage	✓	✓	✓	✓
 Asset condition assessments	✓	✓	✓	✓

* The intention is that funding supports economic stimulus, and therefore is additional to planned investment. As a general rule, activities funded in annual plans are not eligible. However, some expenditure that is included within already approved annual plans may be eligible for funding. For example, where a project was included in the annual plan on the basis of receiving shovel ready funding, but has not done so.

Notional funding allocations - Methodology

A notional funding allocation framework has been developed, which is based on a nationally consistent formula, subject to a few exceptions*.

General approach to determining notional funding allocations



The **population** in the relevant council area, as a proxy for the number of water connections serviced by a local authority. **(75% weighting)**



The **land area** covered by a local authority, excluding national parks, as a proxy for the higher costs per connection of providing water services in areas with low population density. **(25% weighting)**

Structure of funding allocation



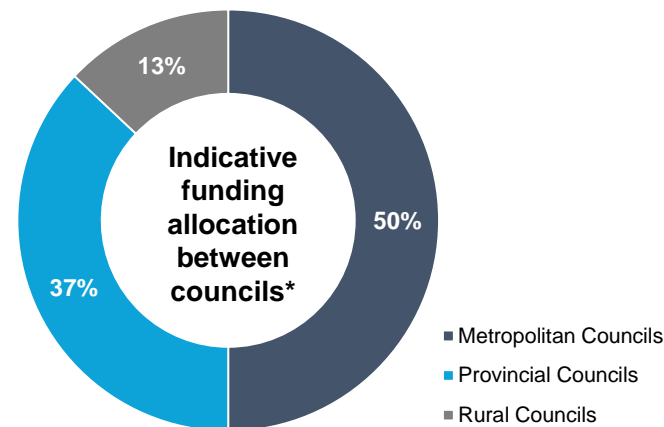
A **direct allocation** to each local authority, comprising **50%** of that local authority's notional allocation



A **regional allocation**, comprising the sum of the **remaining 50%** of the notional allocations for each local authority in the relevant region

* The following exceptions were made to the allocation framework:

- \$30 million has been set aside for non-council rural drinking water suppliers to help address the challenges these suppliers are facing in delivering safe drinking water to consumers.
- \$50 million for the Hawke's Bay region was announced by the Prime Minister and the Minister of Local Government. This supplements the formula-based allocation with a top-up in recognition of the leadership and progress that region has demonstrated in exploring reform of three waters arrangements.
- Exploring alternative solutions to progressing water services delivery reform in the Auckland region.



*Assuming a direct application to councils

Regional allocation

The purpose of the regional allocation is to encourage collaboration in identifying regional investment priorities, and to establish collective participation in the reform programme.

Each region must agree on the regional allocation by 30 September 2020 (refer page 9).

The allocation will not be available where less than two-thirds of local authorities in the region sign the MoU, or if an agreement cannot be reached. The Minister of Local Government may make exceptions.

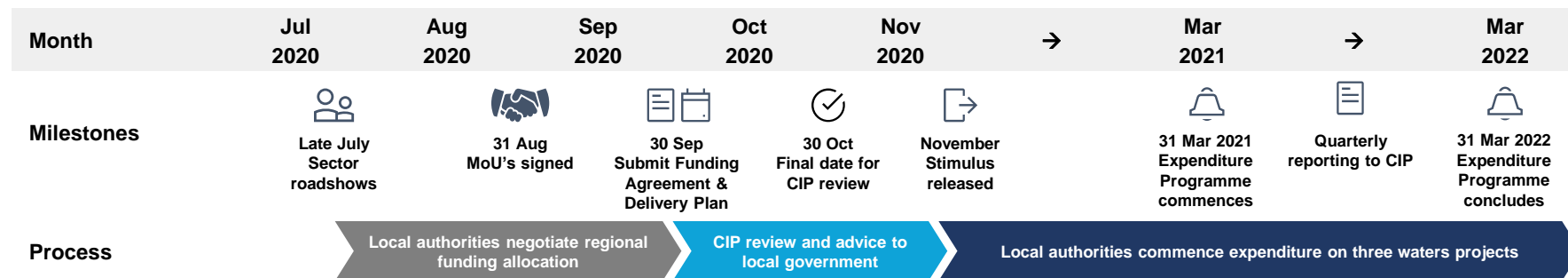
Nominal funding allocations

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

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

Process

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



Delivery Plan drafting and negotiation of regional funding allocation

- Each regional group will be required to agree the funding allocation between the local authorities within the region.
- A joint letter from the Mayors of participating local authorities to the Minister of Local Government and the steering committee should be used to communicate an agreement.
- Local authorities will need to incorporate the regional funding allocations into the Funding Agreement and Delivery Plan to be submitted to threewaters@dia.govt.nz and 3waters@crowinfrastructure.govt.nz by 30 September 2020.

CIP review Delivery Plans

- CIP will review Delivery Plans, as they are submitted, to ensure they align with the stimulus and funding requirements by 30 October 2020.
- CIP will notify the Secretary for Local Government that the Delivery Plan is consistent with the Funding Agreement.
- Initial funding released to local authorities as soon as practicably possible once Delivery Plans are approved by DIA.

Commence expenditure

- Local authorities commence expenditure on three waters projects, in accordance with the Funding Agreement and Delivery Plan (before 31 March 2021).
- Local authorities will need to report to CIP on a quarterly basis. The requirements are set out in the Funding Agreement and Delivery Plan.
- Local authorities must have completed expenditure programmes by 31 March 2022.