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Tuesday, 25 August 2020

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*Te Hui o Te Kaunihera ā-Rohe o Heretaunga*

**Hastings District Council**

**Council Meeting**

*Kaupapataka*

# Open Agenda

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*Te Rā Hui:*  
Meeting date: **Tuesday, 25 August 2020**

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*Te Wā:*  
Time: **9.00am**

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*Te Wāhi:*  
Venue: **Council Chamber  
Ground Floor  
Civic Administration Building  
Lyndon Road East  
Hastings**

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*Te Hoapā:*  
Contact: **Democracy and Governance services  
P: 06 871 5000 | E: [democracy@hdc.govt.nz](mailto:democracy@hdc.govt.nz)**

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*Te Āpiha Matua:*  
Responsible  
Officer: **Chief Executive - Nigel Bickle**

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**HASTINGS DISTRICT COUNCIL**  
207 Lyndon Road East, Hastings 4122 | Private Bag 9002, Hastings 4156  
Phone **06 871 5000** | [www.hastingsdc.govt.nz](http://www.hastingsdc.govt.nz)  
**TE KAUNIHERA Ā-ROHE O HERETAUNGA**



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Tuesday, 25 August 2020

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*Te Hui o Te Kaunihera ā-Rohe o Heretaunga*

**Hastings District Council**

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# Open Agenda

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	<i>Tiamana</i> <b>Chair:</b> Mayor Sandra Hazlehurst
<i>Mematanga:</i> <b>Membership:</b>	<i>Ngā KaiKaunihera</i> <b>Councillors:</b> Bayden Barber, Alwyn Corban, Malcolm Dixon, Damon Harvey, Tania Kerr (Deputy Chair), Eileen Lawson, Simon Nixon, Henare O’Keefe, Peleti Oli, Ann Redstone, Wendy Schollum, Sophie Siers, Geraldine Travers and Kevin Watkins
<i>Tokamatua:</i> <b>Quorum:</b>	8 members
<i>Apiha Matua</i> <b>Officer Responsible:</b>	Chief Executive – Nigel Bickle
<i>Te Rōpū Manapori me te Kāwanatanga</i> <b>Democracy and Governance Services:</b>	Jackie Evans (Extn 5018)

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## *Te Rārangi Take*

# Order of Business

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### 1.0 Opening Prayer – *Karaki a Whakatūwheratanga*

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#### Apologies & Leave of Absence – *Ngā Whakapāhatanga me te Wehenga ā-Hui*

### 2.0 At the close of the agenda no apologies had been received.

At the close of the agenda no requests for leave of absence had been received.

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### 3.0 Seal Register– *Te Rēhita Hira*

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### 4.0 Conflict of Interest – *He Ngākau Kōnatunatu*

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

If a Member feels they do have a conflict of interest, they should publicly declare that at the start of the relevant item of business and withdraw from participating in the meeting. If a Member thinks they may have a conflict of interest, they can seek advice from the General Counsel or the Manager: Democracy and Governance (preferably before the meeting).

It is noted that while Members can seek advice and discuss these matters, the final decision as to whether a conflict exists rests with the member.

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#### Confirmation of Minutes – *Te Whakamana i Ngā Minitī*

### 5.0 Minutes of the Council Meeting held Tuesday 14 July 2020. (Previously circulated)

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### 6.0 Hawke's Bay Airport Limited draft 2020/21 Statement of Intent

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### 7.0 Chief Executive's Report to Council

31

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<b>8.0</b>	<b>Three Waters Stimulus Funding Agreement</b>	<b>35</b>
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<b>9.0</b>	<b>Covid-19 Recovery Contingency Fund</b>	<b>91</b>
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<b>10.0</b>	<b>Appointment process and remuneration for an independent member of the Risk and Assurance Committee</b>	<b>95</b>
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<b>11.0</b>	<b>Changes to the Schedule of Appointments to Committees, Subcommittees and other External Organisations (2019 -2022)</b>	<b>103</b>
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<b>12.0</b>	<b>Minor Items – <i>Ngā Take Iti</i></b>	
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<b>13.0</b>	<b>Urgent Items – <i>Ngā Take Whakahihiri</i></b>	
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<b>14.0</b>	<b>Recommendation to Exclude the Public from Items 15, 16 and 17</b>	<b>105</b>
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<b>15.0</b>	<b>Commercial Transaction</b>	
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<b>16.0</b>	<b>CBD Development Update</b>	
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<b>17.0</b>	<b>Chief Executive - Key Performance Indicators 2020/2021</b>	
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Tuesday, 25 August 2020

*Te Hui o Te Kaunihera ā-Rohe o Heretaunga*  
**Hastings District Council: Council Meeting**

**Item 6**

## *Te Rārangi Take*

# Report to Council

**Nā:**  
**From: Bruce Allan, Group Manager: Corporate**

**Te Take:**  
**Subject: Hawke's Bay Airport Limited draft 2020/21 Statement of Intent**

### **1.0 Executive Summary – *Te Kaupapa Me Te Whakarāpopototanga***

- 1.1 The purpose of this report is to present to the Council the draft Hawke's Bay Airport Limited (HBAL) 2020/21 Statement of Intent for consideration.
- 1.2 This issue arises from the receipt of the draft 2020/21 Statement of Intent (SOI) from HBAL. Wendie Harvey (Chairperson) and Stuart Ainslie (Chief Executive Officer) from HBAL will be in attendance at the Council meeting.
- 1.3 This report concludes by recommending that the draft 2020/21 Statement of Intent be received with any comments passed onto the HBAL Board for consideration.

### **2.0 Recommendations – *Ngā Tūtohunga***

- A) That the Council receives the report titled Hawke's Bay Airport Limited draft 2020/21 Statement of Intent.
- B) That the Council receives the draft 2020/21 Hawke's Bay Airport Limited Statement of Intent and provide feedback.

### **3.0 Background – *Te Horopaki***

- 3.1 HBAL is a joint venture between the Crown (50%), Napier City (26%) and Hastings District (24%).
- 3.2 The Council's share of HBAL is considered to be a Strategic Asset in Council's Significance and Engagement Policy.
- 3.3 HBAL is required to report to its shareholding partners every 6 months.

- 3.4 The Local Government Act requires all Council Controlled Organisations to prepare a Statement of Intent. A draft is required to be provided by 1 March each year for comment with the final Statement of Intent to be completed by 30 June each year. Clause 3 of Schedule 8 of the Local Government Act 2002 outlines the Board's responsibilities upon receiving comments from the shareholders:

**3) Completion of statements of intent**

*The board must –*

*Consider any comments on the draft statement of intent that are made to it within 2 months of 1 March by the shareholders or by any of them; and*

*Deliver the completed statement of intent to the shareholders on or before 30 June each year.*

- 3.5 Clause 9 of Schedule 8 of the Local Government Act outlines the contents of a Council Controlled Organisation's Statement of Intent for which HBAL must comply.
- 3.6 HBAL did provide to Council their draft 2020/21 SOI as required under the Local Government Act, however due to the timing of Council meetings and then the impact of Covid-19, this original version of the SOI was not presented to Council.
- 3.7 Covid-19 has had a profound effect on the operations of HBAL and the Executive and Board of HBAL have been working hard to revise the 2020/21 SOI to better reflect the new and constantly changing environment post the covid-19 lockdown.
- 3.8 The revised 2020/21 SOI is attached as **Attachment 1**.

#### **4.0 Discussion – Te Matapakitanga**

- 4.1 HBAL has revised their draft 2020/21 Statement of Intent and is for the year ended 30 June 2021 and includes financial forecasts for the following two years.
- 4.2 HBAL is forecasting a 50% reduction in total revenue on the 2019/20 budget with revenue recovering through 2021/22 and 2022/23. This is driven by forecast reduced passenger numbers in 2020/21 of 318,000 from a peak of 752,000 passengers in 2018/19.
- 4.3 The 2020/21 Net Profit /(Loss) before tax is budgeted to be a loss of \$2.16m which is well below the 2019/20 result forecast in the previous year's Statement of Intent (that is year two of the 2019/20 Statement of Intent).
- 4.4 The shareholder loan arrangement put in place in July has been established to not only cover the costs of finishing the terminal redevelopment, but also meet the cashflow required to cover the loss situation forecast in 2020/21.
- 4.5 The HBAL 2020/21 Statement of Intent satisfies the requirements set out in Schedule 8 of the Local Government Act 2002.

#### **5.0 Options – Ngā Kōwhiringa**

Option One - Recommended Option - Te Kōwhiringa Tuatahi – Te Kōwhiringa Tūtohunga

- 5.1 Receive the draft 2020/21 Hawkes Bay Airport Limited Statement of Intent and provide feedback to the Board for their consideration.
- With Council having this report on this agenda, the draft SOI has been received. Council's options are whether they provide any feedback to the HBAL Board or not.
  - HBAL have revised their 2020/21 SOI following the significant impact that Covid-19 has had on their business and will likely to continue to have over the next few years. Council is a 24% shareholder in HBAL and as such is a minority shareholder and would require the support of the other shareholders if it was to require changes to the SOI. It can however provide

feedback to the Board on the draft SOI which the Board can then determine if that feedback is to be incorporated into this SOI.

- Council will also have the opportunity later this year to provide further feedback to the HBAL Board through the joint Council Shareholder Letter of Expectation which the Board will consider in preparation of the 2021/22 SOI next year.

## 6.0 Next steps – *Te Anga Whakamua*

- 6.1 If Council does provide feedback to the Board on the draft 2020/21 SOI, the Board will consider this feedback prior to adopting this revised SOI in September.

### Attachments:

1 [↓](#) HBAL Draft Statement of Intent 2020/21

EXT-10-9-1-20-76

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## Summary of Considerations - *He Whakarāpopoto Whakaarohanga*

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### Fit with purpose of Local Government - *E noho hāngai pū ai ki te Rangatōpū-ā-Rohe*

The Council is required to give effect to the purpose of local government as set out in section 10 of the Local Government Act 2002. That purpose is to enable democratic local decision-making and action by (and on behalf of) communities, and to promote the social, economic, environmental, and cultural wellbeing of communities in the present and for the future.

### Link to the Council's Community Outcomes – *Ngā Hononga ki Ngā Putanga ā-Hapori*

This proposal promotes the economic wellbeing of communities in the present and for the future.

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### Māori Impact Statement - *Te Tauākī Kaupapa Māori*

Mana Whenua are acknowledged as a strategic partner of HBAL in the Statement of Intent.

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### Sustainability - *Te Toitūtanga*

The HBAL SOI has a strong sustainability framework that underpins its four key elements of financial return, environmental excellence, social opportunity and operational excellence.

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### Financial considerations - *Ngā Whakaarohanga Ahumoni*

The financial impacts on HBAL from Covid-19 have been significant and Council will not be expecting any dividend from this investment in the near future.

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### Significance and Engagement - *Te Hiranga me te Tūhonotanga*

This report has been assessed under the Council's Significance and Engagement Policy as being of low significance, despite the Airport itself being acknowledged as a strategically important asset to the region.

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**Consultation – internal and/or external - *Whakawhiti Whakaaro-ā-roto / ā-waho***

No consultation is required for this Statement of Intent.

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**Risks**

The receipt of the Airport SOI is of low risk to Council. The ongoing operating environment for HBAL does however pose a risk to the company and Council's investment.

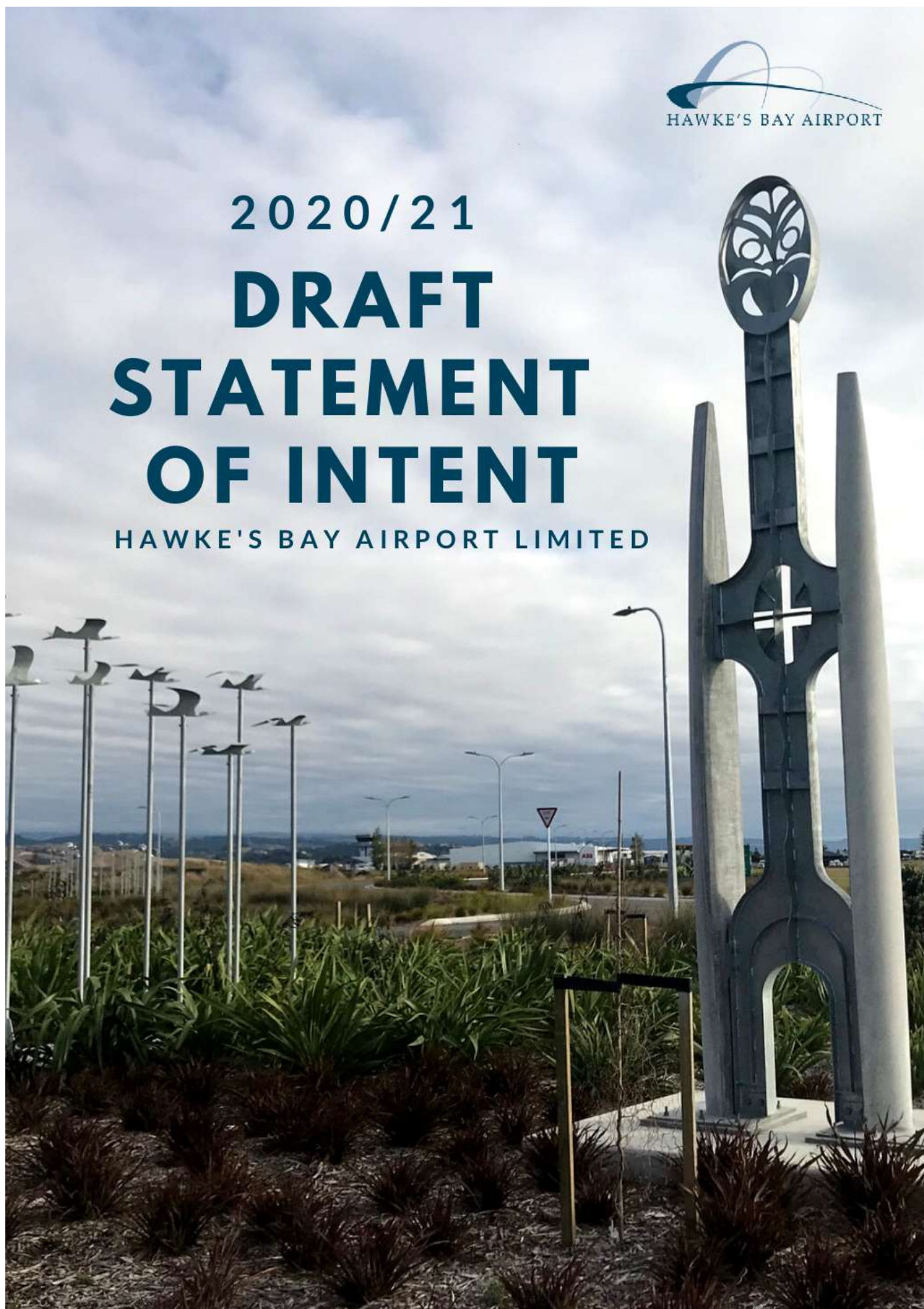
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**Rural Community Board – *Te Poari Tuawhenua-ā-Hapori***

Not applicable.

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Item 6

Attachment 1



Item 6

Attachment 1



# INTRODUCTION

This Statement of Intent ("SOI") is prepared by the Board of Directors of Hawkes Bay Airport Ltd ("HBAL") in accordance with Section 64(1) of the Local Government Act 2002.

This SOI sets out for HBAL the objectives of the group, the nature and scope of the activities to be undertaken and the performance targets and measures by which the company will be reviewed in relation to its performance.

HBAL's achievements against the objectives outlined in last year's Statement of Intent are referred to in this year's Annual Report.

The SOI is a public and legally required document, reviewed and agreed annually with shareholders and covers a three-year period, from 1 July 2020 to 30 June 2023.



Hawke's Bay Airport Ltd - Statement of Intent 2020/21 - 1

Item 6

Attachment 1



## ABOUT US

**HAWKE'S BAY AIRPORT WAS OFFICIALLY OPENED ON THE 15TH OF FEBRUARY 1964. THE FIRST COMMERCIAL FLIGHT WAS A NATIONAL AIRWAYS CORPORATION DC3 FROM WELLINGTON.**

Today Hawke's Bay Airport is the third busiest airport in the North Island and provides an essential role in connecting the region's people and produce with the wider national and international economy.

The Hawke's Bay Region stretches from Wairoa in the north to Waipukurau in the south and at the 2018 New Zealand census had a population of 166,368.

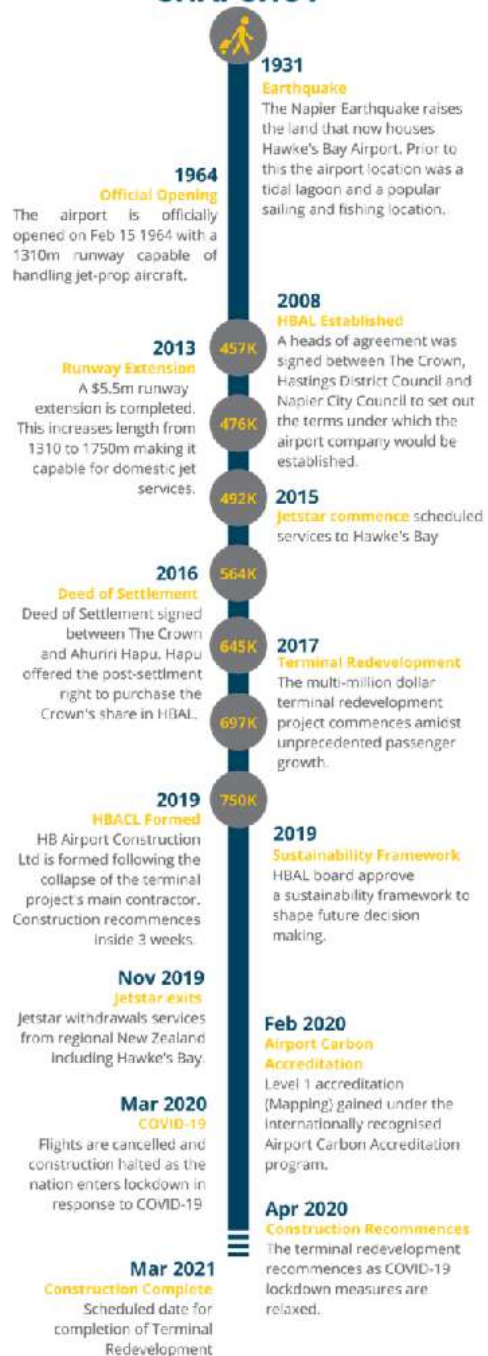
Hawke's Bay has a long and proud history. Māori first settled in around 1250-1300 AD and today represent over 26% of the population. The region's largest iwi (tribe) are Ngāti Kahungunu.

### OWNERSHIP AND GOVERNANCE

Governance sits with the Board of Directors of Hawke's Bay Airport Limited, which is responsible for the strategic and overall direction of the organisation. Directors are appointed by the company's shareholders; the Napier City Council (26%), Hastings District Council (24%) and the Crown (50%).

The Board has four Directors, two of whom are appointed by the Council Shareholders and two who are appointed by the Crown. The Board meets regularly with Management to review the company's performance and provides quarterly, half yearly and annual business performance reports to shareholders.

### HISTORICAL SNAPSHOT





# VISION, MISSION & VALUES

Hawke's Bay Airport's Vision is to be New Zealand's most vibrant and successful regional airport welcoming 1 million passengers by 2030.

We will achieve this by delivering against our Mission of enabling safe, customer focussed and sustainable air transport services in and out of Hawke's Bay.

Our success in working towards this vision will be measured by performance across the five strategic pillars of our business.

This document identifies specific activities and measurable targets for each pillar. These have been developed in alignment with our values and sustainability framework.



## OUR VALUES

- Safety First
- We look to the Horizon
- Striving for continued Commercial Success
- Care and Respect for our people
- Customer Focused
- Sustainability is part of our DNA
- Environmentally responsible.

## STRATEGIC PILLARS



### OPERATIONS

Ensuring a safe, rewarding and delightful journey for our travellers. Striving for Excellence in everything we do.



### COMMERCIAL

Maximising the returns across our Aeronautical Business whilst delivering greater value and a strong sense of place.



### PROPERTY

Making the best use of our land whilst safeguarding our airport to optimise returns and increase value to our shareholders.



### PARTNERS

Engaging with our Customers, Stakeholders, Business Partners and Community to grow our airport in a way which benefits everyone. A great place to do business.



### PEOPLE

Working together to get the best outcomes from our people and community. A great place to work and live.

**HAWKE'S BAY AIRPORT IS A CRITICAL TRANSPORT HUB, ESSENTIAL TO ENABLING AND CONNECTING BUSINESSES, TOURISTS, RESIDENTS, FREIGHT, MEDICAL SERVICES AND GENERAL AVIATION BOTH DOMESTICALLY AND INTERNATIONALLY.**

**THE ORGANISATION'S STRATEGIC PLANNING PROCESS IS PREDICATED ON ITS FOCUS ON SUSTAINABILITY AS PART OF ITS DNA.**

# SITUATIONAL OVERVIEW & THE FLIGHTPATH TO RECOVERY



The airport environment has shifted considerably over recent months with the withdrawal of Jetstar at the end of 2019 followed by the Covid-19 pandemic in 2020 presenting some material changes to Hawke's Bay Airport's operating landscape.

Prior to Jetstar withdrawing services in November 2019 the airport's annual passenger numbers had surged to a new record of over 752,000.

The reduction in capacity following Jetstar's exit saw a decline in passenger numbers that was initially buffered by additional Air New Zealand services before the impact of Covid-19 became apparent.

The combined impact of Jetstar leaving and the Covid-19 pandemic has driven a reset in the airport's passenger growth forecasts. This work was conducted by independent industry experts who have considered a broad range of factors that will influence the ability for the industry to recover.

As a food producing and processing region, Hawke's Bay is expected to have slightly less exposure to the Covid-19 recession than the rest of New Zealand. Despite this, regional GDP is still forecast to contract by more than four times the contraction experienced in 2009 during the Global Financial Crisis[2]. The impact on the aviation industry is anticipated to be much greater than this and there remains a high level of uncertainty around the length and magnitude of its recovery.

Forecast passenger numbers for FY2021 are 317,923 which represents approximately half of all Air New Zealand's passenger numbers in FY2019. Recovery is forecast to continue through FY2022 and FY2023 with passenger numbers forecast to surpass 540,000 by the end of the 3 year planning period in 2024.

The forecast is at the conservative end of the various scenarios modeled however this is considered appropriate given the significant uncertainty that still exists in the current economic environment.

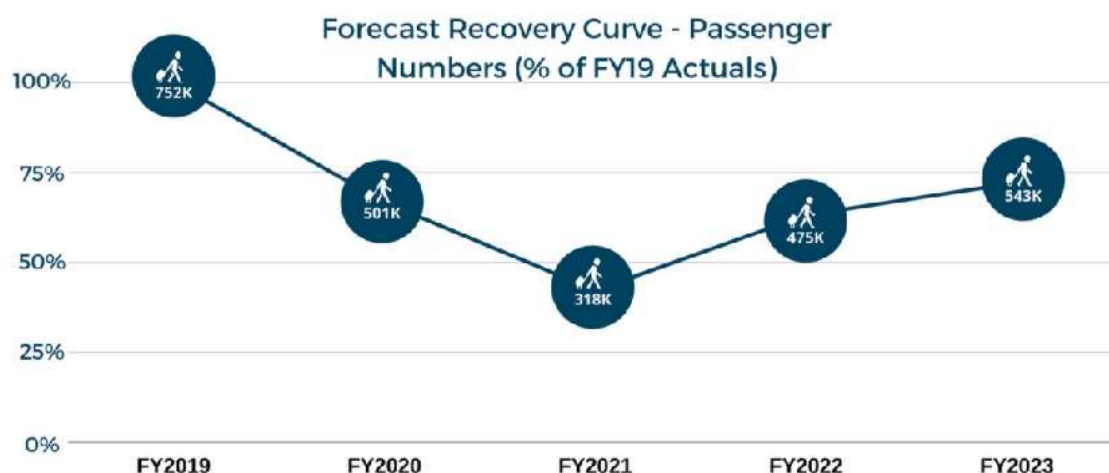
In response to these challenges the airport has moved swiftly to reduce expenditure including the deferment of growth related capex, an organisation wide re-structure and the acceleration of a strategic decision to in-source the airport's rescue fire service.

The airport's strategic focus remains clear and it remains committed to achieving its vision to be New Zealand's most vibrant and successful regional airport.

Central to this will be delivering against its strategic framework and acknowledging the symbiotic nature of the airport's wider ecosystem - For Hawke's Bay Airport to succeed those around it must also prosper.

This will involve the airport working pragmatically and collaboratively where possible to achieve mutually successful and sustainable outcomes.

Partnerships will be key - these will be built within the community and across a broad spectrum of stakeholders including local business, Hawke's Bay Tourism, Air New Zealand, local iwi, central and local government agencies and the wider aviation industry.



[2] Infometrics Economic Impact of COVID-19 on HB Region – April 2020





Item 6

## TERMINAL REDEVELOPMENT

The HBAL Board and Management completed a major review of investment in the terminal infrastructure which was approved via a Major Shareholder Transaction resolution during July 2018. This took the total committed terminal expansion expenditure to \$22.4M and increased the terminal footprint by a total of 74%.

During Q1 2019 the Airport's lead construction contractor, Arrow International went into voluntary administration. The HBAL Board and Management worked to establish a wholly-owned subsidiary – Hawke's Bay Airport Construction Limited which enabled the Terminal Expansion to progress with minimal programme and budgetary impact.

The Terminal Construction is now well advanced with Stage 1 (arrivals area) completed in January 2019. Stage 2 (departures area) was completed in November 2019.

The terminal redevelopment includes a number of technological improvements being incorporated to elevate the safety of passengers and staff and the efficiency of the wider operation. There is also provision in the design for future passenger and baggage screening.

Airside electrical infrastructure has been upgraded to enable a revised apron configuration. This includes the installation of energy saving LEDs and additional capacity to support the growing electricity requirements of airside activities.

The landside electrical infrastructure has recently been upgraded to prepare it for future terminal and property related expansion allowing greater capacity and resilience.

The landside forecourt and wider precinct will be also be redeveloped to accommodate a revised ground transport footprint and safer pedestrian access.

In partnership with local Iwi a cultural narrative will be woven through the development. The Regions proud history will be incorporated into the physical environment through the integration of contemporary Maori artwork. The objective being to reinforce the airport's unique sense of place and to connect it with the region's people and surrounding environment.

The construction site was temporarily shut down for 5 weeks during COVID-19 Alert Level 4, however construction resumed on 28th April 2020.

In unhindered conditions it is anticipated that the project will complete in March 2020.

Attachment 1





## REGIONAL VALUE

Hawke's Bay Airport is a strategic asset for the region and its people. It is an integral component of the transport system and enables opportunities for economic growth and improved connectivity for Hawke's Bay businesses, tourists, regional leadership and community members.

The airport is identified in the Civil Defence Emergency Management Act 2002 as a specified lifeline utility. For a community that is geographically separated from New Zealand's main cities, the airport plays an important and high-profile role and will be a key contributor to the region's Covid-19 recovery.

A 2017 Market Economics report into Hawke's Bay Airport identified the total value of economic activity taking place in the Hawkes Bay Airport environs at \$37.5m<sup>[1]</sup> (gross output).

At a combined level (summing all passenger movements and associated effects) the connections enabled by the airport were identified as having an initial impact on local GDP of some \$214.5m<sup>[1]</sup>. The primary contributors are business connections (\$97.1m) and tourism spending (\$71.8m).

[1] ME Consulting, October 2017

The airport's Terminal Redevelopment Project which began in 2018 is supporting over 200 jobs with 30 individual sub-contractors engaged - nearly all of them are local Hawke's Bay businesses.

The airport business currently supports over 35 volunteer ambassadors, and also provides key regional sponsorship for the Napier based Art Deco Trust, Biodiversity Hawke's Bay, Yarny Army and Hawke's Bay Air Ambulance Charitable Trust.

Hawke's Bay Airport supports the Matariki REDS vision of making Hawke's Bay NZ's most innovative region, the leading exporter of premium primary produce, and a hub for business growth.

The Matariki - Hawke's Bay Regional Economic Development Strategy (REDS) and Action Plan 2019 applies to the geographical areas of Central Hawke's Bay District, Hastings District, Napier City, Wairoa District and small parts of Rangitikei District and Taupō District. The boundary coincides with the Hawke's Bay Regional Council.



Hawke's Bay Airport Ltd - Statement of Intent 2020/21 - 6



# COMMERCIAL STRATEGY

THE ADVENT OF COVID-19 HAS HAD A SIGNIFICANT IMPACT ON ALL PASSENGER AND PLANE RELATED REVENUE NOTING THAT THE AIRPORT HAS LONG IDENTIFIED THE RELIANCE ON AERONAUTICAL REVENUE AS A KEY RISK. HBAL HAS IDENTIFIED A NUMBER OF KEY AREAS TO ENABLE GREATER REVENUE DIVERSITY AND RESILIENCE AS PART OF OUR CORE STRATEGY FOCUSING ON COMMERCIAL & PROPERTY

OUR COMMERCIAL STRATEGY AND RECOVERY PLAN IS FOCUSED ON RECOVERY ACROSS ALL AERONAUTICAL REVENUE STREAMS INCLUDING CAR PARKING, RETAIL, ADVERTISING AND AIR SERVICES DEVELOPMENT WITH A SIGNIFICANT FOCUS ON PROPERTY DEVELOPMENT AND RENEWABLE ENERGY.

## PROPERTY DEVELOPMENT

The airport is ideally located to accommodate critical infrastructure linkages by air, road and sea. This positions HBAL as a hub for critical transport and logistics and a key enabler of regional infrastructure growth.

Property is one of HBAL's strategic pillars which aims to optimise the use of HBAL land whilst safeguarding the airport, improving returns and increasing shareholder value.

A 20-year Master Plan is being developed to ensure safeguarding of aeronautical growth whilst maximising non-aeronautical returns against our sustainability framework.

The focus is on safeguarding the airport's ability to grow sustainably. This is imperative to ensuring it can continue provide the necessary infrastructure to enable critical air services and the connectivity of the region's people and produce both domestically and internationally.

This work is being aligned with the Napier City Council District Plan review which is currently underway.

The airport's updated masterplan has identified zones of land that have no future aeronautical utility and are available for commercial development.

The airport is now seeking to accelerate the development of this land and other property initiatives to achieve its strategic objectives.

A property development pathway is currently being worked through. This process will review market opportunities and work up precinct plans and supporting infrastructure plan for the site. The objective is to optimise the long-term value of the land in alignment with the region's broader commercial land use strategy.

## SOLAR FARM

The airport has been investigating the potential of a renewable energy project on our land for some time and has identified the development of a commercial solar array as an effective way of leveraging the value of land that is restricted in the type of development possible. The objective is to diversify revenue and advance the airport's goal of achieving carbon neutrality.

The project is flexible and will likely be developed in stages. Energy generated will not only meet the airport's direct requirements but be available to supply its current and future tenants. Surplus energy can be sold back to the grid.

To expedite the project HBAL has entered into a Joint Venture agreement with Waipukurau based lines Company Centralines. The JV is currently in the process of procuring a technical partner who will assist in progressing the project to an investment ready stage.





# SUSTAINABILITY



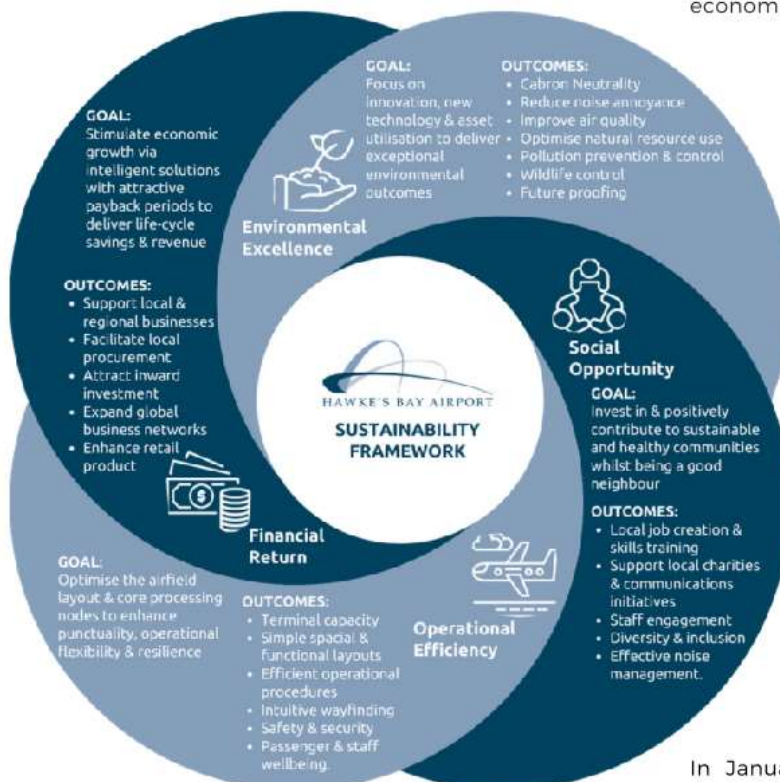
Item 6

HBAL has committed to a Sustainability Framework which is underpinned by the four key pillars of financial return, environmental excellence, social opportunity and operational excellence.

The sustainability framework is ultimately the foundation for our medium to long term strategic imperatives and airport masterplan placing sustainability at the heart of everything we do.

The key objectives identified in this statement of intent have been mapped against specified SDG's to identify their alignment.

The United Nations Sustainable Development Goals (SDGs) are the 'blueprint' to create a better and more sustainable future for all. The SDG's provide a framework for HBAL to align, measure and explain its actions to operate more responsibly and deliver positive social, environmental and economic impacts.



During the Covid-19 recovery period restoring the Airport's financial sustainability will be the priority however there will be an ongoing focus on ensuring that decision making continues to balance all four pillars of the framework.

Through this framework HBAL will measure and explain its actions in accordance with the United Nations Sustainable Development Goals (SDGs).



The company has joined ACI's Airport Carbon Accreditation programme, an independent, internationally recognised programme for carbon reduction at airports. It independently assesses and recognises the efforts of airports to manage and reduce their carbon emissions through 4 levels of certification: 'Mapping', 'Reduction', 'Optimisation' & 'Neutrality'.

























In January 2020 the company was successfully accredited at Level 1 Mapping stage with the aim to achieve Level 2 – Reduction by the January 2021.

The feasibility of an on-airport commercial solar project is also being advanced. This aligns with HBAL's carbon neutral aspirations and many industry, national and local goals to transition to renewable energy.

Attachment 1



# KEY PROJECTS & CAPITAL EXPENDITURE

		 Airport Masterplan	Property & Commercial	Terminal & Apron	Operational Efficiency	Sustainability
FY2020/21	Q1		 Property Development Plan Complete		 In-sourcing of Airport Fire & Safety Team	 Solar Energy Feasibility Complete
	Q2	 Revised Masterplan adopted	 Aero Pricing Review	 Forecourt Works Complete		
	Q3	 Lodge Notice of Requirement	 New Terminal Food & Beverage Complete	 Stage 3 Terminal Expansion Complete	 Revised Conditions of Use Implemented	
	Q4		 New Advertising Infrastructure			
318K						
FY2021/22	Q1		 Additional Retail to support local offerings		 Replace Safety Vehicle	 Stage 1 Solar Energy Development Complete
	Q2	 District Plan Hearings		 Major Airfield Maintenance		
	Q3		 Major Property Development		 Procure New Fire Appliance	 Level 2 Airport Carbon Accreditation
	Q4					
475K						
FY2022/23	Q1					 Stage 2 Solar Energy Development Complete
	Q2			 Airfield Infrastructure Improvements Runway, Apron & Taxiway Enhancements		
	Q3		 Major Property Development			 Level 3 Carbon Accreditation
	Q4					
543K						

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Attachment 1

# KEY OBJECTIVES BUSINESS PLAN 2020/21








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TACTICAL FOCUS		ACTIVITY & OUTCOME	MEASURE	TARGET DATE
COVID-19 RECOVERY	1.	An uncompromising safety focus and compliance to Covid-19 operational guidelines at all times	Monthly review of Covid-19 management plan, risk and business recovery.	Monthly
	2.	Dynamic calibration of financials and business planning.	Monthly review of aeronautical recovery forecasts and resource allocation.	Monthly
	3.	Actively encourage pragmatic whole of aviation industry approach to recovery.	HBAL presence at all relevant forums. Regular meetings with relevant aviation stakeholders including Air NZ, Airways and other Airports.	Ongoing
	4.	Regional collaboration to champion HB air connectivity as critical part of national tourism strategy.	Develop Regional Air Services Strategy in consultation with HB Tourism	30-Aug 2020
	5.	Review economies of scale and in sourcing versus outsourcing of key operational resources.	Review complete and implemented	1-July 2020
	6.	Review aeronautical pricing in consultation with major airline partner.	Aeronautical pricing consultation complete and agreed with key parties.	30 December 2020
	7.	Optimise returns from existing infrastructure by reviewing product offering and develop differentiated propositions.	Segmented propositions implemented.	31 December 2020
	8.	Manage short term in-terminal retail proposition to best meet customer demand whilst preserving viability of third-party operators.	Monthly meetings with retail operator to review passenger feedback and performance	Monthly
	9.	Prioritise the safe reinstatement of Airport Ambassador Program	Enhanced Customer Satisfaction/ASQ	Monthly
	10.	Proactively monitor wellbeing of staff	Internal welfare survey completed	Quarterly







Attachment 1

# KEY OBJECTIVES BUSINESS PLAN 2020/21



STRATEGIC IMPERATIVE		ACTIVITY & OUTCOME	MEASURE	TARGET DATE	SDG ALIGNMENT
OPTIMISE SHAREHOLDER VALUE	11.	Achieve financial and operational targets as per SOI	SOI FY2020-21 with a focus on reducing cost and optimising revenues.	30 June 2021	
 OPERATIONS	12.	Operating and effective safety management system.	Internal SMS Tracker updated monthly	Monthly	
	13.	Practical completion of Terminal Redevelopment	Stage 3 Completed	31/03/2021	
	14.	Bi-annual Strategic Risk/Compliance Review	Review Implemented	Biannual	
	15.	Review and Refine Wildlife Management Plan	Second Phase Plan Implemented.	30/11/2020	
	16.	Reduction of Carbon Emissions against established benchmarks.	Achieve Level 2 Airport Carbon Accreditation (ACA)	30/01/2021	
 COMMERCIAL	17.	Improve service levels and returns by leveraging existing infrastructure	Implement research based product segmentation of carpark	31/01/2021	
			Develop and implement revised aeronautical conditions of use.	31/08/2020	
			Complete review of General Aviation Charges in line with industry benchmarks	31/08/2020	





# KEY OBJECTIVES BUSINESS PLAN 2020/21

STRATEGIC IMPERATIVE		ACTIVITY & OUTCOME	MEASURE	TARGET DATE	SDG ALIGNMENT
COMMERCIAL CONTINUED	18.	Improve carpark to gate and customer experience and car parking returns	>10% of transactions are ticketless Improved ASQ scores	30/06/2021	
	19.	Revise ground transport strategy to ensure alignment with sustainability framework and new technologies.	Transport Strategy Review Complete	30/09/2020	
	20.	Leverage grants/sponsorship where possible to expedite sustainability outcomes	Network with private and public stakeholders to identify opportunities for collaboration.	Ongoing	
	21.	Grow in-terminal retail engagement and per passenger spend rates.	Procure new retail operator/s. Strong focus on non-price attributes. Maximise Returns from Digital Advertising Assets	30/11/2020	
 PROPERTY	22.	Work closely with NCC planners to ensure HBAL interests are considered in district plan review.	Completed RMA Framework	30/08/2020	
	23.	Refine commercial property strategic plan in alignment with RMA/sustainability framework and market demand.	Property Strategy and Marketing Plan in Place	30/11/2020	
	24.	Stimulate property development opportunities	Proactive engagement and collaboration with key strategic partners	Ongoing	
	25.	Develop guidelines for future development to ensure strategic alignment	HBAL development guidelines approved	31/12/2020	
	26.	Develop renewable energy project.	Feasibility complete for Land Based Renewable Project	31/10/2020	



# KEY OBJECTIVES BUSINESS PLAN 2020/21



STRATEGIC IMPERATIVE		ACTIVITY & OUTCOME	MEASURE	TARGET DATE	SDG ALIGNMENT
 PARTNERS	27.	Proactively engage with HB Community, local and central government and other key stakeholders.	Supportive environment for wider airport.	Ongoing	
	28.	Partnership/Collaboration with regional leaders around sustainability outcomes	Ensure airport presence/voice at regional forums.	Ongoing	
	29.	Undertake stakeholder and public consultation as part of NCC district plan review	Community to work as one team.	31/07/2020	
	30.	Continued collaboration with Mana Whenua	Regular meetings/engagement Property Partnerships	Ongoing	
	31.	Collaborate on a plan for the future delivery of air traffic services	Regular meetings with Airways and partner airports	Ongoing	
	32.	Partnership with regional stakeholders to grow Air Services.	Develop Regional Air Services Strategy in partnership with HB Tourism and other stakeholders.	30-Aug 2020	
 PEOPLE	33.	Invest in Teams Development and Training	Training and Development Program	30/06/2021	
	34.	Develop Team Capability	Resources/Expense in line with financial Forecast	30/06/2021	
	35.	Proactively engage with staff to ensure engagement and optimise wellbeing in the workplace.	Staff engagement and culture survey completed.	Quarterly	
	36.	Continue build on success of Ambassador program	>85% of existing Ambassadors complete two years of service	30/06/2021	

# FINANCIAL FORECASTS



Item 6

Attachment 1

## Aeronautical Revenue Assumptions:

Prior to Covid-19 HBAL was in the midst of a pricing consultation process with Air NZ. A move to a revised per-passenger charging mechanism was proposed to acknowledge increases to HBAL's aeronautical asset values and operating costs.

Given the recent operating environment and the uncertainty around future passenger numbers a decision was made to defer the consultation process until Q1 FY21. The proposed passenger charge is assumed to commence following the completion of the terminal redevelopment.

## Other Assumptions/Commentary:

Existing ANZ banking facilities are maintained with additional shareholder loans used to fund the shortfall of HBAL's construction program and working capital requirements. The assumed financing costs associated with these shareholder loans are included in the interest/funding cost line in the P&L and cashflow.

The performance targets include continued growth in passenger numbers, increases in landing charges and associated passenger related revenue. Ongoing capital expenditure relating to the terminal development and associated improvements increasingly impacts interest and depreciation expenses.

Enhanced revenue streams as the terminal development is completed provides for a forecast return to operating surplus in FY23. This is reflected in forecast improvements to the return on equity and net gearing ratios over the three-year SOI period.

## Statement of Intent - Headlines & Financial Metrics July 2020 - June 2023

	Jul 20 - Jun 21	Jul 21 - Jun 22	Jul 22 - Jun 23
Passenger Numbers	317,923	475,187	542,993
Forecast Revenue	4,178,546	6,858,612	8,396,705
EBITDA	1,024,775	3,341,801	4,558,870
EBITDA Margin	24.52%	48.72%	54.29%
NPAT	(1,566,951)	(265,633)	636,036
Net Profit after Taxation Margin	(37.50%)	(3.87%)	7.57%
Interest Cover	(2.04)	0.61	2.26
Total Debt	27,003,544	25,504,025	22,964,189
Total Assets	63,304,268	61,401,962	59,771,997
Leverage Ratio	26.4	7.6	5.0
Return on Equity	(5.1%)	(0.9%)	2.0%
Gearing Ratio	47%	46%	43%
Equity %	49%	50%	53%

# FINANCIAL FORECASTS



## Prospective Summary Statement of Comprehensive Income

July 2020 - June 2023

	Jul 20 - Jun 21	Jul 21 - Jun 22	Jul 22 - Jun 23
<i>Passenger Numbers</i>	317,923	475,187	542,993
Revenue			
Aeronautical	2,116,219	3,939,487	4,688,522
Non-aeronautical	2,062,327	2,919,125	3,708,182
<b>Total Revenue</b>	<b>4,178,546</b>	<b>6,858,612</b>	<b>8,396,705</b>
Operating Expenditure	3,153,771	3,516,812	3,837,834
<b>EBITDA</b>	<b>1,024,775</b>	<b>3,341,801</b>	<b>4,558,870</b>
Depreciation	2,485,131	2,828,674	2,904,683
<b>EBIT</b>	<b>(1,460,355)</b>	<b>513,127</b>	<b>1,654,187</b>
Interest Expense	715,966	843,173	731,915
<b>Profit before Income Tax</b>	<b>(2,176,321)</b>	<b>(330,046)</b>	<b>922,272</b>
Income Tax Expense	(609,370)	(64,413)	286,236
<b>Net Profit after Tax</b>	<b>(1,566,951)</b>	<b>(265,633)</b>	<b>636,036</b>

## Prospective Summary Statement of Cashflows

July 2020 - June 2023

	Jul 20 - Jun 21	Jul 21 - Jun 22	Jul 22 - Jun 23
Cashflow From Operations	571,829	3,160,633	4,482,006
Cashflow From Investing	(8,599,907)	(883,000)	(1,097,500)
Financing and Other			
Total Loans Issued	9,934,576	(1,500,000)	(2,500,000)
Interest Payments	(594,545)	(842,692)	(771,751)
Cashflow From Financing	9,340,031	(2,342,692)	(3,271,751)
<b>Net Cash Inflow/(Outflow)</b>	<b>1,294,075</b>	<b>(65,059)</b>	<b>112,755</b>
Opening Bank	(1,178,043)	116,033	50,973
<b>Net Cash Movement</b>	<b>1,294,075</b>	<b>(65,059)</b>	<b>112,755</b>
Closing Bank	116,033	50,973	163,728

# FINANCIAL FORECASTS



## Prospective Summary Statement of Financial Position

July 2020 - June 2023

	Jul 20 - Jun 21	Jul 21 - Jun 22	Jul 22 - Jun 23
Current Assets	731,436	774,804	952,023
Non Current Assets	62,572,831	60,627,157	58,819,974
<b>TOTAL ASSETS</b>	<b>63,304,268</b>	<b>61,401,962</b>	<b>59,771,997</b>
Current Liabilities	405,642	268,489	542,324
Non Current Liabilities			
Total Debt	27,003,544	25,504,025	22,964,189
Other Non Current Liabilities	5,220,703	5,220,703	5,220,703
Total Non Current Liabilities	32,224,247	30,724,728	28,184,892
<b>TOTAL LIABILITIES</b>	<b>32,629,889</b>	<b>30,993,217</b>	<b>28,727,216</b>
<b>NET ASSETS</b>	<b>30,674,378</b>	<b>30,408,745</b>	<b>31,044,781</b>
Capital and Reserves	30,674,379	30,408,745	31,044,781
<b>TOTAL EQUITY</b>	<b>30,674,379</b>	<b>30,408,745</b>	<b>31,044,781</b>

## Capital Expenditure

The forecast reductions in aircraft and passenger movements has enabled the majority of HBAL's CAPEX program to be deferred to preserve cashflow during the COVID-19 recovery period. This excludes critical maintenance required to ensure the safety and integrity of airport infrastructure.

Budgeted capital expenditure is summarised in the table below. Long term capital expenditure associated with the aeronautical infrastructure is provided for as per the long-term maintenance plan prepared and updated annually by Beca Ltd. From time to time, HBAL may consider additional capital expenditure programmes if supported by a robust business case and the provision of debt funding.

## Prospective Summary Statement of Capital Expenditure

	2020/21	2021/22	2022/23
Airport Masterplan	187,500	125,000	121,500
Property & Commercial	1,265,500	555,000	135,000
Airside Infrastructure & Projects	6,619,413	203,000	296,000
Operational Efficiency	417,800	-	545,000
	<b>8,490,213</b>	<b>883,000</b>	<b>1,097,500</b>



# FINANCIAL FORECASTS



## Accounting Policies

The accounting policies adopted by HBAL are consistent with New Zealand's International Financial Reporting Standards and generally accepted New Zealand accounting practices. The policies are included within HBAL's Annual Report that is available on the Company's website: [www.hawkesbay-airport.co.nz/about/company/annual-report](http://www.hawkesbay-airport.co.nz/about/company/annual-report).

## Distributions

HBAL is forecasting losses for the first two years of the post Covid-19 recovery period which makes the prospect of any dividend payments unlikely until FY2022/23.

## Information to be provided to Shareholders

Shareholders will receive:

- An annual report including audited financial statements within 3 months of balance date.
- A 6 monthly report including non-audited financial statements within 2 months of balance date.
- A Quarterly Report within 2 months of the end of each quarter.
- A Statement of Intent submitted for shareholders' consideration in accordance with the Local Government Act 2002
- Other interim financial reports as agreed with the shareholders
- Reports on matters of material interest to shareholders. Shareholders will continue to be kept informed of key developments, consistent with the Crown's 'No Surprises' policy.

## Acquisition Procedures

The acquisition of any interest in a company or organisation will be considered when it is consistent with the long-term commercial objectives of the company. Any material acquisition will be the subject of consultation with shareholders.

Major transactions as defined by the Companies Act 1993 will require shareholder approval.

## Compensation Sought from Local Body Shareholders

At the request of the shareholders the company may undertake activities that are not consistent with normal commercial objectives.

The company may seek, in these circumstances, a specific subsidy to meet the full commercial cost of providing such activities, however none are contemplated in the planning period.

**Estimate of Commercial Value**

The value of Shareholders investment in the company as at 31 December 2019 is \$34,608,456.

The non-current assets owned by HBAL were revalued at 30 June 2019 to their current market value resulting in an uplift in value of \$2.94 million (net of the deferred tax impact).

HBAL will continue to undertake a revaluation approach to its assets on a regular cycle or when there has been a significant change in the market, to consider the gap between current book values of the assets and liabilities versus the commercial value of the business. The recent withdrawal of JetStar services to the region, the negative impact of Covid-19 on revenues for the next period and the completion of the terminal development in 2020 are seen as significant events with potential to influence asset value. A revised valuation is subsequently under way with assets to be revalued as at 30 June 2020.



Wendie Harvey  
Chairperson  
Hawke's Bay Airport limited  
XX/XX/2020

Item 6

Attachment 1

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Tuesday, 25 August 2020

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*Te Hui o Te Kaunihera ā-Rohe o Heretaunga*  
**Hastings District Council: Council Meeting**

Item 7

*Te Rārangi Take*

# Report to Council

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*Nā:*  
**From: Nigel Bickle, Chief Executive**

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*Te Take:*  
**Subject: Chief Executive's Report to Council**

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## **1.0 PURPOSE AND SUMMARY - TE KAUPAPA ME TE WHAKARĀPOPOTOTANGA**

- 1.1 The purpose of this report is to update Council on key matters of interest since the last Council Meeting and provide executive context for the strategic items on this Council Meeting Agenda. The remaining items are important operational matters and are well traversed within the Officer Reports.

### **Chief Executive Update**

- 1.2 Key areas of public interest and engagement have been Council's response to the impact of COVID-19 as well as keeping the community updated on business as usual activities. I am again very pleased with the actions of staff preparing and moving Council to Level 2 restrictions and potentially Level 3. We have also rostered staff in preparation to support the Hawke's Bay Civil Defence Emergency Management Group, including the provision of two senior managers to be relief Group Controllers should the need arise.
- 1.3 Media activities have continued to support business and consumer confidence by publishing/sharing stories highlighting buoyancy in the Hastings economy in the face of the challenges of COVID-19.
- 1.4 On the back of government funding announcements for 'shovel-ready projects', Council's work programme on roading and footpath works across the district, most notably at Waipatu, has been highlighted both for the resulting improved community safety benefits and also the focus on job creation, retention and redeployment. The 'Jobs for Heretaunga' partnership with Ministry of Social Development (MSD) has been an important component brought to public attention, acknowledging both the work of Council, MSD and the contractors involved.
- 1.5 Meanwhile, Council's role to facilitate and enable more housing to be provided for Hastings residents has been publicised through the most recent development to get underway at Tarbet Street in Flaxmere West. This provided the opportunity to talk about Council's other partnerships and initiatives in the areas of social/transitional housing, greenfield residential subdivisions, proposed

District Plan changes to make it easier to build residential units in the inner city, and broadening the options for seasonal worker accommodation.

- 1.6 The adoption of the Annual Plan and reduction to the proposed budgeted rates revenue in response to COVID-19 was communicated to the public, as was the adoption of an Arts, Culture and Events recovery plan.
- 1.7 Council officers have been busy working with Central Government on further Government investment into Hastings. I am very pleased with the progress being made and look forward to pending announcements of several significant bespoke investments which will underpin substantial sustainability in employment and improvements in community wellbeing.

### **Community Engagement**

- 1.8 The introduction of the changes to the kerbside rubbish and recycling service on 1 July was a communications challenge. This was made more challenging by COVID-19, which 'derailed' the comprehensive communications and engagement plan that was written for this project. Overall the Waste Team have been pleased with the behaviour change/uptake rates. Ongoing community education campaigns aim to further lift recycling participation rates and while reducing overall volumes to landfill.
- 1.9 An area of high public interest is the current speed limit review. People have been steadily providing feedback both via community meetings and through the consultation channel of [myvoicemychoice](https://myvoicemychoice.co.uk). Between August 3 and August 17 nearly 1000 submissions had been received through the website.

### **Three Waters Stimulus Funding Agreement**

- 1.10 On 8 July, the Prime Minister and the Minister of Local Government announced a three-year programme for reforming three waters service delivery arrangements, to be delivered in parallel with an economic stimulus package of Crown investment.
- 1.11 The Government has committed to investing over \$700 million in an investment package to support local government to supplement planned investment and enhance asset quality. This package is intended to stimulate work to maintain our drinking, waste and storm water infrastructure. The design of the investment package recognises that COVID-19 has put additional pressure on local government, and that the financial pressures councils are under may result in reductions to planned maintenance and renewal of infrastructure precisely when the economy needs a boost to protect and create local jobs.
- 1.12 The investment package recognises that local authorities are best placed to direct this investment to where it is most needed, provided it is used to maintain, increase and/or accelerate investment in core water infrastructure renewals and maintenance. The Government is also looking to use this opportunity to accelerate progress on reform of water services delivery.
- 1.13 The investment allocation to Hastings District Council is \$15.36m (ex GST). The Group Manager's Report recommends Council sign a 'Memorandum of Understanding' (MOU) with the Minister of Local Government. The objective of the MOU is for Council and the Crown to work constructively together to support the objectives of the Three Waters Service Delivery Reform Programme. Signing of the MOU is the first step in unlocking the investment allocation to Hastings.

### **Public Excluded Matters**

- 1.14 Council will be asked to consider receiving these reports in Public Exclusion. Section 48 of the Local Government Official Information and Meetings Act provides that Council may, by resolution, exclude the public from all or part of the meeting on certain grounds. I am satisfied that there is good and sufficient reason for recommending public exclusion to avoid prejudicing the commercial position of third parties under section 7 of the Act.

## Conclusion

- 1.15 This is a smaller Agenda for Council in respect of the number of items however some matters to be considered are complex and the result of a substantial amount of quality work by our staff. I likewise appreciate the large workload for Council to understand the matters at hand and consequences for decisions.
- 1.16 This is reflective of the substantial and complex work programme being delivered by staff under the strategic and policy direction set by Council. It is exciting and rewarding for our community that, with each Government investment announcement, our work programme continues to expand.
- 1.17 I remain confident we have the capacity and capability to operate efficiently and effectively in our ongoing environment of budgetary restraint to deliver our ambitious programme of work this year for our community. We are also investing in monitoring and responding to the Health and Safety wellbeing of Council so we can support and retain our staff and facilitate a fair, equitable and rewarding workplace culture.

## 2.0 RECOMMENDATIONS - NGĀ TŪTOHUNGA

That Council receives the report titled Chief Executive's Report to Council .

### Attachments:

There are no attachments for this report.



Tuesday, 25 August 2020

*Te Hui o Te Kaunihera ā-Rohe o Heretaunga*  
**Hastings District Council: Council Meeting**

**Item 8**

*Te Rārangi Take*

# Report to Council

*Nā:*  
**From: Craig Thew, Group Manager: Asset Management**

*Te Take:*  
**Subject: Three Waters Stimulus Funding Agreement**

## **1.0 Executive Summary – *Te Kaupapa Me Te Whakarāpopototanga***

- 1.1 This report recommends that Council enters into a Memorandum of Understanding (MoU) with the Crown. In doing so Council is;
- Agreeing to participate in the initial stage of a central / local government three waters service delivery reform / stimulus programme.
  - Not making a commitment to implement changes to the current service delivery approach.
- 1.2 If there is agreement to enter into the MoU, the report also asks that the Chief Executive is provided the delegation to enter into a Funding Agreement, to accept a grant from the Crown to spend on operating and/or capital expenditure relating to three waters infrastructure and service delivery.
- The report provides initial proposal of projects for inclusion in the delivery plan for submission to the Crown for approval.

## **2.0 Recommendations – *Ngā Tūtohunga***

- A) That the Council receives the report titled Three Waters Stimulus Funding Agreement.**
- B) That the Council approve the signing of the Memorandum of Understanding included in Attachment 1.**
- C) That the Council approve the signing of the Funding Agreement in Attachment 2.**

- D) That the Council agree to the Chief Executive being the responsible Officer for the purposes of the MoU and reform programme – as referred to on page 6 of the MoU.**
- E) That the Council delegate to the Chief Executive the task of finalising and signing of the Funding Agreement and Delivery plan.**

### **3.0 Background – *Te Horopaki***

- 3.1 In July 2020, the Government announced a \$761 million funding package to provide post COVID-19 stimulus to maintain and 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.
- 3.2 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.
- 3.3 The reform programme is designed to support economic recovery, and address persistent systemic issues facing the three waters sector, through a combination of:
- stimulating investment, to assist economic recovery through job creation, and maintain investment in water infrastructure renewals and maintenance; and
  - reforming current water service delivery, into larger scale providers, to realise significant economic, public health, environmental, and other benefits over the medium to long term.
- 3.4 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 MoU, Funding Agreement, and 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.
- 3.5 The Hawkes Bay Councils have already been progressing a review of service delivery options for 3 waters in the region. So whilst the national reform initiative is technically separate to the Hawkes Bay 3 Waters Service Delivery Review Project, the principles and challenges being considered are aligned to those the Councils in across our region have already been progressing in its regional review process to date. Therefore the work the Councils across Hawkes Bay have completed will be valuable in informing and shaping feedback into this national discussion.

### **4.0 Discussion – *Te Matapakitanga***

#### ***Proposal – central/local government three waters reform programme***

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

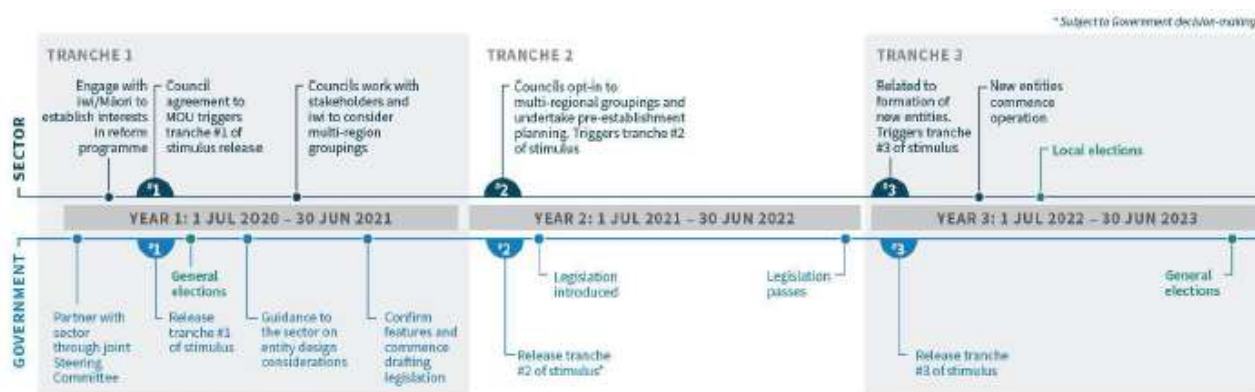
- 4.1 At the recent Central/Local Government Forum, central and local government leadership discussed the challenges facing New Zealand's water service delivery and infrastructure, and committed to working jointly on reform. A Joint Central/Local Government Three Waters Steering Committee has been established to provide oversight and guidance to support this work.
- 4.2 Central and local government consider it is timely to apply targeted infrastructure stimulus investment to enable improvements to water service delivery, progress service delivery reform in partnership, and ensure the period of economic recovery following COVID-19 supports a transition to a productive, sustainable economy.



- 4.3 The Government's starting assumption 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.
- 4.4 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 1.

### **Reform process and indicative timetable**

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



### **Allocation of the investment package**

- 4.10 The Government has determined a notional allocation framework based on a nationally-consistent formula.
- 4.11 The general approach to determining each authority's notional allocation is based on a formula that gives weight to two main factors:
- The population in the relevant council area, as a proxy for the number of water connections serviced by a territorial authority (75 per cent weighting)
  - The land area covered by a local authority excluding national parks, as a proxy for the higher costs per connection of providing water services in areas with low population density (25 per cent weighting).
- 4.12 The allocation available for Hastings District Council is \$15.36 Million (excluding GST). This is part of a \$50 Million allocation across Hawkes Bay, should the Councils take up the MoU.
- 4.13 For the Councils in Hawkes Bay the full allocation in the region has been directly allocated across the individual Councils, this is different to other regions where it is split between direct and regional funds.

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

- 4.14 The initial stage of the reform programme involves three core elements:
- Memorandum of Understanding (Attachment 1);
  - Funding Agreement (Attachment 2);
  - Delivery Plan (Attachment 3).
- 4.15 Initial funding will be made available to those councils that sign the MoU, and associated Funding Agreement, and provide a Delivery Plan.
- 4.16 The MoU is the 'opt in' to the first stage of the reform and stimulus programme. The MoU needs to be signed and submitted by the end of August 2020. The Funding Agreement and Delivery Plan need to be submitted by the end of September 2020, to access the stimulus funding,
- 4.17 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***

- 4.18 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.
- 4.19 Signing the MoU commits councils to:
- engage in the first stage of the reform programme – including a willingness to accept the reform objectives and the core design features set out in the MoU;
  - the principles of working together with central government and the Steering Committee;
  - work with neighbouring councils to consider the creation of multi-regional entities;
  - share information and analysis on their three waters assets and service delivery arrangements.
- 4.20 At this point, this is a voluntary, non-binding commitment. It does not require councils to commit to future phases of the reform programme, to transfer their assets and/or liabilities, or establish new water entities.
- 4.21 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.
- 4.22 A legal opinion by Simpson Grierson, commissioned by SOLGM on behalf of the Steering Committee, advises that the MoU does not contain any explicit triggers for consultation under the Local Government Act 2002. (Refer to Attachment 4)

### ***Funding Agreement***

- 4.23 This Council has been allocated \$15.36 Million by the Crown, if it opts in to the reform programme. This funding will be provided as a grant, which does not need to be repaid if the Council does not ultimately commit to reform at later stages of the process.
- 4.24 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.
- 4.25 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.

- 4.26 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.
- 4.27 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**

- 4.28 The Delivery Plan is the other mechanism for accessing the funding package.
- 4.29 This Delivery Plan will need to show that the funding allocation is being 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.
- 4.30 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.
- 4.31 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 (CIP) will monitor progress against the Delivery Plan, to ensure spending has been undertaken with public sector financial management requirements.
- 4.32 Officers are compiling options for the Delivery plan and intend to workshop these with Council prior to the Chief Executive submitting the initial delivery plan for CIP review.

## **5.0 Options – Ngā Kōwhiringa**

Option One - Recommended Option - Te Kōwhiringa Tuatahi – Te Kōwhiringa Tūtohunga

- 5.1 Sign the agreement:

#### **Advantages**

- Provides additional non ratepayer funds to enhance and accelerate the delivery of 3 waters initiatives.
- Provide funding to maintain and create jobs and careers for our community
- Having an active involvement in the national discussion will provide an opportunity for our learnings and local views to be considered as the reform process is shaped.

#### **Disadvantages**

- There are no obvious disadvantages to progressing with this option. The capacity of resources will need to be considered to support this initiative, this will require ongoing consideration of priorities.

Option Two – Status Quo - Te Kōwhiringa Tuarua – Te Āhuatanga o nāiane

## 5.2 Not Sign the agreement

### Advantages

- No distraction of resources from existing planned works

### Disadvantages

- Lost opportunity to reduce longer term cost impacts on the community
- Lower opportunity to actively participate in the national 3 waters reform programme

## 6.0 Next steps – *Te Anga Whakamua*

- 6.1 If the recommendation to sign the MoU and funding agreement is adopted, then the key next step is to confirm the delivery plan for submission to the CIP for review. The intention is to compile a list of candidate initiatives and workshop this proposed programme with Councils prior to submission.
- 6.2 A review of Councils existing Annual plan programme works will also be required to confirm if the time commitments required by the government agreements necessitate changes to the current work programme and procurement packages.

## Attachments:

1	<a href="#">Water Reform three waters reform Memorandum of Understanding</a>	WAT-20-10-20-1498
2	<a href="#">3 Waters Stimulus Funding Agreement 4 August 2020</a>	CG-16-2-00305
3	<a href="#">3 Waters Stimulus Delivery Plan 04 August 2020</a>	WAT-20-10-20-1496
4	<a href="#">Water Reform Simpson Grierson Advice to SOLGM on MOU - signed 31.07.2020</a>	WAT-20-10-20-1494
5	<a href="#">Water Reform Grant-Funding-Guidance information</a>	WAT-20-10-20-1497

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## Summary of Considerations - *He Whakarāpopoto Whakaarohanga*

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### **Fit with purpose of Local Government - *E noho hāngai pū ai ki te Rangatōpū-ā-Rohe***

The Council is required to give effect to the purpose of local government as set out in section 10 of the Local Government Act 2002. That purpose is to enable democratic local decision-making and action by (and on behalf of) communities, and to promote the social, economic, environmental, and cultural wellbeing of communities in the present and for the future.

### **Link to the Council's Community Outcomes – *Ngā Hononga ki Ngā Putanga ā-Hapori***

This proposal promotes a range of the wellbeing of communities in the present and for the future, with a particular emphasis on the environmental and economic outcomes.

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### **Māori Impact Statement - *Te Tauākī Kaupapa Māori***

This proposal provides funds to Council to proceed with investment into physical works, studies, etc to improve 3 waters services and where possible jobs. The HB 3 waters has started discussions, and includes a cultural case. In progressing any changes in delivery it will be critical that Maori input and views are considered and incorporated.

### **Sustainability - *Te Toitūtanga***

This proposal will provide an opportunity to consider as part of the delivery plan projects that improve the long term resilience and sustainability for the community

### **Financial considerations - *Ngā Whakaarohanga Ahumoni***

The funding provided from central government will provide some offset of investment required from the community over the long term plan.

### **Significance and Engagement - *Te Hiranga me te Tūhonotanga***

This decision/report has been assessed under the Council's Significance and Engagement Policy as being of minor significance on the basis that the agreement is non binding and does not require additional funding from the ratepayers.

### **Consultation – internal and/or external - *Whakawhiti Whakaaro-ā-roto / ā-waho***

Nil at this stage, however if changes in the future are proposed then consultation will be required at a number of levels.

### **Risks**

Opportunity:

REWARD – <i>Te Utu</i>	RISK – <i>Te Tūraru</i>
The funding made available from the non-binding agreement will offset future rate payer costs and accelerate some improvements in service.	Incorrect Perception from community that Council has decided to make a change. Capacity to deliver and actively participate in the process.

### **Rural Community Board – *Te Poari Tuawhenua-ā-Hapori***

At this stage nothing significant.

# 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.<sup>1</sup>

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.

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<sup>1</sup> 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.



<div>.....</div> <div>SIGNED on behalf of the Crown</div> <div>by [insert name - DELETE TEXT]</div> <div>[Sovereign in right of New Zealand acting by and through the Minister of Local Government]:</div>	<div>.....</div> <div>SIGNED by [insert name of the Mayor of the Territorial Authority signing - DELETE TEXT] on behalf of [Territorial Authority]</div> <div>.....</div> <div>SIGNED by [insert name of the Chief Executive of the Territorial Authority signing - DELETE TEXT] on behalf of [Territorial Authority]</div>
<div>.....</div> <div>Witness signature</div> <div>Witness name [insert name - DELETE TEXT]</div> <div>Witness occupation [insert occupation - DELETE TEXT]</div> <div>Witness address [insert address - DELETE TEXT]</div>	<div>.....</div> <div>Witness signature</div> <div>Witness name [insert name - DELETE TEXT]</div> <div>Witness occupation [insert occupation - DELETE TEXT]</div> <div>Witness address [insert address - DELETE TEXT]</div>

Item 8

Attachment 1





Te Tari Taiwhenua  
Internal Affairs

# **FUNDING AGREEMENT**

**BETWEEN**

**DEPARTMENT OF INTERNAL AFFAIRS**

**AND**

**[NAME OF RECIPIENT]**

**FOR**

**THREE WATERS SERVICES REFORMS**

Item 8

Attachment 2

**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](mailto: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 | <b>Expenditure Programme(s)</b>                              | The Recipient may only use the Funding to complete the expenditure programme(s) described in the Delivery Plan (each an <b>Expenditure Programme</b> ).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 5 | <b>Expenditure Programme Milestones and Completion Dates</b> | 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 | <b>End Date</b>                                              | The End Date is 31 March 2022, or such later date determined by DIA in its discretion.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 7 | <b>Funding</b>                                               | <p>The total Funding available under this Agreement is up to <b>NZ\$[INSERT HERE]</b> 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"> <li>(a) Receipt of a duly completed Payment Request in accordance with clause 1 of Part 2.</li> <li>(b) The Expenditure Programme(s) having commenced no later than 31 March 2021.</li> <li>(c) DIA receiving and being satisfied with the quarterly reports specified in the Key Details, together with the other information required in this Agreement.</li> <li>(d) No Termination Event, or event entitling DIA to suspend funding under this Agreement, subsisting.</li> <li>(e) Any further conditions relating to that instalment of Funding as specified in the Delivery Plan.</li> </ul> |

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

Item 8

Attachment 2

**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](mailto: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](mailto: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

Item 8

Attachment 2



**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](mailto:threewaters@dia.govt.nz), with a copy to [3waters@crowinfrastructure.govt.nz](mailto:3waters@crowinfrastructure.govt.nz). The Delivery Plan will be assessed by the Department of Internal Affairs and Crown Infrastructure Partners Limited, who may elect to provide feedback and require further detail, additions or alterations. A revised version of the Delivery Plan, incorporating all agreed changes, must be submitted for approval thereafter, with the final Delivery Plan to be in an approved form by 31 October 2020.

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

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

#### Territorial Authority information

1. Programme Title:	<div>•</div>							
2. Territorial Authority:	<div>•</div>							
3. Total Maximum Amount Payable (NZ\$M):	<div>•</div>	<div>\$</div>						
4. Organisation Lead Contact:	<table border="1"> <tr> <td>Name:</td> <td></td> </tr> <tr> <td>Position:</td> <td></td> </tr> <tr> <td>Email:</td> <td></td> </tr> </table>		Name:		Position:		Email:	
Name:								
Position:								
Email:								

#### Expenditure Programme overview

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

•

6. Location/address of the programme:

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

•

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

• \$

•

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

• Funding Source	• Amount (NZ\$M)
•	• \$
•	• \$
• <b>Total</b>	• \$

•

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:<sup>1</sup>

	Expenditure Programme Milestone (including a description of how the milestone is identified)	Completion Date	Maximum Funding instalment amount (NZ\$) <sup>2</sup>	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]) <sup>3</sup>	NZ\$[INSERT HERE]	

<sup>1</sup> All figures should be GST exclusive.

<sup>2</sup> 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.

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

	<b>TOTAL</b>		[Must be less or equal to Total Maximum Amount Payable]	[Must be equal to the total estimated cost of the expenditure programme]	
--	--------------	--	---------------------------------------------------------	--------------------------------------------------------------------------	--

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:

Item 8

Attachment 3



## 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

- |                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Background</b> | <ol style="list-style-type: none"><li>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 (<b>MOU</b>).</li><li>2. Our advice proceeds on the presumption that councils will enter into the MOU after their annual plan for 2020/21 has been adopted.</li></ol>                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Question</b>   | <ol style="list-style-type: none"><li>3. Do territorial authorities need to consult their community before entering into the MOU?</li></ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Answer</b>     | <ol style="list-style-type: none"><li>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 (<b>LGA 02</b>). 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.</li><li>5. Certain choices made subsequently as to what projects to advance or steps to take might trigger consultation requirements at that time.</li></ol> |



## Our reasons

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

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

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

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

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

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

these do not strongly indicate that consultation is required

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

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

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

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

**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.<sup>1</sup>

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

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

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

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

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

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# Three Waters Reform Programme

Guide to stimulus funding for local  
authorities



## About this guide

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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](mailto:threewaters@dia.govt.nz)
- **30 September 2020**

**Funding Agreement** signed and submitted to **DIA**: [threewaters@dia.govt.nz](mailto:threewaters@dia.govt.nz)

**Delivery Plan** compiled and submitted to **DIA** and **CIP**: [threewaters@dia.govt.nz](mailto:threewaters@dia.govt.nz) and [3waters@crowinfrastucture.govt.nz](mailto: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	Funding Agreement	Delivery Plan
<p>The MoU is a <b>non-binding agreement between the Crown and local authorities</b>, which provides the <b>basis for collaboratively working together to progress the broader reform process</b>.</p> <p>Under the MoU, councils agree to:</p> <ul style="list-style-type: none"> <li>• Participate in a process to agree the principles, structures, process and timetable that support the reform programme.</li> <li>• Working cooperatively together to promote a relationship based upon mutual trust, respect and openness.</li> <li>• Sharing of information.</li> <li>• The funding arrangements.</li> </ul>	<p>The Funding Agreement is a <b>pro-forma agreement</b> that sets out the <b>purpose of the funding</b>, requirements and conditions that local authorities will need to meet to access the funding.</p> <p>Local authorities will choose the expenditure programme they wish to apply funding to, via the Delivery Plan.</p> <p>The Funding Agreement includes detail on the following:</p> <ul style="list-style-type: none"> <li>• Funding objectives.</li> <li>• Overview of what the funding stimulus may be spent on.</li> <li>• Conditions attached to the funding.</li> <li>• Reporting and other requirements.</li> </ul>	<p>The Delivery Plan will be <b>prepared by local authorities</b> and <b>submitted to DIA and CIP for review</b>. Application of funds will need to be consistent with Delivery Plans.</p> <p>The Delivery Plan will need to cover the following elements:</p> <ul style="list-style-type: none"> <li>• A summary of the work to be undertaken.</li> <li>• Confirmation of costs (excl GST).</li> <li>• Proposed milestones and associated disbursement profile.</li> <li>• Location of the physical works.</li> <li>• Estimate of the number of people employed in works.</li> <li>• Reporting milestones.</li> <li>• An assessment of how it supports the reform objectives set out in the MoU.</li> </ul>
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*	Allowable expenditure?
 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



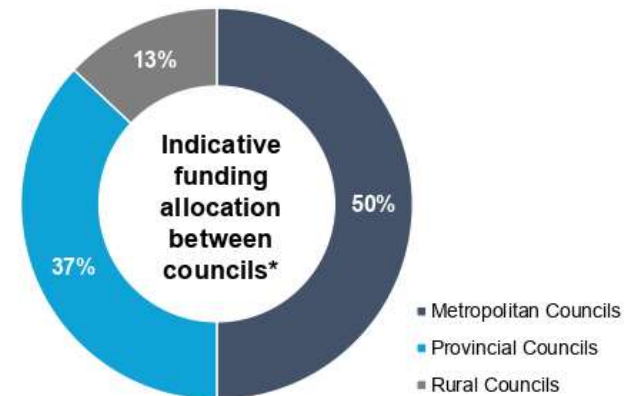
A **direct allocation** to each local authority, comprising **50%** of that local authority's notional allocation



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.

## Notional funding allocations

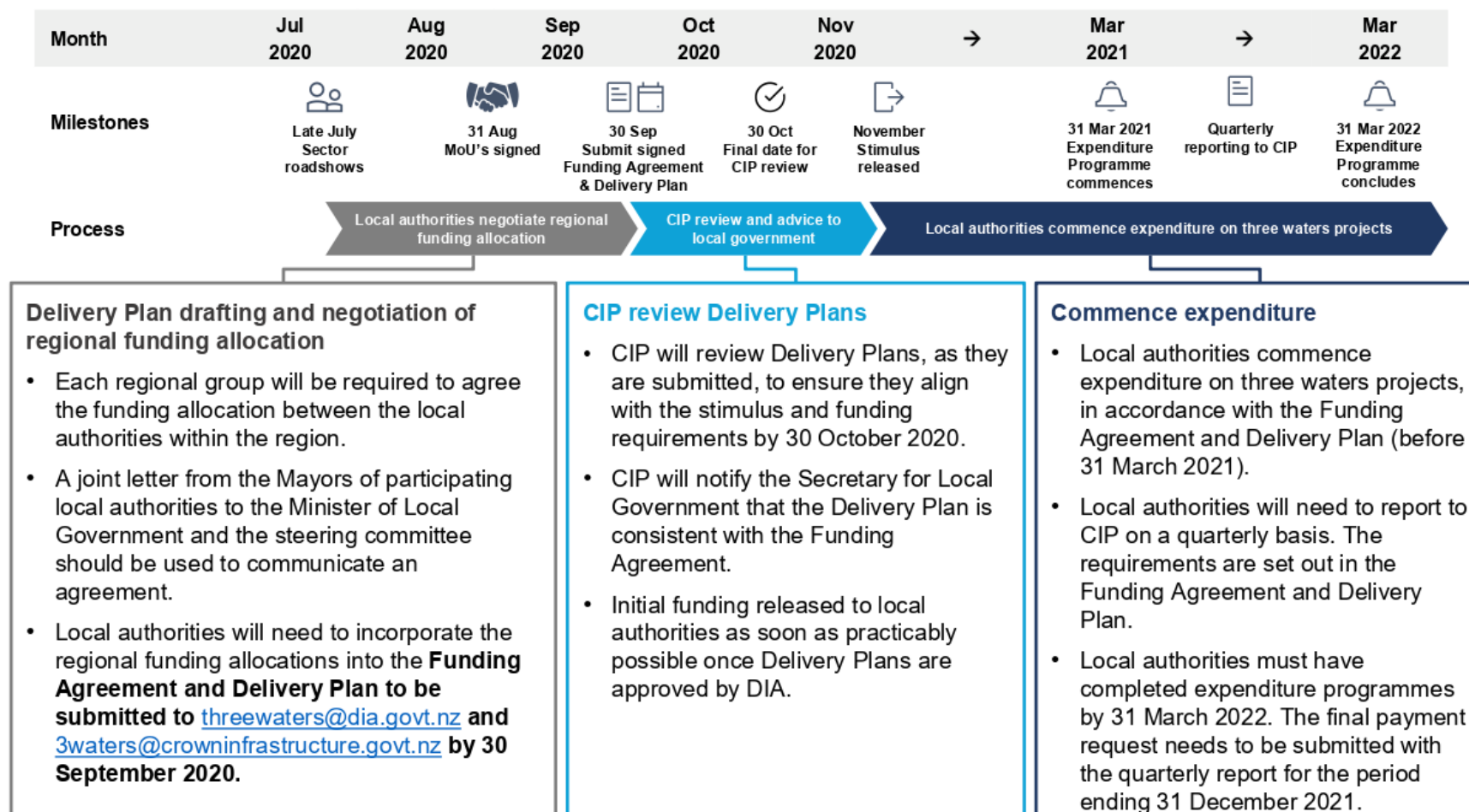
Region	Territorial Authority	Notional allocations		Total (\$m)
		TA allocation (\$m)	Regional allocation (\$m)	
Northland	Far North District Council	5.90	14.13	28.26
	Whangarei District Council	5.89		
	Kaipara District Council	2.35		
Waikato	Thames-Coromandel District Council	2.40	33.30	66.61
	Hauraki District Council	1.53		
	Waikato District Council	5.67		
	Matamata-Piako District Council	2.47		
	Hamilton City Council	8.73		
	Waipā District Council	3.41		
	Ōtorohanga District Council	1.25		
	South Waikato District Council	1.94		
	Waitomo District Council	1.75		
	Taupō District Council	4.16		
Bay of Plenty	Western Bay of Plenty Council	3.46	21.12	42.23
	Tauranga City Council	7.46		
	Rotorua District Council	4.71		
	Whakatāne District Council	3.49		
	Kawerau District Council	0.39		
	Ōpōtiki District Council	1.60		
Gisborne	Gisborne District Council	5.52	5.52	11.04
Hawke's Bay	Wairoa District Council	11.04	50.00	
	Hastings District Council	15.36		
	Napier City Council	12.51		
	Central Hawke's Bay District Council	11.09		
Taranaki	New Plymouth district	5.05	8.95	17.89
	Stratford district	1.19		
	South Taranaki district	2.70		
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		
	Taranua 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		
Otago	Chatham Islands territory	0.32	20.60	41.20
	Central Otago district	4.73		
	Queenstown-Lakes district	4.74		
	Dunedin city	7.92		
Southland	Clutha district	3.20	11.15	22.31
	Southland district	7.03		
	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.







Tuesday, 25 August 2020

Item 9

*Te Hui o Te Kaunihera ā-Rohe o Heretaunga*  
**Hastings District Council: Council Meeting**

## *Te Rārangi Take*

# Report to Council

*Nā:*  
**From: Bruce Allan, Group Manager: Corporate**

*Te Take:*  
**Subject: Covid-19 Recovery Contingency Fund**

### **1.0 Executive Summary – *Te Kaupapa Me Te Whakarāpopototanga***

- 1.1 It has been requested that an allocation of \$50,000 be delegated to the Chief Executive from the Covid-19 Recovery Contingency Fund to allow for the expeditious allocation of funds at times when the allocation is small, but the outcomes that can be achieved are warranted.
- 1.2 The Covid-19 Recovery Contingency Fund was established in the 2020/21 Annual Plan with \$1m to meet opportunities to enable the recovery from Covid-19. Not all opportunities for funding are large and a delegation to the Chief Executive to deal with small opportunities is requested.

### **2.0 Recommendations – *Ngā Tūtohunga***

- A) That the Council receives the report titled Covid-19 Recovery Contingency Fund.
- B) That the Council approve an allocation of \$50,000 from the Covid-19 Recovery Contingency Fund to be delegated to the Chief Executive for small Covid-19 Recovery expenditures.

### **3.0 Background – *Te Horopaki***

- 3.1 The revised 2020/21 budget and Annual Plan was formulated in late April 2020 during the Covid-19 lockdown period and as such there was much uncertainty about the impacts of this lockdown and how long it would last. To help provide for this uncertainty, Council created two contingency funds.

1. Covid-19 Recovery Contingency - \$1,000,000

This fund requires a council resolution to be allocated

## 2. Covid-19 Operational Contingency - \$500,000

The Chief Executive has delegation to allocate this fund to meet operational costs impacted by the Covid-19 pandemic.

### 3.2 To date the following allocations have been made to the Covid-19 Recovery Contingency:

- |                                                            |           |
|------------------------------------------------------------|-----------|
| 1. Hastings District Arts Culture and Events Recovery Plan | \$300,000 |
| 2. Hastings Urban Centres Recovery Fund                    | \$150,000 |

### 3.3 The Mayor and Chief Executive receive many requests for financial support to aid with organisations recovery plans and activities, many of which are of a small value. Seeking a Council resolution for an allocation from the Covid-19 Recovery Contingency for these small but quite often important applications is not always a timely approach to take for what is a small amount of money.

## 4.0 Discussion – *Te Matapakitanga*

- 4.1 It has been requested that an allocation of \$50,000 be delegated to the Chief Executive from the Covid-19 Recovery Contingency Fund to allow for the expeditious allocation of funds at times when the allocation is small, but the outcomes that can be achieved are warranted.
- 4.2 Once the allocated fund is exhausted, the Chief Executive would have to request a replenishment of that fund if it was considered necessary at that time.
- 4.3 The allocations made from this delegation to the Chief Executive will be reported to the Operations and Monitoring Committee in the quarterly Covid-19 Recovery Update report.

## 5.0 Options – *Ngā Kōwhiringa*

Option One - Recommended Option - Te Kōwhiringa Tuatahi – Te Kōwhiringa Tūtohunga

- 5.1 Council delegate to the Chief Executive authority to spend up to \$50,000 on Covid-19 recovery related activities, to be funded from the Covid-19 Recovery Contingency Fund.

### Advantages

- This allocation would streamline the decision making processes for these small applications and enable the Chief Executive to efficiently make decisions and funding allocations when required.
- Setting the allocated funding at \$50,000, restricts the Chief Executive to making decisions on only small funding decisions.

### Disadvantages

- The disadvantage of this allocation of funding is that Council will not have oversight of all Covid-19 Recovery funding decisions, no matter how small. They will however have these decisions reported to them as detailed above.

Option Two – Status Quo - Te Kōwhiringa Tuarua – Te Āhuetanga o nāiane

- 5.2 Decline this request.

- The outcome of this option is that any Covid-19 related recovery expenditures that should be funded from the Covid-19 Recovery Contingency Fund will continue to require Council approval. This will have the effect of delaying decision making on what would be minor levels of expenditure.

## 6.0 Next steps – *Te Anga Whakamua*

- 6.1 If the preferred option is supported by Council, the Chief Executive will have the necessary delegation to make decisions around expenditure that relate to Covid-19 Recovery items that are to be funded from the Covid-19 Recovery Contingency Fund.

### Attachments:

There are no attachments for this report.

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## Summary of Considerations - *He Whakarāpopoto Whakaarohanga*

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### Fit with purpose of Local Government - *E noho hāngai pū ai ki te Rangatōpū-ā-Rohe*

The Council is required to give effect to the purpose of local government as set out in section 10 of the Local Government Act 2002. That purpose is to enable democratic local decision-making and action by (and on behalf of) communities, and to promote the social, economic, environmental, and cultural wellbeing of communities in the present and for the future.

### Link to the Council's Community Outcomes – *Ngā Hononga ki Ngā Putanga ā-Hapori*

This proposal promotes the economic, social and cultural wellbeings of communities in the present and for the future.

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### Māori Impact Statement - *Te Tauākī Kaupapa Māori*

Not applicable

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### Sustainability - *Te Toitūtanga*

Not applicable

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### Financial considerations - *Ngā Whakaarohanga Ahumoni*

The Covid-19 Recovery Contingency Fund was established for 2020/21 with a total budget of \$1m. This request allocates \$50,000 from that fund for the Chief Executive's delegation.

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### Significance and Engagement - *Te Hiranga me te Tūhonotanga*

This decision/report has been assessed under the Council's Significance and Engagement Policy as being of low significance.

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### Consultation – internal and/or external - *Whakawhiti Whakaaro-ā-roto / ā-waho*

Not applicable

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### Risks

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**Rural Community Board** – *Te Poari Tuawhenua-ā-Hapori*

Not applicable.

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Tuesday, 25 August 2020

*Te Hui o Te Kaunihera ā-Rohe o Heretaunga*  
**Hastings District Council: Council Meeting**

Item 10

*Te Rārangi Take*

# Report to Council

*Nā:*  
**From: Bruce Allan, Group Manager: Corporate**

*Te Take:*  
**Subject: Appointment process and remuneration for an independent member of the Risk and Assurance Committee**

## **1.0 Executive Summary – Te Kaupapa Me Te Whakarāpopototanga**

- 1.1 The purpose of this report is to get approval from Council for a process to be put in place for the appointment of a second independent member of the Risk and Assurance Committee.
- 1.2 The report recommends that the position be advertised and that an appointments panel be established to include the Chair (Mr Jon Nichols) and Deputy Chair (Mr Simon Nixon) of the Risk and Assurance Committee with the Mayor as ex officio. The Appointments Panel will make a recommendation back to Council for final approval.
- 1.3 The report also recommends that the new independent member's remuneration be set at \$10,000 per annum.

## **2.0 Recommendations – Ngā Tūtohunga**

- A) That the Council receives the report titled Appointment process and remuneration for an independent member of the Risk and Assurance Committee.
- B) That the Council approve the creation of an appointments panel for the purpose of making a recommendation to Council for the Independent member of the Risk and Assurance Committee.
- C) That the Appointments Panel comprise of the Chair and Deputy Chair of the Risk and Assurance Committee with the Mayor as ex officio.
- D) That the annual remuneration of the Independent member of the Risk and Assurance Panel be set at \$10,000.

### 3.0 Background – Te Horopaki

- 3.1 On September 17, 2019 the Finance and Risk Committee received a report recommending to the incoming Council that the current Chair of the Risk and Audit Subcommittee be reappointed for a further three years and that a second independent member be appointed. The resolution was as follows:

***That the Committee recommend to the incoming Council following the 2019 triennial elections that:***

- i. Mr Jon Nichols be reappointed as the independent chair of the Risk & Audit Subcommittee for a further three years.***
- ii. A second independent member of the Risk & Audit Subcommittee be appointed for a period of three years with a preference for that member to have asset management experience***

- 3.2 The Hastings District Council Committee and Rural Community Board Register of Delegations 2019-22 states that there will be 2 Independent members on the Risk and Assurance Committee.

- 3.3 The recently released Local Government funding and financing report from the New Zealand Productivity Commission makes a strong recommendation for independent representation on Council's Audit & Risk Committees. In that draft recommendation the Productivity Commission states:

*"The Local Government Act 2002 should be amended to require all local authorities to have an Audit and Risk Committee (or equivalent assurance committee).*

- Audit and Risk Committees should have an independent Chair, and ideally include at least one other external expert, to ensure they span the full range of necessary skills and experience.*
- Independent members should be appropriately skilled and qualified.*
- Councils should draw on the good practice guidance and resources that are available to develop and run their committees."*

- 3.4 The Productivity Commission recommendation made regarding Audit & Risk Committees and Independent Chairs signals that there is widely accepted benefits of having independent representation on Audit & Risk Committees.

- 3.5 This is further endorsed by the Office of the Auditor General which notes that independence is a key principle for helping audit committees add value.

- 3.6 The Office of the Auditor General states the following in its guidance notes in regard to competence:

*"Competence is about having the right mix of skills and experience on the audit committee to give oversight of the matters sought of the committee. Audit committee members need to have relevant experience and expertise to bring valuable insights and perspectives to the areas of the committee's responsibility.*

*The better the skills and experience of audit committee members, the better the committee can add value. Collectively, people appointed to serve on audit committees need to have expertise, such as:*

- finance and accounting, including financial reporting;*
- broad governance, assurance, and risk management disciplines;*
- understanding of internal controls and assurance frameworks, including understanding of the roles of internal and external audit;*

- knowledge of the sector or industry in which the public entity operates; and
- other attributes as specifically relevant to the entity (for example, legal or information technology experience).

*A variety of perspectives is needed in an audit committee to ensure ideas are fully debated and the group is aware of its strengths and weaknesses in various aspects of governance. Diversity of membership is a way of achieving a variety of perspectives. This means an audit committee needs a mix of experience levels, skillsets, background experiences, and thinking styles. This can be achieved through demographic diversity, such as gender, ethnicity, education types, career and community experiences, and academic disciplines.”*

#### 4.0 Discussion – Te Matapakitanga

- 4.1 A person specification has been developed that pulls together the Office of the Auditor General advice and aligns with Councils approach and needs requirements to strengthen the role of the Risk and Assurance Committee. A copy of that person specification is attached as **Attachment 1**.
- 4.2 The proposed recruitment process will see the role advertised through a number of channels including Hawke’s Bay Today, Seek website, LinkedIn and with the Institute of Directors.
- 4.3 It is recommended that an appointments panel be established which includes the Chair (Mr Jon Nichols), Deputy Chair (Cr Simon Nixon) of the Risk and Assurance Committee and with the Mayor as ex officio. The appointments panel will make a recommendation back to Council for final approval.
- 4.4 Remuneration for the Chair of the risk and Assurance Committee is set at \$15,000 per annum and aligns with the Chairs of the Rural Community Board and the Heretaunga Takoto Noa Māori Standing Committee. The Risk and Assurance Committee meets 5 times a year for formal meetings and it is recommended that the independent member have remuneration set at \$10,000 per annum. It is important that Council gets a suitably qualified appointee and a level of remuneration reflective of that requirement is necessary.
- 4.5 This level of remuneration is consistent with other councils in New Zealand.

#### 5.0 Options – Ngā Kōwhiringa

Option One - Recommended Option - Te Kōwhiringa Tuatahi – Te Kōwhiringa Tūtohunga

- 5.1 That the role of Independent Member of the Risk and Assurance Committee be advertised and with the appointments panel to include the Chair (Mr Jon Nichols), Deputy Chair (Cr Simon Nixon) of the Risk and Assurance Committee and with the Mayor as ex officio.

Advantages

- It is important that Council gets the right person to fill the second independent member role on the Risk and Assurance Committee and advertising the role widely will help do that. Involving the chair and Deputy Chair on the Committee in the selection process also adds to the process and ensures a complimentary mix of skills and competencies is achieved.

Option Two – Status Quo - Te Kōwhiringa Tuarua – Te Āhuetanga o nāiane

- 5.2 That Council provide an alternative appointments panel to make recommendations to Council.

#### Remuneration

- 5.3 Council has two options when considering the level of remuneration for this role. \$10,000 has been recommended as the preferred option, it aligns with the remuneration paid to the Chair and is the same level of remuneration paid to the independent member before he was appointed Chair.
- 5.4 Council can consider a different level of remuneration, noting that there should be a difference between the Chair and member roles reflecting the workloads and responsibilities. A general rule of thumb is that the Chair gets paid twice that of board members, in this instance a 30% reduction for the independent member is recommended. It should also be noted that the current chair remuneration is aligned with other chair roles and this therefore sets an upper limit.

## 6.0 Next steps – *Te Anga Whakamua*

- 6.1 It is important that this role is put in place as soon as possible and the first advertisement in the Hawke's Bay Today will be placed on the first Saturday following this decision of Council and uploaded onto the internet sites that same week. A short list of preferred candidates selected for interviews with the Appointments Panel will follow with a final recommendation to Council on October 15<sup>th</sup>.

### Attachments:

- 1 [↓](#) Person Specification Independent Member Risk and Assurance Committee cg-16-2-00301

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## Summary of Considerations - *He Whakarāpopoto Whakaarohanga*

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### **Fit with purpose of Local Government - *E noho hāngai pū ai ki te Rangatōpū-ā-Rohe***

The Council is required to give effect to the purpose of local government as set out in section 10 of the Local Government Act 2002. That purpose is to enable democratic local decision-making and action by (and on behalf of) communities, and to promote the social, economic, environmental, and cultural wellbeing of communities in the present and for the future.

### **Link to the Council's Community Outcomes – *Ngā Hononga ki Ngā Putanga ā-Hapori***

This proposal promotes all the wellbeings of the communities in the present and for the future.

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### **Māori Impact Statement - *Te Tauākī Kaupapa Māori***

Having an independent member that understands Tikanga Māori would be beneficial, although with the addition of the Chair of the Heretaunga Takoto Noa Māori Standing Committee, this skill set and knowledge base is now represented.

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**Sustainability - *Te Toitūtanga***

Not applicable.

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**Financial considerations - *Ngā Whakaarohanga Ahumoni***

The new role will come at a small cost for Council, however it is expected that the benefits gained from a second independent member on the committee will outweigh this small additional cost.

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**Significance and Engagement - *Te Hiranga me te Tūhonotanga***

This decision has been assessed under the Council's Significance and Engagement Policy as being of low significance.

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**Consultation – internal and/or external - *Whakawhiti Whakaaro-ā-roto / ā-waho***

There has been no consultation with the community on this matter.

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**Risks**

to improve the independent representation on the Committee does not pose any significant risks, in fact, it is expected that such an appointment will help Council manage its risks more appropriately.

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**Rural Community Board – *Te Poari Tuawhenua-ā-Hapori***

Not Applicable.

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## **Person Specification Independent Member Risk and Assurance Committee**

**Item 10****Attachment 1**

The Risk and Assurance Committee needs the independence of perspective, experience, and knowledge to bring the test and challenge that adds value to the governance of Council.

The Risk and Assurance Committee strengthens and augments the governance arrangements of Council.

It must enhance the governance framework, set a clear tone from the top for risk management practices, and the controls that Council uses to monitor achievements.

Competence is about having the right mix of skills and experience on the Risk and Assurance Committee to give oversight of the matters sought of the Council. The skills and competencies required of the independent member/s will vary when considered against existing skills and competencies. Collectively, people appointed to serve on the Risk and Assurance Committee need to have relevant expertise, such as:

- finance and accounting, including financial reporting;
- broad governance, assurance, and risk management disciplines;
- understanding of internal controls and assurance frameworks, including understanding of the roles of internal and external audit;
- knowledge of the local government environment;
- experience with asset heavy industries with good asset management practices; and
- understanding of the regulatory framework within which local government operates.

The Hastings District Council Risk and Assurance Committee operates in an environment of co-operation and trust. Committee members need to communicate effectively among themselves and with many others interested and involved in the governance and management of the entity. Importantly the Committee plays a key role in setting the required tone for risk management and internal control across all areas of Council operations. A variety of perspectives is needed to ensure ideas are fully debated.

Good communication and relationship management are critical for the Risk and Assurance committee to provide the governance test and challenge needed for organizational improvement and risk management.

The long list of essential skills, knowledge and experience is as follows:

- Experience in the areas of finance, audit (internal and external), investments, health and safety, and risk management including Treasury management
- Previous governance experience
- Good knowledge of the relevant legislative and regulatory requirements
- Able to understand and present financial reports including understanding of internal control and assurance



- Good understanding of internal and external audit
- Familiarity with risk management disciplines (identification, evaluation and management)
- Ability to think independently and objectively
- Ability to make long and short term sound analytical and financial decisions based on all information available
- Have good business acumen and appropriate diligence, time, effort and commitment
- Proven ability to foster and maintain good relationships with CEO, CFO, other committees, management, staff, internal and external auditors
- Ability to actively participate as part of the committee and work productively and openly to raise and resolve issues and to achieve results
- Ability to explain technical matters in their field to other members of the committee
- Willingness and the ability to ask relevant and pertinent questions and to evaluate the answers
- Has a proven track record in terms of high business ethics, sound judgement and common sense
- Maintains confidentiality

Item 10

Attachment 1



Tuesday, 25 August 2020

*Te Hui o Te Kaunihera ā-Rohe o Heretaunga*  
**Hastings District Council: Council Meeting**

Item 11

*Te Rārangi Take*

# Report to Council

**Nā:**  
**From: Jackie Evans, Manager: Democracy and Governance**

**Te Take:**  
**Subject: Changes to the Schedule of Appointments to Committees, Subcommittees and other External Organisations (2019 -2022)**

## 1.0 PURPOSE AND SUMMARY - TE KAUPAPA ME TE WHAKARĀPOPOTOTANGA

1.1 To adopt minor changes and additions to the memberships of the following committees

Committee	Membership	Appointments
<b>District Development Subcommittee</b>	8 Councillors 1 Heretaunga Takoto Noa Māori Standing Committee appointee 2 Youth Council appointees 1 Youth Council alternate (Youth Council are non voting)	<b>Chair: Cr Kerr</b> <b>Deputy Chair: Cr Schollum</b> Cr Barber <b>Cr Corban</b> Cr Harvey <del>Cr O'Keefe</del> Cr Redstone Cr Siers Cr Travers <b>Vacancy</b> (Heretaunga Takoto Noa Māori Standing Committee member) Keelan Heesterman (Youth Council) Sam Wixon (Youth Council) Louis Gaffaney (Youth Council Alternate)
<b>Eco District Subcommittee</b>	<b>7</b> Councillors 1 Heretaunga Takoto Noa Māori Standing Committee appointee 2 Youth Council appointees 1 Youth Council alternate (Youth Council are non voting)	<b>Chair: Cr Redstone</b> <b>Deputy Chair: Cr Siers</b> Cr Corban Cr Lawson Cr Nixon Cr Oli <b>Cr Schollum</b>

Committee	Membership	Appointments
		Mr N Tiuka (Heretaunga Takoto Noa Māori Standing Committee member) Matilda Ellis (Youth Council) Thea Morton (Youth Council) Zoe Smith (Youth Council Alternate)
<b>Omarunui Refuse Landfill Joint Committee</b>	4 Councillors HDC Alternate Councillor HDC 2 Councillors NCC Alternate Councillor NCC (Chair appointed by Committee)	<b>Chair: Cr Redstone (HDC)</b> <b>Deputy Chair: Cr Tapine (NCC)</b> Cr Harvey (HDC) Cr Nixon (HDC) Cr Siers (HDC) Cr McGrath (NCC) <b>Vacancy - Alternate: (HDC)</b> Alternate: Cr Brosnan (NCC)

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## 2.0 RECOMMENDATIONS - NGĀ TŪTOHUNGA

- A) That the Council receives the report titled Changes to the Schedule of Appointments to Committees, Subcommittees and other External Organisations (2019 -2022).
- B) That the Council adopt the proposed membership changes to the Committees outlined above and as follows, and that the Schedule of Appointments to Committees, Subcommittee and Other Appointments (2019-22) and the Committee and Rural Community Board Register of Delegations (2019-22) be amended accordingly:
- That Councillor Corban replace Councillor O’Keefe on the District Development Subcommittee.
  - That membership of the Eco District Subcommittee be increased to 7 Councillors and that Councillor Schollum be appointed to that Subcommittee.
  - That the Council appoint Councillor ..... as the Hastings District Council Alternate on the Omarunui Refuse Landfill Joint Committee.

### Attachments:

There are no attachments for this report.



# HASTINGS DISTRICT COUNCIL

## COUNCIL MEETING

TUESDAY, 25 AUGUST 2020

Item 14

### RECOMMENDATION TO EXCLUDE THE PUBLIC

#### SECTION 48, LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987

THAT the public now be excluded from the following part of the meeting, namely:

- 15 Commercial Transaction
- 16 CBD Development Update
- 17 Chief Executive - Key Performance Indicators 2020/2021

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

<i>GENERAL SUBJECT OF EACH MATTER TO BE CONSIDERED</i>	<i>REASON FOR PASSING THIS RESOLUTION IN RELATION TO EACH MATTER, AND PARTICULAR INTERESTS PROTECTED</i>	<i>GROUND(S) UNDER SECTION 48(1) FOR THE PASSING OF EACH RESOLUTION</i>
15 Commercial Transaction	<b>Section 7 (2) (h)</b> The withholding of the information is necessary to enable the local authority to carry out, without prejudice or disadvantage, commercial activities. Commercially Sensitive Negotiations.	<b>Section 48(1)(a)(i)</b> Where the Local Authority is named or specified in the First Schedule to this Act under Section 6 or 7 (except Section 7(2)(f)(i)) of this Act.
16 CBD Development Update	<b>Section 7 (2) (b) (ii)</b> The withholding of the information is necessary to protect information where the making available of the information would be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information. To protect third party commercial interests and negotiations.	<b>Section 48(1)(a)(i)</b> Where the Local Authority is named or specified in the First Schedule to this Act under Section 6 or 7 (except Section 7(2)(f)(i)) of this Act.
17 Chief Executive - Key Performance Indicators 2020/2021	<b>Section 7 (2) (a)</b> The withholding of the information is necessary to protect the privacy of natural persons, including that of a deceased person. To protect the privacy of the incumbent.	<b>Section 48(1)(a)(i)</b> Where the Local Authority is named or specified in the First Schedule to this Act under Section 6 or 7 (except Section 7(2)(f)(i)) of this Act.