

**Title:** Three Waters Service Delivery Reform  
**Section:** Chief Executive's Office  
**Prepared by:** Lisa Osler - Principal Advisor to Chief Executive  
**Meeting Date:** 13 August 2020

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Legal: No

Financial: Yes

Significance: **Medium**

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## Report to COUNCIL for decision

### PURPOSE

The purpose of this report is to seek Council support to sign a Memorandum of Understanding (MoU) with the Crown, agreeing to participate in the initial stage of a central/local government three waters service delivery reform programme (**Attachment A**).

### SUMMARY

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

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

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

- 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.

Initial funding from the stimulus package will be made available to those councils that agree to participate in the first stage of the reform programme, through a Memorandum of Understanding (MoU), Funding Agreement, and approved Delivery Plan. The MoU must be signed by the end of August 2020, with the Funding Agreement and Delivery Plan submitted and approved by the end of September 2020.

The decisions or matters in this report are considered to be of **Medium** significance in accordance with the Council's Significance and Engagement Policy.

## **RECOMMENDATIONS**

**That the Council:**

**1. Notes that:**

- a. in July 2020, the Government announced an initial funding package of \$761 million to provide a post COVID-19 stimulus to maintain and improve water networks infrastructure, and to support a three-year programme of reform of local government water services delivery arrangements; and
  - b. initial funding will be made available to those councils that agree to participate in the initial stage of the reform programme, through a Memorandum of Understanding (MoU), Funding Agreement, and approved Delivery Plan.
  - c. this initial funding will be provided in two parts: a direct allocation to individual territorial authorities, and a regional allocation.
  - d. Council will need to choose one or more neighbouring regions (Hawkes Bay or Bay of Plenty) to join with to allocate the regional funding, participating with that region's individual authorities to agree an approach to distributing the regional allocation.
  - e. the Steering Committee has recommended a preferred approach to the allocation of regional funding, being the same formula as was used to determine the direct allocations to territorial authorities
  - f. The Chief Executive has delegated authority to sign the MoU that commits us to work constructively with Government to support the objectives of the Three Waters Reform Programme (Attachment A) and subsequent Funding Agreement (Attachment B).
  - g. The Chief Executive has delegated authority to make decisions about the allocation of regional funding, with the understanding that the minimum level of funding to the Council be based upon the formula used to calculate the direct council allocations, and noting that participation by two-thirds of territorial authorities within the region is required to access the regional allocation
  - h. the Chief Executive will be nominated as Council's primary point of communication for the purposes of the MoU and reform programme – as referred to on page 6 of the MoU.
2. Agrees that the Mayor may also sign the MoU on behalf of Council.
  3. Notes that the MoU and Funding Agreement cannot be amended or modified by either party, and doing so would void these documents.
  4. Note that participation in this initial stage is to be undertaken in good faith, but this is a non-binding approach, and the Council can opt out of the reform process at the end of the term of the agreement (as provided for on page 5 of the MoU).

5. Note that the Council has been allocated \$5.52m of funding, which will be received as a grant as soon as practicable once the signed MoU and Funding Agreement are returned to the Department of Internal Affairs, and a Delivery Plan has been supplied and approved (as described on page 5 of the MoU).
6. Note that the Delivery Plan must show that the funding is to be applied to operating and/or capital expenditure relating to three waters infrastructure and service delivery, and which:
  - a. supports economic recovery through job creation; and
  - b. maintains, increases, and/or accelerates investment in core water infrastructure renewal and maintenance.

*Authorised by:*

**Nedine Thatcher Swann - Chief Executive**

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**Keywords:** water infrastructure, reform, service delivery, funding, Memorandum of Understanding, MoU

## **BACKGROUND**

### **Issues facing the three waters system, and rationale for reform**

1. Over the past three years, central and local government have been considering the issues and opportunities facing the system for regulating and managing the three waters (drinking water, wastewater, and stormwater).
2. The Government Inquiry into Havelock North Drinking Water – set up following the serious campylobacter outbreak in 2016 – identified widespread, systemic failure of suppliers to meet the standards required for the safe supply of drinking water to the public. It made a number of urgent and longer-term recommendations to address these significant systemic and regulatory failures.
3. The Government's Three Waters Review highlighted that, in many parts of the country, communities cannot be confident that drinking water is safe, or that good environmental outcomes are being achieved. This work also raised concerns about the regulation, sustainability, capacity and capability of a system with a large number of localised providers, many of which are funded by relatively small populations.
4. The local government sector's own work has highlighted similar issues. For example, in 2014, LGNZ identified an information gap relating to three waters infrastructure. A 2015 position paper, argued for a refresh of the regulatory framework to ensure delivery of quality drinking water and wastewater services, and outlined what stronger performance in the three waters sector would look like.
5. Both central and local government acknowledge that there are many challenges facing the delivery of water services and infrastructure, and the communities that fund and rely on these services. These challenges include:
  - Underinvestment in three waters infrastructure in parts of the country, and substantial infrastructure deficits. For example, it is estimated that between \$300 to \$570 million is required to upgrade networked drinking water treatment plants to meet drinking water standards; and up to \$4 billion is required to upgrade wastewater plants to meet new consent requirements. These deficits are likely to be underestimates, given the variable quality of asset management data.
  - Persistent funding and affordability challenges, particularly for communities with small rating bases, or high-growth areas that have reached their prudential borrowing limits.
  - Additional investment required to increase public confidence in the safety of drinking water, improve freshwater outcomes, and as a critical component of a collective response to climate change and increasing resilience of local communities.
6. COVID-19 has made the situation even more challenging. Prior to COVID-19, territorial authorities were planning on spending \$8.3 billion in capital over the next five years on water infrastructure. However, COVID-19 is likely to cause significant decreases in revenue in the short term. As a result, borrowing will be constrained due to lower debt limits that flow from lower revenues, and opportunities to raise revenue through rates, fees and charges will be limited.

### **Progress with three waters regulatory reforms**

7. Good progress is already being made to address the regulatory issues that were raised by the Havelock North Inquiry and Three Waters Review. The Government is implementing a package of reforms to the three waters regulatory system, which are designed to:
  - improve national-level leadership, oversight, and support relating to the three waters – through the creation of Taumata Arowai, a new, dedicated Water Services Regulator;
  - significantly strengthen compliance, monitoring, and enforcement relating to drinking water regulation;
  - manage risks to drinking water safety and ensure sources of drinking water are protected;
  - improve the environmental performance and transparency of wastewater and stormwater networks.
8. Legislation to create Taumata Arowai had its third reading on 22 July 2020 and should be enacted shortly. This new Crown entity is currently being built, and will become responsible for drinking water regulation once a separate Water Services Bill is passed (anticipated mid 2021).
9. However, both central and local government acknowledge that regulatory reforms alone will not be sufficient to address many of the persistent issues facing the three waters system. Reforms to service delivery and funding arrangements also need to be explored.

## **DISCUSSION**

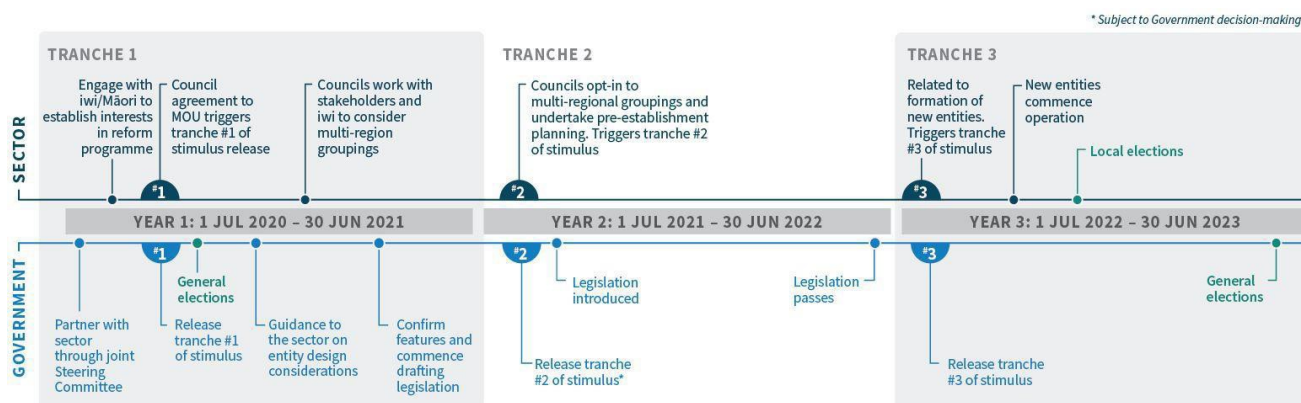
### **Overview of proposed approach to three waters investment and service delivery reform**

10. 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.
11. 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.
12. In July 2020, the Government announced an initial funding package of \$761 million to provide post COVID-19 stimulus, support a three-year programme of reform of local government water service delivery arrangements, and support the establishment and operation of Taumata Arowai.

13. 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.
14. While the Government's starting intention is for publicly-owned multi-regional models for water service delivery (with a preference for local authority ownership), final decisions on a service delivery model will be informed by discussion with the local government sector and the work of the Joint Steering Committee.
15. 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 A**.

### Reform process and indicative timetable

16. 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.
17. 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).
18. Councils that agree to opt in by the end of August 2020 will receive a share of the initial funding package.
19. Any further tranches of funding will be at the discretion of the Government and may depend on progress against reform objectives.
20. 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**

21. The Government has determined a notional allocation framework based on a nationally- consistent formula.
22. 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).
23. The investment package is structured into two components:
  - a. A direct allocation to each territorial authority, comprising 50% of that territorial authority's notional allocation; and
  - b. A regional allocation, comprising the sum of the remaining 50% of the notional allocations for each territorial authority in the relevant region
24. The relevant allocations for Gisborne District Council is \$11.04m being:
  - a. \$5.52m (excluding GST) Territorial Authority allocation; and
  - b. \$5.52m (excluding GST) Regional allocation.
25. The purpose of the Government's regional allocation is to establish collective participation by councils in the reform programme. Each regional group of councils has until 30 September to agree on how best to apportion the regional funds to the individual territorial authorities that make up the region. **Attachment F** includes a hypothetical example of how a regional allocation decision-making process could work.
26. As Council is the only territorial authority in the Gisborne Region, the Government has informed the Chief Executive that Council must choose one or more neighbouring regions (Hawkes Bay or Bay of Plenty) to join with to allocate the regional funding, participating with that region's individual authorities to agree an approach to distributing the regional allocation.
27. The Steering Committee has recommended a preferred approach to the allocation of regional funding, being the same formula that is used to determine the direct allocations to territorial authorities.

### **OPTIONS**

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

28. The initial stage of the reform programme involves three core elements:
  - a. Memorandum of Understanding (**Attachment A**);
  - b. Funding Agreement (**Attachment B**);
  - c. Delivery Plan (**Attachment C**).

29. Initial funding will be made available to those councils that sign the MoU, and associated Funding Agreement, and provide a Delivery Plan.
30. This initial funding will be provided in two components: a direct allocation to individual councils, and a regional allocation. The participating councils in each region are required to agree an approach to distributing the regional allocation.
31. 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,
32. 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**

33. 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.
34. 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.
35. 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.
36. 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.
37. 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 D.**)

### **Funding Agreement**

38. This Council has been allocated \$11.04m 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.



39. 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.
40. 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.
41. 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**

42. The Delivery Plan is the other mechanism for accessing the funding package.
43. This Delivery Plan must show that the funding allocation is to be applied to operating and/or capital expenditure relating to three waters infrastructure and service delivery, and which:
- supports economic recovery through job creation; and
  - maintains, increases, and/or accelerates investment in core water infrastructure renewal and maintenance.
44. 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.
45. The Delivery Plan will be supplied to Crown Infrastructure Partners (and other organisations as agreed between the Council and Crown), for review and approval. Crown Infrastructure Partners will monitor progress against the Delivery Plan, to ensure spending has been undertaken with public sector financial management requirements.

### **ASSESSMENT of SIGNIFICANCE**

Consideration of consistency with and impact on the Regional Land Transport Plan and its implementation

**Overall Process:** **Low** Significance

**This Report:** **Low** Significance

Impacts on Council's delivery of its Financial Strategy and Long Term Plan

**Overall Process:** **Medium** Significance

**This Report:** **Medium** Significance

Inconsistency with Council's current strategy and policy

**Overall Process:** Low Significance

**This Report:** Low Significance

The effects on all or a large part of the Gisborne district

**Overall Process:** Medium Significance

**This Report:** Low Significance

The effects on individuals or specific communities

**Overall Process:** Medium Significance

**This Report:** Low Significance

The level or history of public interest in the matter or issue

**Overall Process:** Medium Significance

**This Report:** Medium Significance

46. This report is part of a process to arrive at a decision that will/may be of **Medium** level in accordance with the Council's Significance and Engagement Policy

## TANGATA WHENUA/MAORI ENGAGEMENT

47. Up until now, the communicating of the Three Waters Reform Programme has come entirely from Government. They have stated their intention to formally engage with Tangata Whenua/Māori throughout the reform programme to understand the Treaty rights and interests, but it is quite likely that they will rely on Council to help broker that relationship in the initial term.
48. The reform of water service delivery is likely to present a range of Treaty interests which will need to be identified and explored as part of the reform programme through targeted engagement with Tangata Whenua/Māori.
49. From a 4 Waters Infrastructure perspective, we have good relationships with Iwi and Hapū, that have grown overtime through quarterly meetings of the Wastewater Management Committee (WMC) - a standing committee of Council whose membership comprises four elected members and four Iwi members and the KIWA group - comprising representatives from Te Runanga o Turanganui a Kiwa (TROTAK), Rongowhakaata iwi, Ngai Tāmanuhiri iwi, Te Aitanga a Mahaki iwi, and Ngati Oneone hapu.
50. Throughout 2020, Council have partnered with the KIWA Group to undertake consultation on (what was then a pending) resource consent application for wet and dry weather overflows to city rivers. This work focussed on Tangata Whenua values and perspectives, with dialogue between Iwi, Hapū and Council. The KIWA Group was extended to include Te Whanau-a-Kai and Nga Ariki Kaiputahi to be part of the group for this assessment.

51. Western science knowledge, values and perspectives also formed part of these discussions, primarily as supporting information within a mātauranga context. Tikanga and mauri were key points of discussion in respect of wai Māori and wastewater (waikino). The engagement process was supported in a practical sense through previous reports and use of the Mauri Compass (an environmental health assessment tool, used in this instance to identify and measure through collective engagement the effects of wastewater overflows upon Tangata Whenua and their customary rights and practises), used in this instance to promote korero and assessment.
52. As observed in the Tairāwhiti Piritahi: Fostering Māori Engagement in Council Decision Making Policy - Tairāwhiti is a tightly connected network so one Council work programme engaging with Maori partners will almost certainly be connected to another.

## **COMMUNITY ENGAGEMENT**

53. Signing the MoU, and committing to participate in the reform programme, does not commit Council to change the way it currently delivers three waters services – so, in keeping with our Significance and Engagement Policy, we do not have to consult our communities to sign up to the MoU and participate in Phase One of the reform programme.
54. Through previous LTP consultations, and regular social media comments on the theme, we know that our community place a very high value on the health and mauri of our river or coastal marine environments, particularly in the context of wastewater (treated or overflows). This means it will be important to provide opportunities for the community to participate in the reform process further down the track.

## **CLIMATE CHANGE – Impacts / Implications**

55. There are no impacts or implications on Climate Change associated with this report seeking endorsement of an MoU.
56. As the Three Waters Reform Programme progresses there will be greater discussion about ways that the delivery of three waters services can be made more resilient to the impacts of climate change, particularly increased frequency of drought and heavy intensity rains.

## **CONSIDERATIONS**

### **Financial/Budget**

57. The stimulus is a grant, it would not need to be repaid to the Government and could be used for Capital or Operational activities relevant to water infrastructure.
58. Local Government funding for water infrastructure is a persistent affordability challenge-even under Business as Usual conditions. The new drinking water and environmental regulatory requirements, increasing community expectations, and concerns that the economic recovery from COVID 19 will exacerbate this situation make it even more difficult to provide resilient infrastructure.
59. An initial payment of 50% of the total funding allocated, will be released soon after the approval of Delivery Plans.

## Legal

60. The MoU is not legally binding. Rather it has been described by the Government as a document to be approached in "good faith" by those councils who sign it thereby agreeing to participate in the first phase of the programme.
61. We anticipate that as the reform programme progresses there will be a requirement to sign a binding contract to commit to water reform (and any associated funding agreements).

## POLICY and PLANNING IMPLICATIONS

62. Signing the MoU (recommended) is consistent with Council's Revenue and Financing Policy including consideration of who benefits, intergenerational equity, who contributes to the need for the activity, distinct funding and the overall impact of the method of funding.

## RISKS

63. There are no significant risks associated with agreeing to sign the MoU and participating in the first stage of the three waters reform programme.

## NEXT STEPS

Date	Action/Milestone	Comments
31 August 2020	Have a signed MoU submitted to the DIA.	
30 September 2020	Funding Agreement and Delivery Plan submitted to DIA	

## ATTACHMENTS

1. Attachment A - Three Waters Reform - Memorandum-of-understanding [20-249.1 - 7 pages]
2. Attachment B - 3 Waters Stimulus Funding Agreement 04 August 2020 [20-249.2 - 19 pages]
3. Attachment C - 3 Waters Stimulus Delivery Plan 04 August 2020 [20-249.3 - 4 pages]
4. Attachment D - Simpson Grierson Advice to SOLGM on MOU - signed 310720 [20-249.4 - 6 pages]