

HEADS OF AGREEMENT

BETWEEN

THE SOVEREIGN IN RIGHT OF NEW ZEALAND

AND

**NEW ZEALAND LOCAL GOVERNMENT ASSOCIATION
INCORPORATED TE KAHUI KAUNIHERA Ō
AOTEAROA**

FOR

**PARTNERING COMMITMENT TO SUPPORT
THREE WATERS SERVICE DELIVERY REFORM**

Parties

Name The Sovereign in right of New Zealand
Short name **Crown**

Name New Zealand Local Government Association Incorporated Te Kahui Kaunihera
ō Aotearoa
Short name **LGNZ**

Background

- A The New Zealand Government (**Government**) is undertaking a programme to reform the delivery of three waters in New Zealand (**Three Waters Reform Programme**).
- B LGNZ is an incorporated society that represents the national interests of local government in New Zealand and leads best practice in the local government sector.
- C Since May 2020, the Crown and LGNZ have worked collaboratively to consider the interests of central and local government in relation to the Three Waters Reform Programme.
- D The Crown and LGNZ wish to continue their interests-based partnering relationship:
- (i) to enable LGNZ's ongoing role in assisting with the interface between the Crown and the local government sector in connection with the Three Waters Reform Programme (including supporting the Three Waters Reform Programme objectives and supporting the sector through its implementation and transition); and
 - (ii) to strengthen the important relationship central government has with local government to continue to work together in relation to the Three Waters Reform Programme, acknowledging local government's critical role in placemaking and achieving positive wellbeing outcomes for communities and the shared objective of a thriving, resilient and sustainable local government system that is fit for purpose and has the flexibility and incentives to adapt to the future needs of local communities.
- E The Crown and LGNZ now wish to set out the agreed process for, and the terms of, the continuation of their interests-based partnering relationship.
- F The Crown (through the Department of Internal Affairs (**DIA**)) and LGNZ have previously entered into a non-disclosure agreement (**NDA**) under which DIA and LGNZ provided certain undertakings to each other in respect of confidentiality, conflict management and use of information (amongst other key terms), which continues to apply.

Agreed Terms

1. Definitions

- 1.1 Defined terms and expressions used in this Heads of Agreement shall, unless inconsistent with the context, have the meaning set out in Schedule 1.

2. Mutual commitment to continuing the partnering approach for three waters reform

- 2.1 In May 2020, the Government (through DIA) and LGNZ committed to working together to explore options for national three waters services delivery reform in recognition of the significant challenges – presently but more so in the future – facing the delivery of water services and infrastructure and the communities that fund and rely on them.

- 2.2 The Crown and LGNZ each wish to continue:

- (a) an interests-based partnering relationship, including through the Joint Steering Committee, to support:
 - (i) the identification and resolution of matters of concern to the local government sector in a manner that is consistent with the shared objectives referred to in this Heads of Agreement; and
 - (ii) a smooth transition and successful implementation of the Three Waters Reform Programme, as further described in this Heads of Agreement; and
- (b) to strengthen the important relationship central government has with local government to continue to work together in the Three Waters Reform Programme, acknowledging the critical role local authorities play in local long-term planning, local placemaking and achieving positive wellbeing outcomes for their communities and the shared objective of a thriving, resilient and sustainable local government system that is fit for purpose and has the flexibility and incentives to adapt to the future needs of local communities.

- 2.3 The Crown acknowledges that:

- (a) although LGNZ has a mandate to consider the national interests of local government in New Zealand, the mandate of individual local authorities (as set out in the Local Government Act 2002) relates to the interests of their own local community; and
- (b) LGNZ's agreement to support and lead the sector in the manner described in this Heads of Agreement does not bind its members and individual local authorities may determine to adopt a position different to LGNZ's.

2.4 Ensuring recognition of rights and interests of iwi/Māori in three waters service delivery

The Crown and LGNZ recognise Te Tiriti o Waitangi/Treaty of Waitangi and the protection and promotion of iwi/Māori rights and interests in the delivery of three waters services, including through existing Treaty settlement mechanisms. Water can be a taonga of particular significance and importance to Māori and both parties recognise the importance of working in partnership, and acting reasonably and in good faith with the Treaty partner throughout the reform process. Both parties recognise the reform is a significant opportunity to improve outcomes for Māori in the delivery of three water services.

2.5 **Shared objectives for the Three Waters Reform Programme**

The Crown and LGNZ each acknowledge shared objectives which underpin the Three Waters Reform Programme. The principal objectives (including as they have been refined over the engagement process to date) are:

- (a) that there are safeguards (including legislative protection) against privatisation and mechanisms that provide for continued public ownership;
- (b) significantly improving the safety and quality of drinking water services, and the environmental performance of drinking water, wastewater and stormwater systems (which are crucial to good public health and wellbeing, and achieving good environmental outcomes);
- (c) ensuring all New Zealanders have equitable access to affordable three waters services and that the Water Services Entities will listen, and take account of, local community and consumer voices;
- (d) improving the coordination of resources and planning, and unlocking strategic opportunities to consider New Zealand's infrastructure and environmental needs at a larger scale;
- (e) ensuring the overall integration and coherence of the wider regulatory and institutional settings (including the economic regulation of water services and resource management and planning reforms) in which the local government sector and their communities must operate;
- (f) increasing the resilience of three waters service provision to both short-and long-term risks and events, particularly climate change and natural hazards;
- (g) moving the supply of three waters services to a more financially sustainable footing, and addressing the affordability and capability challenges faced by small suppliers and local authorities;
- (h) improving transparency about, and accountability for, the planning, delivery and costs of three waters services, including the ability to benchmark the performance of the new Water Services Entities; and
- (i) undertaking the reform in a manner that enables local government to continue delivering (in a sustainable manner) on its placemaking role and broader "wellbeing mandates" as set out in the Local Government Act 2002.

2.6 **Other shared objectives for three waters reform and beyond**

The Crown and LGNZ further acknowledge the following shared objectives of their interests-based partnering relationship in relation to the Three Waters Reform Programme:

- (a) supporting achievement of the shared three waters reform objectives described above;
- (b) ensuring that the Water Services Entities are set up for future success, including preserving their ability to borrow to accelerate investment and meet future investment demands;
- (c) maintaining good faith participation by central and local government in relation to other large reform programmes, including resource management reforms;
- (d) work in partnership to support the 'workforce transfer guidelines' so as to ensure that workers in local communities are treated fairly as part of the three waters reform process and with the least amount of disruption for staff and local authorities (including so that local

authorities can maintain their ongoing operations, including as they relate to three waters service delivery and investment for the duration of the transition period);

- (e) building on the success of the COVID-19 response and Joint Three Waters Steering Committee processes to demonstrate a new way of working that provides a platform for ongoing, constructive relationships between central and local government; and
- (f) supporting three waters service provision by the new Water Services Entities to be an enabler of a resilient, responsive and sustainable local government system, including as the roles and functions of local authorities may change and develop over time.

2.7 Acknowledgement

The Crown and LGNZ each further acknowledge that the Three Waters Reform Programme is a tested and robust package of reforms that will:

- (a) affordably and sustainably address the water services delivery objectives over the next 30 years; and
- (b) require all-in participation of local authorities to do so.

2.8 Partnering principles – Three Waters Reform

The Crown and LGNZ each wish to conduct their working relationship with the other party in relation to, and throughout the period of, the Three Waters Reform Programme in good faith and in accordance with the following objectives and principles:

- (a) *shared intention*: the shared intention of supporting the Three Waters Reform Programme, including ensuring a smooth transition and successful implementation of the Three Waters Reform Programme;
- (b) *mutual trust and respect*: build and foster working relationships and communication practices that are based on, and value, mutual respect and high trust, including so as to address any issues and concerns that might arise, early and constructively, to ensure that process expectations are clear and aligned and to act and respond in ways that reflect a fair assessment of the importance or materiality of the matters requiring an action or a response;
- (c) *constructive*: non-adversarial dealings between the parties, and constructive mutual steps to avoid differences and disputes and to identify solutions that advance the shared interests and objectives of both central and local government with respect to the communities they serve;
- (d) *open and fair*: open, prompt and fair notification and resolution of any differences or disputes which may arise and the identification of potential risks and/or issues (including potential causes of delay) that could adversely impact the timely completion of the activities within the timeframes specified in any agreed programme of activities; and
- (e) *no surprises*: adopt a 'no surprises' approach in respect of their respective communications to stakeholders and their public statements and to ensure they are consistent with the spirit and intent of this Heads of Agreement.

3. Support Commitments

3.1 The Crown and LGNZ each acknowledge that:

- (a) LGNZ will endorse and support such package and the need for all-in participation of local authorities to realise the full system benefits, to help build support for the reform across the sector, in the manner contemplated below; and
- (b) the key features of a Three Waters Reform financial support package are set out in clauses 5.1 to 5.3 below.

3.2 The Crown and LGNZ each agree:

- (a) to continue to carry out the discussions in relation to the Three Waters Reform Programme in good faith with a view to ensuring the reforms are achieved in a manner consistent with the shared objectives set out in clauses 2.4 to 2.6 above and Cabinet decisions in relation to the Three Waters Reform Programme;
- (b) that local authorities will be provided a reasonable period (expected to be around 8 weeks and commencing immediately after the annual LGNZ 2021 conference) to consider the impact of the reforms (including the financial support package) on them and their communities and an opportunity to provide feedback;
- (c) to discuss in good faith (including through the Joint Steering Committee) how the proposed model and design can best accommodate, in a manner consistent with the shared objectives, the following matters:
 - (i) how local authorities can continue to influence how the new water service delivery system as a result of Three Waters Reform will respond to issues of importance to their communities, and provide for localised solutions such as the aspiration for chlorine-free water;
 - (ii) ensuring appropriate integration between the needs, planning and priorities of local authorities (representing their local communities) and the planning and priorities of the Water Service Entities; and
 - (iii) how to strengthen the accountability of the WSEs to the communities that they serve, for example through a water ombudsman; and
- (d) to use all reasonable endeavours (in the case of LGNZ consistent with the resourcing, funding and activities reflected in the funding agreements referred to in clause 6) to achieve support for the Three Waters Reform Programme from the local government sector, including (in the case of LGNZ) as contemplated in clauses 4.2 and 4.3 below.

3.3 DIA and LGNZ have agreed a joint position statement (set out at Schedule 4 of this Heads of Agreement) with respect to the Three Waters Reform Programme. DIA and LGNZ will each ensure that statements made by them respectively in relation to the Three Waters Reform Programme, including statements or information made or provided to the local government sector in relation to the Three Waters Reform Programme (including through LGNZ) including at the annual LGNZ 2021 conference, shall be consistent with the joint position statement.

4. LGNZ support of Three Waters Reform

LGNZ considers:

- (a) the Three Waters Reform Programme is in the national interest of local government and the communities that it represents;

- (b) the partnering approach between the Crown (including DIA and Treasury) and LGNZ in relation to the Three Waters Reform Programme enhances and ensures a long-term commitment to partnership between central and local government in New Zealand; and
 - (c) the Three Waters Reform financial support package (as contemplated in this Heads of Agreement) is fair and reasonable at a national level.
- 4.2 Accordingly, LGNZ commits to supporting, endorsing and promoting the Three Waters Reform Programme.
- 4.3 LGNZ commits to:
- (a) supporting the case for change by:
 - (i) publicly supporting the position that there is a sufficient and evidence-based national case for change, including that the current approach to three waters service delivery is not capable of delivering the outcomes required in an affordable and sustainable way into the future;
 - (ii) noting the analysis supporting the Crown’s preferred approach to reform has been tested through the design process, and expressing the view that the proposed model design and approach to reform is sound, appropriate and beneficial when viewed as a whole at a national level; and
 - (iii) assisting LGNZ’s members to understand the reform-related information being provided to them by or on behalf of the Crown, how the reform is intended to work and the impact it is likely to have on local authorities and the communities they serve, including throughout the transition period – and in respect of which the Crown (through DIA) commits to supporting LGNZ and the local government sector to actively engage in the transition process and to working through the remaining questions and further policy detail with LGNZ with a view to supporting a smooth transition to, and successful implementation of, the Three Waters Reform Programme;
 - (b) endorsing the Three Waters Reform financial support package announced by the Government (as contemplated in this Heads of Agreement);
 - (c) if, after the end of the period referred to in clause 3.2(b), the Government decides to adopt an “all in” legislated approach to the Three Waters Reform then LGNZ agrees that it will accept such a decision on the basis that:
 - (i) “all in” participation of local authorities is needed to realise the national interest benefits of the reform;
 - (ii) such acceptance does not imply that LGNZ supports such approach;
 - (iii) LGNZ will not actively oppose such approach; and
 - (iv) LGNZ may publicly express its disappointment that the Government has considered it necessary to adopt such approach.
 - (d) leading and supporting the local government sector through change arising from the Three Waters Reform Programme, in the interests of a constructive and orderly transition process.
- 4.4 The Crown (through DIA) and LGNZ will each use all reasonable endeavours to agree a timetable to support the reform (which is consistent with Cabinet decisions in relation to the Three Waters

Reform Programme) including the staged release of information and the process to develop individual local authority agreements.

5. **Financial support package to local authorities**

5.1 The Crown is proposing that a Three Waters Reform financial support package be provided to local authorities, comprising:

- (a) a “no worse off” package which will seek to ensure that financially, no local authority is in a materially worse off position to provide services to its community directly because of the Three Waters Reform Programme and associated transfer of responsibility for the provision of water services (including the transfer of assets and liabilities) to the Water Services Entities; and
- (b) a “better off” package of \$2 billion which supports the goals of the Three Waters Reform Programme by supporting local government to invest in the wellbeing of their communities in a manner that meets the priorities of both the central and local government, and is consistent with the agreed criteria for such investment set out in Schedule 3 of this Heads of Agreement,

and which will be given effect (including in relation to the process for the provision of funding by Water Services Entities) in agreements between each local authority and the Crown (through DIA). The key principles and process for development of such agreements will be a matter that is considered by the Joint Steering Committee.

5.2 LGNZ acknowledges that the quantum of the proposed Three Waters Reform financial support package set out in clause 5.1 is a fair and reasonable package and contribution to the local government sector having regard to the impacts of the Three Waters Reform Programme on the sector and to contribute to the future of local government in supporting the wellbeing of their communities.

5.3 The Crown and LGNZ have been discussing the proposed Three Waters Reform financial support package and record the agreed principles, as at the date of this Heads of Agreement:

- (a) in relation to the “no worse off” package, in Schedule 2 of this Heads of Agreement; and
- (b) in relation to the “better off” package, in Schedule 3 of this Heads of Agreement,

noting that in relation to those areas of the financial support package that remain to be finalised as contemplated in those schedules, the Crown intends to finalise the same with LGNZ consistent with the principles and partnering approach set out in this Heads of Agreement; and noting also that (as provided in the Public Finance Act 2010) no funding will be due or payable from the Crown until funding is appropriated.

5.4 For the avoidance of doubt, there are a range of other impacts for local authorities that may represent an adverse financial impact, which the support package contemplated in clauses 5.1 to 5.3 above does not take account of, and are intended to be addressed (through a process to be agreed between the Crown (through DIA) and LGNZ) by alternative mechanisms:

- (a) transaction costs associated with facilitating the transfer of assets, liabilities and revenue, including staff involvement in working with the establishment entities and transition unit, and legal, accounting and audit costs. There is an allocation within the \$296 million tagged contingency established as part of the 2021 Budget Package for the transition and implementation costs incurred by councils and DIA will work with LGNZ in developing the parameters of this funding pool, before it is agreed with Ministers and shared with the sector. The funding will look to ensure that councils are able to participate in the reform

programme without putting at risk council delivery of water services during the transition – noting that the funding pool will have a finite limit, needs to deliver the transition objectives, demonstrate value for money to Crown and meet the conditions around the tagged contingency; and

- (b) accumulated cash reserves that have been earmarked for future water infrastructure investment. Local authorities will be encouraged to use these reserves (subject to reserve conditions) prior to the “go live” date of 1 July 2024. It is intended that any material reserve balances remaining at that time will be transferred to new Water Services Entities with a commensurate commitment to invest those funds in the communities that paid for them, consistent with the conditions under which they were raised. Councils will be allowed to retain immaterial reserve balances upon transfer. The materiality threshold will be developed in discussion between DIA and LGNZ and agreed with Ministers before reflecting this in guidance for the sector; and
- (c) any payment to be made to a local authority by the relevant Water Services Entity associated with the transfer of water assets, debt and revenue - being the amount of water-related debt established through any applicable due diligence and/or audit when that Water Service Entity takes over the three waters-related infrastructure and service delivery responsibilities (including the transfer of water assets, debt and revenue) from the local authority to implement the Three Waters Reform Programme.

6. Crown support for LGNZ to lead and support the local government sector through change

The Crown is proposing to provide ongoing support to LGNZ, by way of separate funding agreement(s) with LGNZ (and subject to the conditions set out in such agreement(s)):

- (a) in the short term (expected to be through to mid-September 2021) to enable LGNZ to build support within the local government sector for the Three Waters Reform Programme; and
- (b) subsequently through the transition and implementation phases of the Three Waters Reform Programme (expected to be approximately two and half years), to enable LGNZ (including LGNZ engaging Taituarā as appropriate) to support the Crown and the local government sector through the transition and implementation of the Three Waters Reform Programme.

7. Joint Steering Committee

- 7.1 The Crown and LGNZ each acknowledge the benefit to both central and local government of the work carried out by the Joint Steering Committee, particularly in ensuring that the perspectives, interests and expertise of both central and local government, and of communities throughout New Zealand, have been accommodated in the development of the Three Waters Reform Programme to date.
- 7.2 The Crown and LGNZ each consider that there is considerable benefit in the Joint Steering Committee continuing to be convened to support the constructive partnering approach between central and local government, to continue to inform the detail that is yet to be developed as part of the Three Waters Reform Programme and to achieve the best outcomes for all New Zealanders through the Three Waters Reform Programme, including through transition and implementation.
- 7.3 The Crown and LGNZ each acknowledge that, in order to give effect to the Cabinet decisions in relation to the Three Waters Reform Programme in a manner that is consistent with the shared objectives set out in this Heads of Agreement, further policy detail remains to be worked through to ensure a smooth transition and successful implementation of the Three Waters Reform

Programme. The Crown (through DIA) and LGNZ agree to continue to work together, including through the Joint Steering Committee, with a view to agreeing an approach to such issues that reflect the priorities of both central and local government.

- 7.4 The Crown and LGNZ therefore agree that the Joint Steering Committee will continue to be convened (on terms to be agreed) to support the Three Waters Reform Programme including through transition and implementation.

8. **Future for Local Government review and other major reform initiatives**

The Crown acknowledges the opportunity to strengthen the important relationship central government has with local government through the Review. The Crown acknowledges, as set out in the terms of reference for the Review, local government's critical role in placemaking and achieving positive wellbeing outcomes for communities. The terms of reference also notes that:

- (a) the Review should be guided by the objectives of the Public Service Act 2020, in terms of building a unified, agile and collaborative public service, grounded in a commitment of service to the community;
 - (b) the impact of reform programmes, including those related to the three waters sector and resource management system, are within the scope of the review;
 - (c) consideration of the discharge of the functions of the Review should be characterised by a spirit of partnership including between the Review, local government, and iwi/Maori, while upholding the independence of the Review; and
 - (d) the Review must identify options for a collaborative approach with the local government sector.
- 8.2 The Crown commits to working through its response to the Review in an open and transparent manner, consistent with the partnership principles set out in this Heads of Agreement including convening a joint steering committee comprising representatives of central and local government (or other appropriate mechanism) to consider issues arising with respect to the Review. This will include working closely on solutions to funding and financing challenges the sector may face, recognising the potential for reform to compromise the sustainability of some local authorities' current financial arrangements.
- 8.3 The Crown (through DIA) commits to working with other government agencies, and Ministers as appropriate, to seek to extend the partnership-based approach contemplated in this Heads of Agreement (including the partnering principles in clause 2.8) to other policy reforms that have the potential to significantly impact local government.

9. **General**

9.1 **Other roles and functions**

The involvement of the Crown (including DIA and Treasury) and LGNZ will not fetter or otherwise limit or compromise the Crown (including DIA and Treasury) or LGNZ respectively (or any other central or local government entity) in performing any regulatory role or function it may have (including as a territorial authority) including, for the avoidance of doubt, in the giving of free and frank policy advice including to Ministers, Cabinet or the Government.

9.2 **Communications protocols**

It is acknowledged that each of the Crown and LGNZ may at times have distinct obligations in terms of communications with respective stakeholders. However, as it works through the matters

contemplated by this Heads of Agreement, it is critical for the credibility and the integrity reflected in the partnership principles that the nature and manner of communications is agreed. A communications protocol will be agreed by DIA and LGNZ which will include how updates and messaging is provided to the local government sector and other stakeholders including the media. The communications protocol will reflect the partnership principles and principles of openness and transparency and confidentiality, and will address where there is a potential conflict in relation to the application of such principles.

Before making any media statements or press releases (including social media posts) or other public statement regarding this Heads of Agreement and/or the Crown's involvement (including through DIA and/or Treasury) with the Three Waters Reform Programme, LGNZ will consult with DIA.

9.3 **No authority**

LGZ does not have the right to enter into any commitment, contract or agreement on behalf of the Crown or any associated body, or to make any public statement or comment on behalf of the Crown or the Government.

9.4 **LGZ Acknowledgement of disclosure**

LGZ acknowledges and agrees that nothing in this Heads of Agreement restricts the Crown's ability to:

- (a) discuss, and provide all information in respect of, any matters concerning LGZ, this Heads of Agreement with any Minister of the Crown, any other government agency or any of their respective advisors, including for the avoidance of doubt for the purpose of giving free and frank advice;
- (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.

9.5 **Some Information subject to Official Information Act 1982**

LGZ acknowledges that:

- (a) the contents of this Heads of Agreement; and
- (b) information provided to the Crown (including DIA and/or Treasury);

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 Heads of Agreement and such information may be released to the public unless there is good reason under the Official Information Act 1982 to withhold it.

Signing

Executed as an agreement:

SIGNATURES

SIGNED by the **SOVEREIGN IN RIGHT OF NEW ZEALAND** acting by and through Her Minister of Finance and Her Minister of Local Government:

SIGNED for and on behalf of **NEW ZEALAND LOCAL GOVERNMENT ASSOCIATION INCORPORATED TE KAHUI KAUNIHERA Ō AOTEAROA** by the persons named below, being a persons duly authorised to enter into obligations on behalf of LGNZ:

Hon Grant Robertson, Minister of Finance



Name: Stuart Crosby

Position: President, LGNZ National Council

Date: 13 July 2021



Hon Nanaia Mahuta, Minister of Local Government



Name: Hamish McDouall

Position: Vice-President, LGNZ National Council

Date: 13 July 2021



Schedule 1: Definitions and interpretation

1.1 Definitions:

Defined terms and expressions used in this Heads of Agreement shall, unless inconsistent with the context, have the meaning set out below:

Cabinet means the central decision making body of executive government in New Zealand

Crown means The Sovereign in right of New Zealand.

Joint Steering Committee means the Joint Steering Committee formed in May 2020 by, and comprising representatives from DIA, Treasury, LGNZ and Taituarā to work closely to support a programme of reform for the delivery of three waters.

Review means the Ministerial review into the Future for Local Government.

Taituarā means Local Government Professionals Aotearoa, the national organisation that supports and develops local government professionals in New Zealand (formerly known as the New Zealand Society of Local Government Managers).

Three Waters means drinking water, wastewater and stormwater.

Water Services Entity means the new water services entities to be established by legislation giving effect to the Three Waters Reform Programme.

1.2 Interpretation

In this Heads of Agreement:

- (a) headings are for convenience only and do not affect interpretation of this Heads of Agreement;
- (b) words importing:
 - (i) the singular include the plural and vice versa; and
 - (ii) any gender includes any other gender;
- (c) the term including means “including without limitation”;
- (d) the meaning of “or” will be that of the inclusive, being one, some or all of a number of possibilities.

Schedule 2: “No worse off” package key principles

The Crown and LGNZ acknowledge and agree that the key principles of the “no worse off” package are:

- that the “no worse off” package will seek to ensure that financially, no local authority is worse off as a direct result of the Three Waters Reform and associated transfer of responsibility for the provision of water services (including the transfer of assets, revenues and effective transfer of liabilities) to Water Services Entities (“**Water Transfer**”);
- it is intended that the “no worse off” package will be funded by the relevant Water Services Entity. This approach recognises that the impacts being addressed by this aspect of the support package are closely linked to the Water Transfer. It is also acknowledged that the proposed support arrangements between the Crown and the Water Services Entities, such as a liquidity support, is expected to reduce the borrowing costs and thereby increase the borrowing capacity of the Water Services Entities, supporting funding through this mechanism;
- that the “no worse off” package will acknowledge the costs and financial impacts on local authorities directly as a result of the Three Waters Reform in relation to:
 - o stranded costs, being organisational overheads previously allocated by the local authority to three waters services that are not able to be transferred or avoided in the short-term as part of the Three Waters Reform, and therefore remain with the local authority for a period and be required to be reallocated by the local authority to their remaining activities; and
 - o financial sustainability support, for the (expected small number of) local authorities in respect of which the Water Transfer will adversely and directly affect their financial ability to sustainably perform their non-water related roles and functions at the existing level of performance (noting that for most councils the impact of such transfers is expected to have a positive effect on their borrowing capacity). It is intended that this will be addressed through a one-off payment.
- it is intended that the “no worse off” package will recognise the above costs and financial impacts through:
 - o for stranded costs, up to \$250 million to be allocated to support councils to manage these costs. This represents a nationwide estimate of two years of unavoidable stranded costs for councils with two years considered to be a reasonable period for these costs to be managed. We are proposing a fixed amount as the actual stranded costs faced by any council is dependent on decisions made by the council and cannot be robustly and transparently assessed. The allocation will be spread based on:
 - \$150 million allocated to councils (excluding Auckland, Christchurch and councils involved in Wellington Water) based on a per capita rate that is adjusted recognising that smaller councils face disproportionately greater potential stranded costs than larger councils;¹
 - Up to \$50 million allocated for the councils excluded above based on a detailed assessment of 2 years of reasonable and unavoidable stranded costs directly resulting from the Water Transfer; and

¹ The adjustment is based on adjusting the proportional allocation implied by the squared inverse natural logarithm of population. This means smaller councils receive a greater proportional allocation than larger councils

- Up to \$50 million able to be allocated to councils that have demonstrable, unavoidable and materially greater stranded costs than provided for above (the process for determining this will be agreed and is subject to the agreement of LGNZ and the Crown (through DIA and Treasury));
 - o for financial sustainability, the Crown (through DIA) will work with LGNZ and Taituarā to develop agreed principles for how the assessment of financial sustainability support (described above) will be undertaken, the methodology for quantifying this support requirement, and the process for undertaking the associated due diligence process with councils. The methodology will need to protect the interests of Water Services Entities to ensure only necessary payments are made (up to a maximum of \$250 million), that it does not create poor incentives and ensures a robust and equitable process for New Zealand. Priority will be given to undertaking due diligence with those local authorities that are more likely to suffer adverse borrowing impacts. We note that the due diligence process to confirm three waters debt and revenue for each council will be required to be transparent and robust to ensure equitable treatment of local authorities;
- that the payment of funds under the ‘no worse off’ package to a local authority will be made at the point of the Water Transfer. This is the point at which most of the financial impacts for councils will crystallise.
- that the payment of funds under the “no worse off” package to a local authority will be subject to appropriate conditions to satisfy accountability and other requirements of the Crown. These conditions will include a positive obligation on councils to manage the transfer and reorganisation in a way that minimises the ‘no worse off’ funding required. This would avoid councils seeking greater ‘no worse off’ funding than anticipated on the basis of avoidable costs, and therefore reduces incentives for behaviour that might drive up ‘no worse off’ costs.
- it is acknowledged that certain aspects of the “no worse off” package need to be enabled through legislation including the establishment of the Water Services Entities.

Schedule 3: “Better off” package key principles

The Crown and LGNZ acknowledge and agree that the key principles of the “better off” package are:

- that the better off package is:
 - in recognition of the significance to the local government sector (and the communities they serve) of the transfer of responsibility for water service delivery; and
 - intended to demonstrate central government confidence in the future for local government by providing the sector additional funds to invest in local community wellbeing outcomes, in a way that aligns with the priorities of central government.
- that the better off package will comprise \$2 billion of investment, which will comprise:
 - \$1 billion of Crown funding, \$500 million of which (or such greater amount as may be agreed) is intended to be provided to local authorities from 1 July 2022 to enable early investment; and
 - the remaining \$1 billion to be funded by the new Water Services Entities.

It is intended that such funding (other than that portion of the Crown funding noted above to be provided to local authorities from 1 July 2022) will be provided from 1 July 2024.

- that the funding will be allocated using simple to understand factors for which there are available metrics applied in a way that recognises the relative needs of local communities, the unique challenges facing local authorities in meeting those needs and the relative differences across the country in the ability to pay for those needs. A combination of population, relative deprivation and land area are recognised as the most relevant measures to recognise those factors. The allocation framework will distribute funding on the basis of a 75% allocation based on population, a 20% allocation based on the deprivation index, and a 5% allocation based on land area.
- that the use of this funding supports the three waters service delivery reform objectives and other local wellbeing outcomes and aligns with the priorities of central and local government, through meeting some or all of the following criteria:
 - supporting communities to transition to a sustainable and low-emissions economy, including by building resilience to climate change and natural hazards;
 - delivery of infrastructure and/or services that:
 - enable housing development and growth, with a focus on brownfield and infill development opportunities where those are available,
 - support local place-making and improvements in community well-being.
- to recognise the role that iwi/Māori will play in the new delivery system as partners, local authorities will be expected to engage with iwi/Māori in determining how it will use its funding allocation.
- to ensure value for money, appropriate contractual mechanisms, similar to those used for the initial water infrastructure investment stimulus package, will be implemented. The Crown (through DIA) will develop these in consultation with LGNZ and will likely include funding conditions, wellbeing assessments, delivery milestones, disbursement profiles, monitoring and reporting arrangements. These mechanisms will seek to make funding easily available while maintaining a reasonable level of accountability.

- that any funding conditions will acknowledge that long-term plans are subject to change over time. Conditions may include, but are not limited to:
 - o conditions relating to the planned investment in three waters infrastructure for the duration of the transition period, including commitments made through respective 2021-31 long-term plans;
 - o working in partnership with central government to transition to the new water services delivery system, including working collaboratively with the establishment entities for the new Water Services Entities to support the smooth transfer of assets, liabilities, information and staff to the new entities;
 - o assisting in the preparation of initial asset management plans to ensure continuity of investment, and to provide certainty for local authorities regarding what investment will be prioritised by the new Water Services Entities once they assume responsibility for water services delivery;
 - o provisions to address the consequences of local authorities being in material breach of the associated conditions; and
 - o it is acknowledged that certain aspects of the “better off” package need to be enabled through legislation including the establishment of the Water Services Entities.

Schedule 4: Joint Position Statement

CENTRAL-LOCAL GOVERNMENT JOINT POSITION STATEMENT ON THREE WATERS REFORM

Acknowledging the challenge

Central and local government believe that three waters services are fundamental to the health and wellbeing of our communities and environment; and to our local, regional and national economies. The way they are delivered across New Zealand cannot address the challenges our communities will face in the future.

Analysis produced over the past 12 months shows that all communities will need to invest significantly over the next 30 years to maintain, replace and upgrade ageing assets and to provide for growth. This is reflected by increasing investment in councils' new long-term plans.

Consistently enforced compliance standards, a backlog of infrastructure renewals and external pressures such as climate change, workforce shortages, and economic regulation will create unsustainable pressure on the current system.

Building a new partnership

Three waters reform has created an opportunity for central and local government to work together differently.

In May 2020, the Government and Local Government New Zealand agreed to set up a Joint Steering Committee to provide feedback on the reform of three waters services delivery. This group co-designed delivery of the initial stimulus investment in three waters infrastructure and services, supported the Request for Information (RFI) process and fed back into the Government's policy development. It has interrogated the analysis behind the case for change, facilitated robust conversations, and seen policy shift towards more practicable and enduring solutions.

This model responded to the local government sector's call for a closer working relationship with government, and to the Government's desire to deliver in partnership with the sector. It builds on work undertaken together in response to COVID-19 and has opened the door to a fundamental reset between our two tiers of government, so that change is undertaken together for the benefit of all our communities.

A proposal for change

The Government has proposed creating four new water service delivery entities. The scale of these entities means they'll be able to borrow to fund the significant investment needed to benefit all New Zealanders, from our smallest communities to our largest cities.

As part of this proposal, the Government and LGNZ have developed a package that recognises the importance of local place-making and the critical role that local government plays in that. This package:

- supports local government to invest in the wellbeing of their communities, so that all councils and their communities are better off;
- ensures no council will be financially worse off after reform; and
- makes clear that the Government will cover reasonable transition costs.

The economic model shows that significant benefits are available for all communities and will work best if all councils participate. Each council needs more time to interrogate its own position and understand the implications for their communities and operations. There remain critical issues to work through over the next two months.

These issues include ensuring all communities have both a voice in the system and influence over local decisions. Councils want to be sure the water entities understand and act on communities' needs and wants, including responding to localised concerns like a desire for chlorine-free water.

They want to ensure effective representation on the new water entities' governing boards so that there is strong accountability to the communities they serve. They want to be confident the water entities will respond to their plans for growth. And they want effective assurance that entities, which remain owned by the community, cannot be privatised in future.

We believe continuing the partnership between local and central government is the best way to resolve the remaining questions and policy detail to give these critical reforms the best chance of success. To that end we're recommitting to an agreed a set of shared objectives:

- significantly improving the safety and quality of drinking water services, and the environmental performance of drinking water, wastewater and stormwater systems
- ensuring robust safeguards against privatisation
- ensuring all New Zealanders have equitable access to affordable three waters services and that the water services entities will listen, and take account of, local community and consumer voices
- improving the coordination of resources, planning, and unlocking strategic opportunities
- ensuring the overall integration and coherence of the wider regulatory and institutional settings
- increasing the resilience of three waters service provision to climate change and natural hazards
- ensuring three waters service delivery has a more financially sustainable footing, and addressing the affordability and capability challenges faced by small suppliers and local authorities
- improving transparency about, and accountability for, the planning, delivery and costs of three waters services
- undertaking the reform in a matter that enables local government to continue delivering on its placemaking role and broader "wellbeing mandates".

Looking to the future

We are very aware that how we work together now sets the tone for other large-scale reform affecting the sector, especially the Future for Local Government review.

This review is a real opportunity for New Zealand to re-imagine the roles, responsibilities and resources of councils so that they can meet communities' expectations now and in the future. These expectations have evolved massively since the introduction of the current Local Government Act over 30 years ago. It's time for a genuine re-think about what's needed for local government to respond to communities' changing needs.

For this review to succeed, we need to be partners. Our three waters relationship has allowed robust, open discussions – and opened the door to a fundamental reset between our two tiers of government. Both central and local government are committed to a new way of working together, in tune with our diverse communities and our treaty partnership.