

DRAFT TRANSFER PRINCIPLES

These draft transfer principles give you more information about the transfer provisions in [schedule 1](#) of the Water Services Entities Act 2022 (**WSE Act**) and the proposed amendments in the [Water Services Legislation Bill](#) (**WS Legislation Bill**).

The WS Legislation Bill is now being considered by the Finance and Expenditure Committee and you can make submissions on it. You can find more information on the [Parliament website](#).

We would like to hear what you think about these draft transfer principles, particularly if there are any unanswered questions, or any assets, liabilities or other matters that are not covered by the principles. Your comments on the WS Legislation Bill are best directed to the select committee that will consider them.

We will update this document to reflect your comments and the WS Legislation Bill after it has been enacted.

We look forward to hearing from you. Please provide your feedback by completing this short [survey](#) by 31 March 2023.

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THREE WATERS REFORM PROGRAMME

DRAFT TRANSFER PRINCIPLES

As at December 2022

1. Purpose

This document explains and expands on the principles covering the transfer of assets, liabilities, and other matters relating to providing Water Services from Local Government Organisations (LGOs) to the four Water Services Entities (WSEs), as set out in the Water Services Entities Act 2022 (WSE Act) and the Water Services Legislation Bill (WS Legislation Bill). This document is to help LGOs, iwi/ Māori, and third-party suppliers of water related services understand the assets, liabilities, and other matters that are in scope to transfer to the WSEs under [schedule 1](#) of the WSE Act.

The proposed transfer process is driven by legislation, so matters in this document may change as this legislation is finalised, including references to provisions and concepts within the WS Legislation Bill. You may make submissions on that Bill to the select committee process. You can find more information on the [Parliament website](#).

This document does not cover the transfer of LGO employees; that process is set in the Staff Transition Guidelines. However, this document does address the transfer of contractual arrangements for independent contractors and service providers.

This document is for guidance only and does not alter or affect the legal requirements set out in the WSE Act or the WS Legislation Bill.

2. Transfer Objective

The primary objective of the transfer process is to ensure WSEs have the assets, liabilities, and other matters they need to operate Water Services effectively from the Establishment Date without adversely impacting service to consumers or the ability of LGOs to provide non-water services to their communities.

Consistent with this objective, the focus of the WS Legislation Bill, and these Transfer Principles, is to transfer only those LGO assets, liabilities, and other matters that relate to providing Water Services. To do this the Establishment WSEs (with the help of the National Transition Unit) will work with LGOs to identify those assets, liabilities, and other matters that either wholly or partially relate to providing Water Services and will be informed by, amongst other considerations, the following:

- Where an asset has more than one purpose or use, the asset will only transfer if its primary purpose or predominant use relates to providing Water Services or where parties otherwise agree.
- Land will only transfer where its primary purpose or predominant use relates to providing Water Services or where parties otherwise agree.
- Only contractual arrangements that wholly relate to providing Water Services will transfer.

- To the extent possible, existing contractual arrangements with third-party service providers will transfer materially unaltered.

This objective is in part reflected in the guiding principle in clause 6 of Schedule 1 of the WSE Act:

The establishment chief executive of a water services entity must, in preparing or updating the entity's allocation schedule, have regard to the principle ... that secondary water services assets or property of a local government organisation should be specified in the should-not-transfer part of the entity's allocation schedule, unless the organisation and the establishment chief executive agree otherwise.

3. Definitions

In this document:

Allocation Schedule means the allocation schedule to be prepared by the establishment chief executive of a WSE as further described in the WSE Act.

CCO means council-controlled organisation.

CCTO means council-controlled trading organisation.

DIA means the Department of Internal Affairs.

Establishment Date means the date the WSEs become fully operational (through the remaining provisions within the WSE Act coming into force which will be no later than 1 July 2024).

Establishment Period means the period starting on the date the transitional provisions within the WSE Act comes into force and ending on the Establishment Date.

Establishment WSEs means the WSEs, acting in accordance with their establishment functions and objectives during the Establishment Period, to make the preparatory arrangements for full operation on and from the Establishment Date.

Local Government Organisation or LGO means any of the following (within the meaning of the Local Government Act 2002) that provides Water Services:

- a local authority (regional council or territorial authority);
- a CCO or CCTO;
- a subsidiary of a CCO or CCTO organisation.

NTU means the DIA's Three Waters National Transition Unit.

Transport stormwater system means the infrastructure owned or operated by, or processes used by, a transport corridor manager to collect, treat, drain, store, reuse, or discharge stormwater affecting a transport corridor; and includes—

- an overland flow path; and
- green Water Services infrastructure that delivers stormwater services.

Urban area means an area identified in a district plan or a proposed district plan as being primarily zoned, or intended to be for residential, industrial, commercial and mixed use, or settlement activities, together with adjoining special-purpose and open-space and recreation zones; but does not include any other area zoned primarily for rural activities.

Water Services means the provision of drinking water, wastewater and/or stormwater services.

Water Services Entity or WSE means the new entities to be established under the WSE Act.

Water Services Reform means the establishment of the WSEs to deliver Water Services in accordance with the WSE Act and the transfer of interests in, and the ownership of, infrastructure assets from LGOs to the WSEs.

WSE Act means the Water Services Entities Act 2022.

WS Legislation Bill means the Water Services Legislation Bill introduced into Parliament in December 2022.

4. Transfer Principles

The transfer of assets, liabilities, and other matters relating to Water Services from LGOs to the four WSEs will be governed by the following eight principles:

- **Principle One:** To be in scope to transfer, the asset, liability or other matter must be owned or controlled by a LGO and relate wholly or partly to the provision of Water Services.
- **Principle Two:** The majority of assets, liabilities or other matters will transfer to the WSEs by legislation.
- **Principle Three:** Assets will transfer to a WSE based on the location of the LGO owner and not the location of the assets.
- **Principle Four:** Territorial authorities will receive payment for their Water Services infrastructure debt rather than debt transferring to the WSEs.
- **Principle Five:** LGOs remain responsible for the provision of Water Services until the end of the Establishment Period.
- **Principle Six:** Relationship agreements and service level agreements between WSEs and LGOs will be used to help facilitate the transfer of functions.
- **Principle Seven:** LGOs will work with the Establishment WSEs to facilitate the transfer of assets, liabilities, and other matters during the Establishment Period.
- **Principle Eight:** Third-party rights will be protected and unaltered by the transfer of assets, liabilities, and other matters to the extent possible.

Principle One: To be in scope to transfer the asset, liability or other matter must be owned or controlled by a Local Government Organisation and relate wholly or partly to the provision of Water Services

What does relate wholly or partly to the provision of Water Services mean?

The policy intention of the Water Services Reform is for only those assets, liabilities, and other matters, that LGOs use to provide Water Services to transfer to the WSEs. Assets, liabilities, and other matters that relate to the provision of non-Water Services will remain with LGOs.

In this context, 'water services' means services relating to water supply, wastewater, and stormwater. Water supply includes:

- drinking water supply as defined in section 9 of the Water Services Act 2021
- firefighting water supplies as defined in section 6 of the Fire and Emergency New Zealand Act 2017;
- water supplied for agricultural or horticultural purposes (see comments on rural mixed-use drinking water supplies below).

There will be a range of assets that may not wholly relate to the provision of Water Services; that is, they may have more than one purpose or use (eg, a sports field may also have a stormwater drainage function). Assets that only partly relate to the provision of Water Services will only be in scope to transfer under the general transfer provisions if their primary purpose or predominant use is the delivery of Water Services. These types of assets are currently defined in the WS Legislation Bill as a 'mixed-use water services asset or property' but do not include a transport corridor stormwater system.

Where the primary purpose or predominant use of an asset or property is not the delivery of Water Services, WSEs when preparing their Allocation Schedules must have regard to the guiding principle which is that:

... secondary water services assets or property of a local government organisation should be specified in the should-not-transfer part of the entity's allocation schedule, unless the organisation and the establishment chief executive agree otherwise (clause 6, schedule 1 of the WSE Act).

Assets owned by LGOs wholly relating to 'rural mixed-use drinking water supplies' are also in scope to transfer under the general transfer provisions, but irrigation schemes and water races are not in scope. Rural mixed-use drinking water supplies assets are defined as those assets that provide drinking water and agricultural and/or horticultural water. This includes assets relating to 'small mixed-use rural water service'. A small mixed-use rural water service is a water supply that meets both of the following criteria:

- 85% or more of the total volume of water supplied by the service is for agricultural or horticultural purposes, and
- 1,000 or fewer dwellings (not being dwellings on farmland) rely on the service for drinking water supply and other domestic household purposes.

Following the transfer to the WSEs, the WS Legislation Bill provides a process for these small mixed-use rural water service to be transferred to an alternative operator if certain criteria are met.

What are assets, liabilities and other matters?

The WSE Act provides an open-ended definition for assets, liabilities, and other matters, which include things like:

- assets (eg, infrastructure relating to water supply networks, wastewater networks, and stormwater networks, fleet, plant, and equipment
- contracts, engagements, or information

- benefits, entitlements, interests, rights, powers, or privileges (eg, any moneys payable, proceedings, statutory approvals or consents, easements, encumbrances, leases, or licences)
- other property (eg, anything that is capable of being owned, whether it is real or personal property, and whether it is tangible or intangible property)
- eligibility for benefits, entitlements, interests, rights, powers, or privileges
- duties or liabilities (including, without limitation, in relation to any moneys payable, proceedings, or statutory approvals or consents)
- ineligibility for benefits, entitlements, interests, rights, powers, or privileges.

What will happen to assets owned by Local Government Organisations but located on land that will not transfer?

By default, these assets are within scope of the transfer. Any existing registered or documented access and usage rights will transfer to the WSEs. To the extent that the existing rights are not sufficient or documented, or there are no rights currently registered or documented, new rights will need to be created (either through the exercise of statutory powers or by agreement between the parties).

Where the land on which that the asset is located is owned by a LGO, it may be appropriate for that portion of the land to be subdivided and transferred to the WSEs. Where it is not appropriate for that portion of the land to be subdivided, other options like an easement may need to be created to provide the WSEs legal rights to locate, access and maintain the asset on that land.

WSEs will have the same or similar statutory powers as utility operators to enter private land to inspect and maintain assets.

Likely examples include assets located within roading and rail corridors or assets located within land covered by the Reserves Act 1977.

What about assets, liabilities, and other matters that relate to the provision of Water Services not owned or controlled by a Local Government Organisation?

The policy intention of the Water Services Reform is for only those assets, liabilities, and other matters that are currently owned or controlled by LGOs to be within scope of the transfer. This means assets, liabilities, and other matters owned by the Crown or by private parties are not within scope to transfer even if they relate to the provision of Water Services.

However, currently the WS Legislation Bill allows for a limited opt-in by the Crown or by private parties to transfer assets, liabilities and other matters to the WSEs with the agreement of the relevant WSE (see Principle Two).

Water Services assets that are owned by a LGO and privately or communally operated, are by default within scope of the transfer. However, the responsibility for operating these assets is unlikely to transfer to the WSEs unless the parties agree. As the asset owners, WSEs may seek to alter the operating arrangements in the future.

Where a LGO manages or operates but does not control Water Services assets owned by private parties, the underlying assets are outside the scope of the transfer. However, the responsibility for operating these assets will transfer to the WSEs in accordance with any existing management or operations arrangements that are in place immediately prior to the transfer. As with privately owned

assets, there may be limited circumstances where the private owners and the WSEs agree to transfer the underlying assets as well.

To the extent that a LGO has shared ownership arrangements in a Water Services asset with a private party, the LGO's ownership interest or share will transfer to the WSEs.

Where the ownership of a Water Services assets is uncertain or undocumented, these assets will not be transferred by the general transfer provisions. Rather agreement from all the interested parties will be required for the assets to transfer (see Principle Two).

What about assets, liabilities and other matters owned by Council-Controlled Organisations or Council-Controlled Trading Organisations and their subsidiaries?

The WSE Act defines a LGO as including a local authority, a CCO, and a subsidiary of a CCO that provides Water Services. This means any assets, liabilities, and other matters, owned by a CCO or a CCTO that relate wholly or partly to the provision of Water Services are within scope to transfer to the WSEs under the general transfer provisions.

However, where a CCO/CCTO or its subsidiary has a non-LGO shareholder (eg, private party investors), only the shares held by the LGO in the CCO/CCTO transfer to the WSE. The assets, liabilities, and other matters remain with the CCO/CCTO or its subsidiary. Relationship agreements and service level agreements are likely to be entered into with the CCO/CCTO setting out how the parties will work together (see Principle Six).

Will all land that relates to the provision of Water Services transfer?

The policy intention of the Water Services Reform is to only transfer land that is necessary for the WSEs to maintain continuity of Water Services to the community. For this purpose, the focus of the transfer is on land owned by LGOs that has planned or existing Water Services assets on it. Whether a land parcel will transfer will depend on a number of factors, including:

- the primary purpose or use of the land on which the Water Services asset is located or on which a Water Services asset is planned to be located;
- whether the land is held for separate purposes or uses, each occupying different portions of the same land and could be easily subdivided; and
- whether the land is held for a mixed or shared use, with non-Water Services being the primary purpose or predominate use.

Where the use of the land relates wholly to the provision of Water Services, then the land will be in scope to transfer to the WSEs under the general transfer provisions (eg, the land on which a treatment plant sits). Where the land is held for separate purposes or uses, it may be that only the portion of the land that is used for the provision of Water Services is subdivided and transferred to the relevant WSE under an Allocation Schedule (eg, a treatment plant may sit on a large parcel of land, that is also used for other non-Water Services purposes). The WS Legislation Bill provides a process for land to be subdivided as part of the Allocation Schedule process. Where the land is held for a mixed or shared use and the primary purpose does not relate to the provision of Water Services then the land is unlikely to transfer without the agreement of the LGO as per the guiding principle in the WSE Act (eg, a sports field that also has stormwater drainage function). Before any land is listed for transfer, LGOs will be consulted as part of the Allocation Schedule process (see Principle Two).

There will be some situations where it may be inappropriate for certain land to transfer, such as land located within water catchment areas. These areas usually incorporate land that has significant environmental, cultural, and/or recreational value. It will be important for the WSEs to have influence over how these water catchment areas are protected and managed given the WSEs will have responsibility for managing water quality. For this reason, the WSEs will explore alternative mechanisms, such as relying on statutory access powers, and other regulatory instruments provided for in the WS Legislation Bill, such as controlled drinking water catchment management plans.

Similarly, where some land with a recreational purpose does transfer, such as cycleways around stormwater assets, the WSEs will work with LGOs to set up arrangements relating to public access.

The WS Legislation Bill provides that the transfer of any land subject to the Public Works Act 1981 to a WSE will not trigger the section 40 'offer back' requirements. However, those 'offer-back' obligations will continue to apply to any subsequent land transfers after the Establishment Date.

What types of contracts will transfer to the Water Services Entities?

As with assets, the policy intention of the Water Services Reform is to only transfer contracts and agreements that are necessary for the WSEs to maintain continuity of Water Services to the community. To the extent that they relate wholly to the provision of Water Services, they will transfer to the WSEs. The types of contracts and agreements that will be in scope include:

- infrastructure development agreements
- supplier and services agreements (including independent contractor agreements, works contracts, consultancy agreements)
- construction contracts
- stakeholder and utility operator agreements
- leases and licenses
- bulk supply agreements
- trade waste agreements
- joint venture agreements
- asset management and maintenance agreements
- operational services agreements
- operational technology agreements.

Contracts and agreements that relate wholly to the provision of Water Services, will transfer by legislation and so there will be no need to transfer each individual contract or agreement to effect the transfer (see Principle Two). However, there will be a range of 'mixed-use' contracts and agreements that relate to more than just Water Services, eg, bulk power supply contracts that cover a range of activities by LGOs such as supplying power to its waste treatment plant and to its corporate offices or maintenance contracts that cover roading, parks and stormwater.

Given that LGOs will still need some of the services provided under the 'mixed-use' contracts and agreements, it is not appropriate for the entire contract or agreement to transfer to the WSEs. For these contracts the Establishment WSEs will work with LGOs during the Establishment Period to put in place alternative arrangements with the service providers. If parties are unable to put in place alternative arrangements by the end of the Establishment Period, the WS Legislation Bill allows the Minister of Local Government to issue binding directions on the WSEs and the LGOs to enter into alternative arrangements.

If a binding direction is issued, the third-party supplier will have the right to:

- enter into any replacement contract that is offered;
- continue with the existing contract as modified by any direction given; or
- terminate the existing contract

(See Principle Eight for more information on third-party rights).

What legal liability will transfer to the Water Services Entities?

On and after the Establishment Date, a matter or thing that would, but for the transfer, have been completed by a LGO relating to the provision of Water Services must be completed by the WSE. Further, anything done, or omitted to be done, or that is to be done, by a LGO that is wholly related to the provision of Water Services by that LGO will be treated as having been done, or having been omitted to be done, or to be done, by the WSE. This means from the Establishment Date the WSEs are responsible and liable for all past acts or omissions of LGOs wholly related to the provision of Water Services, as if a WSE had carried out the act or omission itself.

The WS Legislation Bill provides that any civil or criminal proceedings (including any enforcement or compliance action) by or against a LGO that are wholly related to the provision of Water Services must be continued or enforced by or against the WSE without amendment to the proceedings, this includes any unsettled employment related proceedings to the extent that the employee has transferred to the WSEs.

However, any existing debts, penalties, charges, fines, fees, wholly related to the provision of Water Services arising from an act or omission by, or in relation to a LGO, that are due and payable before the Establishment Date will remain due and payable by the LGO. For example, if civil proceedings are completed before the Establishment Date and a LGO has been ordered to pay damages, the liability for making that payment will remain with the LGO.

In relation to liability for debts and charges relating to provision of Water Services during the Establishment Period see Principle Four.

What statutory consents and other approvals will transfer?

As with assets and contracts, the policy intention of the Water Services Reform is to transfer all statutory consents and other regulatory approvals granted or issued to a LGO that are necessary for the WSEs to maintain continuity of Water Services to the community. To the extent that they relate wholly to the provision of Water Services, they will transfer to the WSEs. The types of consents and regulatory approvals that will be in scope to transfer under the general transfer provisions include:

- resource consents and building consents
- designations.

On and after the Establishment Date any existing application made by a territorial authority for a resource consent under section 88 of the Resource Management Act 1991, in relation to the provision of Water Services, continues in effect as if it were made by the WSE whose service area includes the district of that territorial authority.

However, we anticipate that some resource consents and other statutory approvals held by LGOs (either solely or jointly with third parties) authorise activities that include, but extend beyond, the provision of Water Services. For these statutory consents and approvals, it is not appropriate for the entire consent or approval to transfer to the WSEs and will not be in scope to transfer under the general transfer provisions. For these consents and approvals, the Establishment WSEs will work with LGOs during the Establishment Period to put in place alternative arrangements.

In relation to stormwater, we know that there are a number of global stormwater network discharge consents held by LGOs that relate to urban, rural and transport stormwater systems. To the extent that these consents cover assets not in scope to transfer, they will not transfer under the general transfer provisions. However, the policy intention is that these consents transfer to the WSEs through the Allocation Schedules with LGOs and the WSEs using the Establishment Period to put in place arrangements relating to the ongoing use of these consents by both parties. Such arrangements may include provisions around working together and allocating responsibility for compliance (which can be recorded in a relationship agreement or service level agreement) or splitting the consent between the local authority, road controlling authority and the WSE to the extent that is possible.

The WS Legislation Bill also provides for the transfer of designations made under the Resource Management Act 1991. On and after the establishment date, designations of LGOs that wholly relate to the provisions of for which a WSE has assumed financial responsibility, will be deemed to have transferred to the WSE.

What about cash reserves?

Some LGOs will have accumulated significant cash reserves that have been earmarked for future water infrastructure investment. LGOs are encouraged to use these reserves (subject to reserve conditions) before the establishment date. Any material reserve balances remaining as at the Establishment Date will transfer to the WSEs with a commensurate commitment to invest those funds in the communities that paid for them, consistent with the conditions under which they were raised.

Further guidance will be developed by the NTU, including the materiality threshold.

What are stormwater assets?

The policy intention of the Water Services Reform is to transfer all urban stormwater assets and processes to the WSEs. Stormwater assets and processes owned or operated by territorial authorities in their capacity as road-controlling authorities and other transport corridor managers, such as KiwiRail and Waka Kotahi, are excluded from the transfer. Similarly, rural stormwater assets and process, which predominately either relate to land drainage, flood management/control, or agricultural water (such as irrigation schemes and water races) are excluded from the transfer. During the Establishment Period LGOs, transport corridor managers and WSEs will work together in relation to any interface issues between the stormwater systems, which will include entering into relationship agreements and service level agreements setting out, among other matters, each party's roles and responsibilities.

The types of stormwater assets that are in scope for transfer under the general transfer provisions include:

- hard assets – engineered structures created for the purpose of conveying and/or managing stormwater, eg, pipes, outlets/inlets, catchpits, stormwater pumpstations
- constructed green assets – artificial structures that provide similar functions to natural equivalent, eg, constructed wetlands, ponds, raingardens, swales areas.

Transfer of the underlying land will not always need to transfer with stormwater assets to the WSE (see comments above on the transfer of property) and where possible the land will remain with the LGO.

Where an asset relates wholly to the provision of stormwater services in the urban area, eg, a stormwater pumpstation, it will transfer under the general transfer provisions. However, a large number of assets used in the operation of the stormwater network will be ‘mixed-use water services assets’ in that they will have more than one use or purpose. Those mixed-use water services assets will only be in scope to transfer under the general transfer provisions if their primary purpose or predominant use is related to the provision of stormwater services in the urban area. If their primary purpose or predominant use is not related to the provision of stormwater services, the WSEs may still want them to transfer if the assets are critical to the function of the urban stormwater network, but these would need to be listed in an Allocation Schedule and agreement sought from the relevant LGO. Similarly, an asset that relates to the provision of stormwater services in a rural area or a transport corridor, may be listed in the Allocation Schedule as transferring to the WSE by agreement.

Where both the LGO and the relevant WSE require ongoing use of the same asset or consent then the WSE will work with the LGO to put in place arrangements through a relationship agreement and/or service level agreement (see Principle Six).

How will the assets, liabilities, and other matters be identified?

During the Establishment Period Establishment WSEs will work with LGOs and the NTU to prepare Allocation Schedules. The purpose of the Allocations Schedules is to identify and list those assets, liabilities, and other matters that will and will not transfer from LGOs to the WSEs. However, the legal transfer itself will occur through legislation (see Principle Two below).

Principle Two: The majority of assets, liabilities, and other matters will transfer to the Water Services Entities by legislation

How will the assets, liabilities, and other matter transfer to the Water Service Entities?

The WS Legislation Bill provides two main methods for transferring assets, liabilities, and other matters that relate to the provision of Water Services:

- falling into one of the categories of assets, liabilities, and other matters listed in the general transfer provisions; or
- through an Order in Council based on the specified assets, liabilities, and other matters that are identified in the Allocation Schedules.

Under the general transfer provisions, the following assets, liabilities, and other matters, that wholly relate to the provision of Water Services will transfer and vest in the WSEs on the Establishment Date (unless excluded by an Allocation Schedule):

- assets owned or controlled by the LGO;
- property owned or controlled by the LGO;
- rights, liabilities, contracts, information, interests, entitlements, and engagements of the LGO;
- statutory approvals or consents granted or issued to the LGO; and
- easements, encumbrances, access licences, or leases granted or issued to the LGO.

Mixed-use Water Services assets owned or controlled by the LGO and assets that are wholly related to the provision of rural mixed-use drinking water supplies by the LGO will also transfer to WSEs under the general transfer provisions.

This means that any asset, liability, or other matter that fall within the general transfer provision will transfer to the relevant WSE on the Establishment Date even if it was not identified at the time, eg, any assets, liabilities, or other matters that are identified after the Establishment Date will be deemed to have transferred to the relevant WSE on the Establishment Date.

For some classes of assets, while legal ownership or title will pass to the WSEs by legislation (either under the general transfer provision or by Order in Council), there will be some administrative tasks to complete after transfer to update certain registers – see land titles below.

As noted under Principle One, the general transfer provisions do not apply to a CCO/CCTO or subsidiary of a CCO/CCTO with one or more non-LGO shareholders. In those situations, only the ownership interest/shares held by the LGO in that CCO/CCTO or subsidiary will transfer to the WSE. The assets, liabilities, and other matters remain with the CCO/CCTO or its subsidiary. For those CCOs/CCTOs and subsidiaries where the general transfer provisions do apply (those that are wholly owned by one or more LGOs), following the transfer of assets, liabilities, and other matters, the legal entity will remain, the legislation will not extinguish the legal entity. LGOs as the owners of the CCOs/CCTOs will be responsible for winding up any redundant legal entities following the transfer. Some LGOs may choose not to wind up the legal entities for accounting or tax reasons.

The general transfer provisions also do not apply to any charges or debts payable to or by a LGO in relation to the provision of Water Services before the establishment date. Those charges or debts remain with the LGOs.

Under the Order in Council, any specified assets, liabilities, and other matters of a LGO that are identified in an Allocation Schedule will vest in the WSE. Assets, liabilities, and other matters that are located outside the service area of the WSE will still vest in the WSE if they are owned by an LGO located within the WSE's service area (see Principle Three). Allocation Schedules can also specify assets, liabilities, and other matters of an LGO that do not vest in the WSE even if they would otherwise be caught by the general transfer provisions.

As noted above, the Order in Council may also subdivide the land to be transferred to a WSE and to create titles for the subdivisions of that land and nothing in section 11 or Part 10 of the Resource Management Act 1991 or section 348 of the Local Government Act 1974 will apply to the transfer of that land or an interest in that land to a WSE. Further, the WS Legislation Bill provides that any land transferred to a WSE that is a reserve under the Reserves Act 1977 will have the reservation

classification revoked on the transfer date and will be treated as being held by a WSE under the Public Works Act 1981 for Water Services purposes.

Depending on the ownership arrangements, some assets, liabilities, and other matters, that are not within scope of the general transfer provisions, may still be able to transfer by Order in Council if all the interested parties agree. This is to cover situations where a Water Services asset may not be owned by a LGO or where the ownership of the asset is unknown.

How will titles to land be updated?

The WS Legislation Bill requires the Registrar-General of Land on written application by a WSE to register the WSE in substitution for the LGO as the proprietor of the estate or the interest of the LGO in any registered land transferred to the WSE under the WSE Amendment Act and generally do all the things as may be necessary to give effect to the transfer.

Some assets, liabilities, and other matters will not be able to transfer by legislation

It is anticipated that the majority of assets, liabilities, and other matters will transfer to the WSEs either by the general transfer provisions or through an Allocation Schedule and Order in Council, this includes mixed-use Water Services assets. However, there are some mixed-use assets, liabilities, and other matters that will not be able to transfer by legislation as both parties will still require elements of them following the establishment date. As noted above, this includes 'mixed-use' contracts, agreements, and consents – for these items, transfer by legislation is not appropriate.

Therefore, it is our expectation that the Establishment WSEs will work with LGOs during the Establishment Period to put in place alternative arrangements. As noted above, for mixed-use contracts, where the parties fail to reach agreement, the Minister of Local Government may make a binding direction on the parties to amend or enter into new arrangements.

Who is responsible for preparing the Allocation Schedule?

Under the WSE Act, the Establishment WSEs are responsible for preparing their respective Allocation Schedules during the Establishment Period. We anticipate as part of this process, the Establishment WSEs will work closely with the NTU and LGOs to obtain the information required to prepare the schedules.

Before finalising an Allocation Schedule, an establishment WSE must provide each LGO in its service area with a draft copy of the schedule and provide the LGOs with a reasonable opportunity to make written submission. The Establishment WSEs must consider any comments received and inform each LGO in writing of the reasons for any amendments made to the draft as a result of any comments received.

Final approval of the Allocation Schedule (including further amendments) rests with the Minister of Local Government. We anticipate the process of preparing the Allocation Schedules is likely to be an iterative process between the establishment WSEs/NTU and LGOs.

Principle Three: Assets will transfer to WSEs based on the location of the local government organisation owner and not the location of the assets

What will happen to LGO assets located outside of a Water Services Entity's service area?

Some LGOs will have assets that are located outside of the proposed service area of their WSE. The policy intention of the Water Services Reform is for the ownership of those assets to remain with the communities that paid for the assets. For this reason, assets will transfer to a WSE from the LGOs within the service area of the WSE regardless of where the assets are located. This means some WSE will own assets outside of their service areas. To the extent that those assets are currently used to provide Water Services to another LGO in a different WSE service area those arrangements can continue. The WS Legislation Bill allows for WSEs to enter into joint arrangements with one another for the purpose of providing Water Services.

What happens if an LGO is in more than one service area?

Where a LGO is located in more than one WSE service area it may not be appropriate or practical to divide and transfer the assets between the WSEs based on the location of assets in each service area. Instead, we expect that the two Establishment WSEs will work with the LGO during the Establishment Period to determine which assets will transfer to the respective WSEs. This can then be recorded in the WSEs' Allocation Schedules.

Principle Four: Territorial authorities will receive payment for Water Services infrastructure debt

Will Local Government Organisations' debts relating to Water Services infrastructure be transferred to the WSEs?

One of the policy intentions of the Water Services Reform is to ensure LGOs' financial sustainability and capacity are not adversely impacted in a material way due to the transfer. For this reason, the WS Legislation Bill requires WSEs to pay LGOs an amount equivalent to an allocation of debt related to the Water Services investments made by each LGOs for the assets that are transferring. Cabinet was concerned that requiring the WSEs to pay any more for these assets, such as market valuation, would mean that communities (future water customers) would pay twice for the same assets.

There may be some specific situations or individual projects where it will be appropriate to transfer specific debt obligations to the WSEs or where the WSEs should step into a project which has existing borrowings, if applicable this would be specified in the Allocation Schedule. DIA is still considering what specific situations or types of projects may be appropriate for debt transfer, however at present, it is our expectation that few specific debt contracts or obligations will need to be (or be able to be efficiently) transferred from a LGO to a WSE. Instead, the majority of debt related to the Water Services infrastructure will be discharged by one or more payments to a LGO by the relevant WSE. All payments by a WSE must be made to a LGO within five years from the establishment date.

We note that the payments to LGOs from the WSEs, being the amount of Water Services related debt, are separate to any payments made under the 'no worse off', 'better off', or 'transitional support' financial packages.

How will the amount of Water Services infrastructure debt be calculated?

Currently, under the WS Legislation Bill, the Chief Executive of DIA will determine the total debt owed by an LGO in respect of any Water Services infrastructure that is transferred to a WSE. Given the complex nature of financing Water Services infrastructure, DIA and the LGO will be required to agree the date and manner of the payment. This could include making a one-off payment, a series of payments, paying specific debts as and when they fall due, or structuring the payments as a loan. This will provide flexibility to LGOs to ensure they are not penalised for amending or breaking their financing arrangements early as a result of the Water Services Reform.

Finally, DIA is not anticipating deducting any amounts from the total debt amount for any other financial liabilities that are transferred to the WSEs as part of the final financial settlement process, such as costs associated with recognising employees' existing annual leave balances (see below for more detail). However, these amounts may be considered as part of the calculations under the 'no worse off' financial package.

What other Water Services related debts or moneys transfer to the Water Services Entities?

As noted under Principle Two, any charges or debts payable to or by a LGO in respect of the provision of Water Services before the Establishment Date will remain with the LGOs and will not transfer to the WSEs. However, on the Establishment Date, an LGO must transfer to the relevant WSE any unpaid or unaccounted for development contribution or financial contribution (or any part of) that was required by the LGO in respect of the development of its Water Services infrastructure. The relevant WSE will be required to use any development contribution or financial contribution transferred for the purposes for which the contribution was required by the LGO.

The WSE Act requires WSEs to recognise transferring employees' employment with their former LGO employers as if it were continuous service with the WSEs. This means, for the purposes of calculating service-related entitlements, such as annual leave, the employees' current balances will be recognised by the WSEs. However, the WSEs will not be seeking compensation from the LGOs to cover these costs as part of the transfer.

Principle Five: Local Government Organisations remain responsible for the provision of Water Services until the end of the Establishment Period

Who has responsibility for maintaining and/or managing the assets, liabilities, and other matters that will transfer to the Water Services entities during the Establishment Period?

The policy intention of the Water Services Reform is for LGOs to remain responsible for the provision of Water Services until the Establishment Date. This means during the Establishment Period LGOs are required to continue to meet their Water Services related obligations under the Local Government Act 2002 and other relevant legislation.

In relation to assets, LGOs will be expected to ensure Water Services assets continue to meet the required standards for maintenance and management and LGOs will continue to be liable for risk of loss or damage to assets during the Establishment Period up to the establishment date.

What should a Local Government Organisation do if a contract or consent is going to expire during the Establishment Period?

A large number of contracts and agreements will expire during the Establishment Period, some will be minor services agreements and others may be major long-term operation and maintenance agreements. These contracts and agreements will need to be renewed and/or replaced during the Establishment Period.

It is our expectation that any new contracts or agreements (including debt and financing arrangements) entered into, or any existing contracts or agreements renewed during the Establishment Period have a term that does not expire before the Establishment Date or extend more than 36 months past the Establishment Date. The reason for this time period is to ensure continuity of service past the Establishment Date and avoid the WSEs having to negotiate a large number of new contracts or agreements in a compressed timeframe. While contracts and agreements will transfer to the WSEs by legislation, LGOs could consider recording this understanding between the parties in any new or renewed contracts and agreements entered into during the Establishment Period.

Similarly, there will be a range of regulatory and environmental authorisations (including resource consents) that may be required or renewed during the Establishment Period. It is our expectation that as part of the duty to co-operate (see Principle Seven) LGOs will apply for and maintain all regulatory and environmental authorisations that are required for the provision of Water Services until the transfer of the Water Services assets to the relevant WSEs has taken place.

During the Establishment Period we recommend that LGOs apply to replace any expiring resource consent at least six months before its expiry where that consent is necessary for the continued operation and the provision of Water Services and apply to replace any other environmental authorisation before it is due to expire. Further, it is our expectation that, during the Establishment Period LGOs ensure that Water Services are carried out in accordance with the conditions of the relevant environmental authorisations already held.

For completeness, during the Establishment Period LGO's must provide the DIA with information about an intended "decision" and DIA can review any "decision" made by a LGO, unless it is an excluded decision or has been previously confirmed by the DIA. LGOs will be required to provide certain information to DIA and seek prior written confirmation of certain significant decisions.

The NTU has issued draft guidance on the oversight and monitoring powers.

What should a Local Government Organisation do if wants to dispose of any redundant land or assets related to the provision of Water Services during the Establishment Period?

It is our expectation that before a LGO disposes of any redundant land or assets related to the provision of Water Services, the LGO first consults with the NTU. Depending on the nature of the proposed disposal, the LGO may be required to obtain prior written confirmation from DIA before proceeding with the disposal (see comments above about DIA's monitoring and oversight powers).

Principle Six: Relationship agreements and service level agreements between Water Services Entities and Local Government Organisations will be used to assist with facilitating the transfer of functions

What are relationship agreements and service level agreements?

The WS Legislation Bill requires WSEs, territorial authority owners, regional councils whose boundaries are inside or overlap with the WSE's service area, and transport corridor managers to enter in one or more relationship agreements to cover certain matters where the parties will have an overlapping relationship in relation to the provision of Water Services following the establishment date. The matters that must be included in a relationship agreement include:

- general provisions including relationship principles and how the parties will handle disputes;
- stormwater-related interfaces;
- strategic planning;
- information sharing;
- setting out service-level agreements in relation to their respective roles;
- the process for engagement in the WSE's assessment of Water Services in the service area;
- any arrangements with iwi or hapu for which both parties have obligations; and
- civil defence and emergency management response.

In relation to regional councils the matters covered by relationship agreements will be limited in scope so as not to limit the independence of regional councils' regulatory roles. However, there will be additional mandatory contents, including working with the WSEs in relation to land use planning processes and building consent processes, including the preparation of standards and policies and exercising functions under the Resource Management Act 1991.

WSEs and other organisations (such as the Department of Conservation, iwi and hapu, and/or some private landowners) may also want to establish relationship agreements. These agreements will not be mandatory, but WSEs will have the flexibility to enter into an agreement with any other relevant and willing organisation or individual.

As the relationship agreements with territorial authorities, regional councils and transport corridor managers will not be binding or legally enforceable these agreements will not be used for the contracting out of services and the funding of those services. Instead, the relationship agreements will be high level, setting out how the parties intend to work together collaboratively and in good faith.

To the extent that matters listed in a relationship agreement need to be operationalised, eg, by providing services, these details can be agreed and recorded in a separate agreement, such as a service level agreement, which will be binding and legally enforceable. Due to the interface between the rural, urban and transport stormwater systems, certain relevant relationship agreements are to identify service level agreements relating to the parties' respective roles in operating stormwater, land drainage or related systems.

How can relationship and service level agreements assist with the transfer of functions?

Relationship and service level agreements will also be key to managing the use of any mixed-use Water Services assets regardless of whether they transfer to a WSE or remain with a LGO so that both parties can continue to use the assets if required, including detailing access rights, maintenance, and costs.

These agreements are also likely to cover the provision of any interim or transitional services that may be required after the Establishment Date.

Principle Seven: Local Government Organisations will work with the water service entities to facilitate the transfer of assets, liabilities, and other matters during the Establishment Period

Do Local Government Organisations have to co-operate with the Water Services Entities?

The policy intention of the Water Services Reform is for LGOs and the WSEs to work closely together to facilitate the transfer of assets, liabilities, and other matters that relate to the provision of Water Services. To support and facilitate the successful delivery of transfer related activities, the WSE Act requires LGOs to co-operate with DIA and the WSEs during the Establishment Period to facilitate the Water Services Reform.

What will Local Government Organisations be required to do during the Establishment Period?

The WSE Act states the duty to co-operate includes complying with any reasonable requests for the secondment of employees and for the collation and provision of information (including disclosing current pricing information or indicative water charges on invoices during the Establishment Period).

In relation to the transfer of assets, liabilities, and other matters, this is likely to include:

- providing information on assets, liabilities, and other matters
- assisting with preparing the Allocation Schedule
- ensuring contracts, agreements, and environmental authorisations relating to the provision of Water Services do not lapse and are renewed when required
- participating in any commercial negotiations with third-party suppliers
- registering and/or updating any legal instruments.

Will Local Government Organisation have to cover the cost of co-operating in transfer activities?

The costs incurred to establish the WSEs, including the transfer of assets, liabilities, and other matters, will initially be met by DIA and then by the WSEs. In relation to costs incurred by LGOs to co-operate and participate in the transfer DIA has made financial assistance available through the 'transitional support' financial package.

Principle Eight: Third-party rights will be protected and unaltered by the transfer of assets, liabilities and other matters to the extent possible

Will third-party rights be amended by the transfer?

For large and small suppliers of goods and services to the water sector, the Water Services Reform means business as usual. The intention of the Water Services Reform is, where possible, to ensure third-party rights are not adversely affected by the transfer.

Under the WS Legislation Bill:

- contracts with LGOs that are wholly related to Water Services will automatically transfer to the WSEs
- contracts with LGOs that partly relate to Water Services and partly to other services will be split or shared between the WSEs and the LGOs (see comments above)
- an Allocation Schedule is able to change the default positions under the WS Legislation Bill
- the transfer of a contract will not put either party in breach of contract or give them any additional rights.

If you are a supplier that is a party to a contract that needs to be split or shared, you can expect to hear from your LGO and/or the NTU about your contract so that we can try to agree how it will be split or shared with the relevant WSE.

If you are a supplier that does not have any existing contractual arrangements in place with a LGO, eg, where services are obtained as and when required through a purchase order, it is our intention that a full list of recent suppliers will be provided to the WSEs.

As noted above, where possible, third-party rights will not be adversely affected by the transfer. One exception to this principle relates to the pricing and charging terms in a contract for the supply of Water Services by a WSE that has transferred from an LGO. The WS Legislation Bill allows the WSE to enter negotiations with parties to the contract to have those terms amended. If parties fail to vary the contract before 1 July 2029, that is, within five years of the contract transferring to the WSE, then the contract will expire.