

FACT PAPER FOR HAVELOCK NORTH

DRINKING WATER INQUIRY HEARING 27-29 JUNE 2107

20 June 2017

INTRODUCTION

1. This fact paper for the Havelock North Drinking Water Inquiry (**the Inquiry**) hearing on 27 to 29 June 2017 is on behalf of the Crown, in particular, the Department of Internal Affairs (**DIA**), the Ministry of Health (**MoH**) and the Ministry for the Environment (**MfE**) as core participants in the Inquiry. The hearing will address Issues 1 (current safety of Havelock North drinking water) and 2 (Drinking water partnerships and collaboration) of the Issues list.

2. The paper addresses Issue 2 and related matters:

2.1. **Issue 2 - Drinking water partnerships and collaboration:**

2.1.1. Legislative obligations on local authorities to collaborate, as set out in the LGA 02 and elsewhere (for the purposes of this paper, “collaboration” is treated to mean working with others);

2.1.2. Practical examples of collaboration between local authorities for the supply of water services;¹ and

2.1.3. Leadership and guidance from Ministries.

2.2. **Related matters:**

2.2.1. Relevant aspects of the Local Government Act 2002 Amendment Bill (No 2) (the Bill) as reported to Parliament by the Local Government and Environment Committee; and

2.2.2. Summary of the LGA 02 obligations on local authorities relating to drinking water service provisions and local

¹ In this context “water services” refers to the supply of drinking (i.e. potable) water. It does not include wastewater or stormwater services.

authorities' financial information about drinking water services.²

Issue 2

Introduction

3. Under the Local Government Act 2002 (**LGA 02**), local authorities determine how, if and when they will collaborate with other local authorities, public bodies and entities. As set out below, local authorities have a power of general competence and are best placed to make decisions on how to carry out their role, functions and responsibilities.
4. The provision of drinking water services in New Zealand is closely linked to the local governance arrangements applying to each local authority. The LGA 02 sets out mechanisms and structures that can be used by a local authority in arranging for the provision of water services.
5. A local authority is required to “*actively seek to collaborate and co-operate with other local authorities and bodies to improve the effectiveness and efficiency with which it achieves its identified priorities and desired outcomes.*”³ This is one of the nine principles that each local authority is required to act in accordance with, when performing its role.
6. Where a local authority does collaborate with other local authorities and bodies, the act of collaborating does not, by itself, remove or alter the local authority's legal responsibilities. Collaboration may add additional responsibilities – for example, on a specific project, a local authority may work with another body to agree a set process to share information.
7. Local authorities have existing powers and mechanisms to work closely with other authorities and entities.

² On 11 November 2016, the Crown filed with the Inquiry a background paper which included information on the Local Government Act 2002 [**LGA 02**]. This paper does not repeat all matters addressed in the earlier background paper.

³ LGA 02, s 14(1)(e).

Local authority purpose, role and function

8. The purpose, role and functions of local authorities are set out in the LGA 02. The provisions relating to these matters establish the broader context in which a local authority's obligation to collaborate arises.
9. Section 10 of the LGA 02 states the purpose of local government:

10 Purpose of local government

- (1) The purpose of local government is—
 - (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
 - (b) to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.
 - (2) In this Act, good-quality, in relation to local infrastructure, local public services, and performance of regulatory functions, means infrastructure, services, and performance that are—
 - (a) efficient; and
 - (b) effective; and
 - (c) appropriate to present and anticipated future circumstances.
10. The role of a local authority is to:⁴
 - 10.1. give effect, in relation to its district or region, to the purpose of local government stated in s 10; and
 - 10.2. perform the duties, and exercise the rights, conferred on it by or under this Act and any other enactment.
 11. These duties include obligations relating to the provision of water services.⁵
 12. In carrying out its role, a local authority must have “particular regard to the contribution” that a range of core services make to its communities, including “network infrastructure”.⁶ This term is defined to mean the “provision of

⁴ LGA 02, s 11.

⁵ LGA 02, s 130.

⁶ LGA 02, s 11A(a).

roads and other transport, water, wastewater, and stormwater collection and management".⁷

13. A local authority must comply with the nine principles set out in s 14 (a) – (h) of the LGA 02 when performing its functions, including the collaboration principle (at s 14 (1)(e)) set out at paragraph 5 above.
14. Beyond this statement of principle, the LGA 02 does not prescribe any particular steps which must be taken to fulfil this obligation; mandate any particular form of collaboration; or provide further detail on the manner in which local authorities can or should seek to collaborate.
15. Each local authority will decide how, if and when it will collaborate and co-operate, as required, to comply with its legal and wider obligations. The LGA 02 gives local authorities a power of general competence to carry out their role and functions.⁸
16. Examples of the ways in which the LGA 02 recognises collaboration and co-operation may occur are set out below.

Examples of local government collaboration

17. The LGA 02 describes specific situations when local authorities can collaborate with other entities:
 - 17.1. **Joint local government and joint arrangements:** a local authority may enter into arrangements with other local authorities, or non-local government organisations, for the purpose of providing drinking water services. Section 137 of the LGA 02 sets out the requirements for these joint arrangements.⁹
 - 17.2. **Triennial agreements:** Section 15 of the LGA 02 requires all local authorities within each region (a regional council and at least one district or city council) to enter into a triennial agreement no later

⁷ LGA 02, s 197(2).

⁸ LGA 02, s 12.

⁹ Under LGA 02, s 137(4)(a)-(c), joint arrangements are permitted for unlimited periods, so long as the local authority (or organisation if a council-controlled organisation is the water supplier):

- (a) continues to be legally responsible for the provision of water services; and
- (b) retains control over the pricing of water services and the development of policy related to water services; and
- (c) at the end of the arrangement, retains ownership of all infrastructure associated with the water service.

than 1 March after each triennial election. An agreement must include:

- 17.2.1. protocols for communication and co-ordination among the local authorities;¹⁰ and
- 17.2.2. processes and protocols through which all local authorities can participate in identifying, delivering, and funding facilities and services of significance to more than 1 district.¹¹
- 17.3. **Transfer of responsibilities:** Section 17(1) permits a regional council to transfer 1 or more of its responsibilities to a territorial authority. Section 17(2) permits a territorial authority to transfer one or more of its responsibilities to a regional council. For the purposes of this provision, responsibility is defined as meaning “any responsibility, duty, or legal obligation except a responsibility, duty, or legal obligation conferred by or under any other Act”.¹²
- 18. The LGA 02 also sets out specific mechanisms which can be used where a local authority seeks to collaborate with another local authority or body. One example is a “joint committee”. A local authority can appoint a joint committee with other local authorities or public bodies.¹³ A joint committee is deemed to be a committee of each local authority that has appointed members to the committee,¹⁴ and the committee is “subject in all things to the control” of each local authority involved and must carry out all directions (both general and specific) of each local authority in relation to the committee and its affairs.¹⁵

¹⁰ LGA 02, s 15(2)(a).

¹¹ LGA 02, s 15(2)(c).

¹² LGA 02, s 17(8).

¹³ LGA 02, Schedule 7, cl 30(1)(b) and cl 30A. Sub-committees and other subordinate decision-making bodies can also be appointed by a local authority under cl 30(1)(a) and committees themselves may appoint sub-committees unless prohibited from doing so by the local authority under cl 30(2).

¹⁴ LGA 02, Schedule 7, cl 30A(5).

¹⁵ LGA 02, Schedule 7, cl 30(3). Clause 30(4) provides that any sub-committee is subject in all things to the committee that appointed it, and must carry out all general and special directions of the committee given in relation to the sub-committee and its affairs.

19. The mechanisms in the LGA 02 are not exhaustive – a local authority can, where appropriate, use a range of collaboration mechanisms, including entering into a memorandum of understanding or forming a joint working group.

Service delivery reviews

20. In addition to the mechanisms listed above, local authorities are also required to periodically review service delivery arrangements, including for water supply. This requirement was introduced in August 2014.¹⁶
21. The purpose of the service delivery arrangement review under s 17A is to assess the cost-effectiveness of service delivery arrangements. A review must consider options for the governance, funding and delivery of infrastructure, services and regulatory functions.¹⁷ These options can include the division of governance, funding and delivery options with other entities including council-controlled organisations and other local authorities.¹⁸
22. Local authorities are required to complete their first assessments under section 17A(1) by 7 August 2017¹⁹ and perform another service delivery review once six years elapse since the last service delivery review was undertaken.²⁰ Section 17A(2) of the LGA 02 sets out circumstances in which local authorities are required to undertake service delivery reviews at intervals and times before the six year deadline and s 17A(3) sets out the circumstances in which local authorities are not obliged to undertake a service delivery review.²¹ Section 17A does not by itself override other provisions in the LGA 02 relating to water service provision (e.g., s 130 LGA 02 – see discussion below).
23. In addition to the examples in the LGA 02, there are other legislative examples of possibilities for local authority (and wider) collaboration.²²

¹⁶ By s 12 of the Local Government Act 2002 Amendment Act 2014.

¹⁷ LGA 02, s17A(4).

¹⁸ LGA 02, s 17(4)(a).

¹⁹ LGA 02, Schedule 1AA, cl 2.

²⁰ LGA 02, s 17A(2)(c).

²¹ Note this paper does not set out the further detail in s 17A(2) of specific timing requirements for performance of service delivery reviews aside from the general six year rule.

²² For example, Resource Management Act 1991 [RMA], s 18A; Land Transport Management Act 2003, s 115; Sale and Supply of Alcohol Act 2012, s 295.

Examples of collaboration

24. To assist the Inquiry, DIA has, from its general knowledge, identified and commented on some of the arrangements that currently exist around collaboration in water services supply. DIA does not claim that the examples set out below are comprehensive.

Wellington Water

25. Wellington Water is what DIA would describe as a management council controlled organisation (**CCO**). It operates water supply, sewage treatment services and stormwater services for the Wellington Regional Council and the Upper Hutt, Hutt, Porirua and Wellington City Councils. It responds to a unique situation (for New Zealand) where one water supply network is fragmented between five local authorities and where two sewage treatment schemes overlap territorial local authority boundaries. Effectively it provides facilities management and professional services to the five councils. However, ownership of the networks remains with the five councils and each council decides what investment takes place within its part of the network and how its water services are to be funded.

Taranaki Councils²³

26. The three territorial authorities in the Taranaki region – New Plymouth District Council, South Taranaki District Council and Stratford District Council – have collaborated on aspects of water supply services for over a decade. The original focus of the collaboration was instrumentation and electrical services for water and wastewater treatment plants and facilities. These services are designed to a common standard (e.g. a common SCADA²⁴ platform and protocols) and there is a joint regional contract for the maintenance and servicing of this equipment. New Plymouth District Council takes the lead on this work and effectively supplies these services under contract to the other two councils.
27. In 2013 South Taranaki District Council entered into a formal agreement to operate the three water treatment plants owned and operated by Stratford

²³ DIA acknowledges the assistance of Brent Manning, Group Manager Engineering Services, South Taranaki District Council in preparing this information.

²⁴ Supervisory Control and Data Acquisition.

District Council. This also extended to joint procurement of common treatment plant equipment for the Stratford and Opunake town water supply schemes resulting in construction cost savings for both councils. South Taranaki operates all water treatment plants for both councils, effectively under contract to Stratford District Council for the Stratford, Midhirst and Toko supplies.

Nelson and Tasman District Councils²⁵

- 28. Nelson City Council (NCC) and Tasman District Council (TDC) have had a long standing joint involvement in wastewater collection and disposal through the Nelson Regional Sewerage Business Unit (NRSBU). The NRSBU operates a wastewater treatment plant (oxidation ponds) on Bell Island plus a string of pump stations and rising mains along the Waimea Estuary from Richmond to Monaco that collect wastewater and pump it to Bell Island.
- 29. The Nelson Regional Sewerage Business Unit (NRSBU) is a joint committee of the Tasman District and Nelson City Councils and was instigated to look after the owners' (the two Councils') interests in the Regional Sewerage Scheme.
- 30. The committee has two Councillors (or appointees) from TDC, two from NCC, provision for one independent member, one iwi representative and one industry representative. The two Councils share the administration of the business unit and contract out the day to day operations and maintenance of the facility.
- 31. The NRSBU was set up as a business unit in October 2000 and previously operated as the Nelson Regional Sewerage Authority dating from the 1980's. A Memorandum of Understanding that was signed by the two Mayors and CEOs in December 2000 governs the operation of the NRSBU. The NRSBU treats municipal wastes (mainly domestic sewage) from Nelson City, Stoke, Tahunau, Richmond, Wakefield, Brightwater (the Waimea Basin) and Mapua as well as industrial wastewater from Alliance Nelson, ENZA Food, and Nelson Pine Industries.

²⁵ DIA acknowledges the assistance of Phil Ruffell, Senior Asset Engineer – Utilities, Nelson City Council, in preparing this information.

Waikato Water

32. The Hamilton City Council, Waipa District Council and Waikato District Council have been considering the benefits of combining their water supply and wastewater treatment and stormwater operations. The proposal has been under consideration for some years without an agreement being reached. The position at the time of writing is that Hamilton and Waikato both support a management CCO along the lines of Wellington Water. Waikato District Council had not yet adopted a position on this option.

Leadership and guidance from Ministries

33. DIA administers the LGA 02 and supports local authority decision-making under that Act in a range of ways, including working with local authority representative groups and providing fact sheet guidance. For example, in 2014, DIA prepared a brief fact sheet on collaboration to reflect legislative changes to s 14(1)(e) of the LGA 02.²⁶
34. MfE administers the Resource Management Act 1991 (**RMA**). The Resource Legislation Amendment Act 2017 (RLAA) came into force on 19 April 2017 and inserted a collaborative planning process into the RMA (along with other amendments) as an alternative track for developing policy statements and plans. It is optional and available where a council is undertaking a review, change, or preparing a new plan or policy statement including a combined regional and district document. MfE has prepared a draft guide to the collaborative planning process.²⁷
35. The RLAA also inserted s 18A into the RMA. Section 18A requires decision-makers to take all practicable steps to apply new procedural principles.²⁸ The amendment requires every person exercising powers and performing functions under the RMA to take all practicable steps to promote collaboration between or among local authorities on their common resource management issues. Section 18A reinforces the principle in s 14(1)(e) of the LGA 02. MfE has

²⁶ See <http://www.dia.govt.nz/Fact-sheets-for-2014-Act>.

²⁷ See <http://www.mfe.govt.nz/publications/rma/draft-guide-collaborative-planning-process-under-resource-management-act-1991>.

²⁸ Regarding the Inquiry's Issue 2(h) (Should collaboration be mandated or prescribed), the wording of s 18A was changed from "must ... promote collaboration" to "must take all practicable steps to ... promote collaboration". Submissions from LGNZ, NZ Planning Institute and councils raised concerns about prescribing procedural principles: RLAA departmental report pp 100-101: https://www.parliament.nz/resource/en-NZ/51SCLGE_ADV_00DBHOH_BILL67856_1_A530897/eb114c7511b65e08fcf097c8fcf6247e83f35ef.

prepared a fact sheet on s 18A promoting collaboration on a range of subjects and between different types of councils.²⁹

36. MOH administers the Health Act 1956. Provisions in the Health Act encourage collaboration between agencies. For instance, s 23(f) of the Health Act provides for a territorial authority “to furnish from time to time to the medical officer of health such reports as to diseases, drinking water, and sanitary conditions within its district as the Director-General or the medical officer of health may require.” Section 127 provides for the medical officer of health, at the request or with the consent of any territorial authority, to “attend any meeting of the local authority, or of any committee of the local authority, and take part in the discussion of any matter relating to public health or to the powers and duties of the local authority under this Act.”
37. The Public Health Unit Annual Plan Guidance 2017/18 used to assist public health managers to prepare contract specifications with MOH includes several requirements for liaison with councils.³⁰

Related matters

Section 2: The Local Government Act 2002 Amendment Bill (No 2)

38. A key focus of the LGA 02 is to ensure the cost-effectiveness of current local authority arrangements for meeting the needs of communities within its district or region for good-quality local infrastructure, local public services, and performance of regulatory functions.³¹
39. Relevant to this, the Local Government Act 2002 Amendment Bill (No 2) (the Bill) was introduced to Parliament on 9 June 2016. The Local Government and Environment Committee reported the Bill back to Parliament on 15 June 2017. At the time of writing, the Bill was awaiting its second reading.
40. The General Policy Statement prefacing the Bill states³²:

The current legislation provides only limited support for shared and integrated services, which is insufficient to enhance scale and

²⁹ See <http://www.mfe.govt.nz/publications/rma/resource-legislation-amendments-2017-fact-sheet-series#fstwo>. MFE has a range of resources and guidance on collaboration on its website: <http://www.mfe.govt.nz/rma/resources/about-collaboration>.

³⁰ See <http://nsfl.health.govt.nz/dhb-planning-package/201718-planning-package/public-health-unit-annual-plan-guidance-201718>. See in particular, Appendix 6 Environmental Health Exemplar.

³¹ See, for example, LGA 02, ss 3(3), 10 and 17.

³² Local Government Act 2002 Amendment Bill (No 2), Explanatory note, General policy statement, p 1.

capability for water, transport, economic development and other activities. This Bill provides for a broader range of functions to be transferred between local authorities, joint governance arrangements for areas of common or shared interest, and greater use of joint council-controlled organisations (**CCOs**) for providing services. New models introduced in the Bill include water services CCOs with statutory powers and 2 pre-approved models for transport CCOs, as well as bespoke transport CCOs subject to approval from the Minister of Transport.

41. There was strong opposition to significant aspects of the Bill at the Select Committee stage – in particular to a proposed power which would have enabled the Local Government Commission to impose CCOs, including water services CCOs, on one or more local authorities.

Outcome

42. If Parliament proceeds with the Bill largely as reported back, the LGA02 will contain a range of enabling provisions that allow local authorities to collaborate with varying degrees of formality in the provision of services, including water services. However, those decisions will be decisions for local authorities to take. The power for the Local Government Commission to impose CCOs has been removed.

Summary of obligations under LGA 02

43. To assist as general background, the **Appendix** to this paper sets out several key sections of the LGA 02 and financial information about water services.

APPENDIX ONE

Key sections of the LGA 02

Decision-making and consultation

1. Sections 76AA to 87 of the LGA 02 specify principles and procedures about how local authorities make decisions and how they consult with communities in making those decisions.
2. Broadly, these sections require local authorities to consider the significance of their proposed decisions to stakeholders within the community and the appropriate engagement / consultation approach; consider the views and preferences of people who may be affected by or interested in any particular matter and to identify and assess the advantages and disadvantages (including all legal requirements).
3. All of this is tempered by principles of proportionality. The level of engagement / consultation and the depth of analysis and consideration of options related to any particular decision is to be in proportion to the significance of the issues at stake, the extent of the local authority's resources and the options available to the local authority in the circumstances.

Local authorities' structure in relation to performance of separate functions

4. Under s 39(c) of the LGA 02, a local authority must ensure that, so far as is practicable, responsibility and processes for decision-making in relation to regulatory responsibilities is separated from responsibility and processes for decision-making for non-regulatory responsibilities.

Provisions of the LGA in relation to the provision of water services

5. Under s 130 of the LGA 02, where a local government organisation¹ provides water services to communities within its district or region, it must ensure that it continues to provide these services and maintains the capacity to do so. As part of meeting this obligation, local authorities (or the local authority subsidiary responsible for provision of water services) must take certain steps, including retaining ownership over assets in their water service,² and ensuring

¹ Defined as a local authority or subsidiary of that authority that provides water services: LGA 02, s 124.

² Unless ownership is divested to another local government organisation: LGA 02, s 130(3)(b).

that water supply is not restricted or stopped unless particular circumstances apply.³

6. The ability of local authorities to transfer water services to another local government organisation, enter into joint arrangements or joint local government arrangements, or delegate responsibility for delivery of services to a council controlled organisation is discussed above. Local authorities have a relatively high degree of flexibility in determining how they wish to manage the provision of water services, provided they continue to comply with their duty under s 130.
7. Under s 125, territorial authorities must assess the provision of water services within their districts from time to time. The purpose is to assess the adequacy of the water services in the territorial authority's district from a public health perspective in light of (among other matters) the extent to which drinking water provided by water supply services meets applicable regulatory standards.
8. These provisions make up the key obligations on local and territorial authorities in relation to the supply of drinking water and place limits on local authorities exiting the provision of water services (with some limited exceptions for supplies servicing fewer than 200 people specified in ss 131 to 135 of the LGA02).⁴

Infrastructure strategy

9. Relevant to ensuring local authorities are accountable to their communities, and ensuring that local authorities maintain the ability to comply with their obligations under Part 7 in relation to the provision of water services, under s 101B of the LGA 02, local authorities must prepare and adopt an infrastructure strategy for a period of at least 30 consecutive financial years. This strategy is designed to identify significant infrastructure issues for the period covered by the strategy and identify options for managing those issues and to that end must outline how a local authority will manage infrastructure assets, including assets used to provide water supply services.

³ LGA 02, s 130(3).

⁴ LGA 02, s 136. Section 137 also prevents a local authority from entering into franchise or concession arrangements.

10. In determining how infrastructure assets are to be managed, a local authority must take into account a number of matters, including whether assets will need to be renewed or replaced; the need to maintain or improve public health and environmental outcomes or mitigate adverse effects on them; provision for the resilience of infrastructure assets by identifying and managing risks relating to natural hazards and by making appropriate financial provision for those risks.
11. The first infrastructure strategies were included in local authority 2015 long-term plans. The Auditor-General is required to report on whether the long-term plan gives effect to the statutory purpose of the plan and on the quality of the information and assumptions underlying the forecast information provided in the plan (s 94 of the LGA 02).

Financial Information about water services

12. Since 2012 local authorities have been required to disclose consistent information about projected expenditure on, and funding of, water services in their long-term plans. Since 2014, local authorities have been required to disclose additional information in their annual reports. These two developments have enabled DIA to compile national financial datasets on these services that could not be compiled before as the data was previously unavailable.
13. The following information summarises key matters at a national level. The underlying information is held at the level of individual local authorities, so further subsets can be made available for local authorities with particular characteristics.

Asset Values

Table 1: Asset value of local authority water services infrastructure at 30 June 2016

	Book value \$billion	Estimated Replacement Cost \$billion	
Water treatment	2.05	3.49	6%
Water Other	8.26	14.83	27%
Sewage	3.03	4.52	8%

Treatment			
Sewerage Other	9.55	17.97	33%
Stormwater	8.93	13.91	25%
Total	31.81	54.71	100%

Source: DIA analysis of local authority 2016 annual reports

Recent Investment

14. Local authorities are investing substantially in water services, in response to a number of demands placed upon them. Table 2 shows the breakdown of expenditure. DIA believes this data is slightly influenced by the completion of infrastructure repairs following the Christchurch earthquake. In particular the category “sewerage other” is affected by unusually high reported expenditure by the Christchurch City Council in the 2015 and 2016 financial years. DIA notes that capital expenditure on water treatment facilities is proportionately slightly higher than the asset value attributable to water treatment.

Table 2: Local authority water services capital expenditure 2014-2016

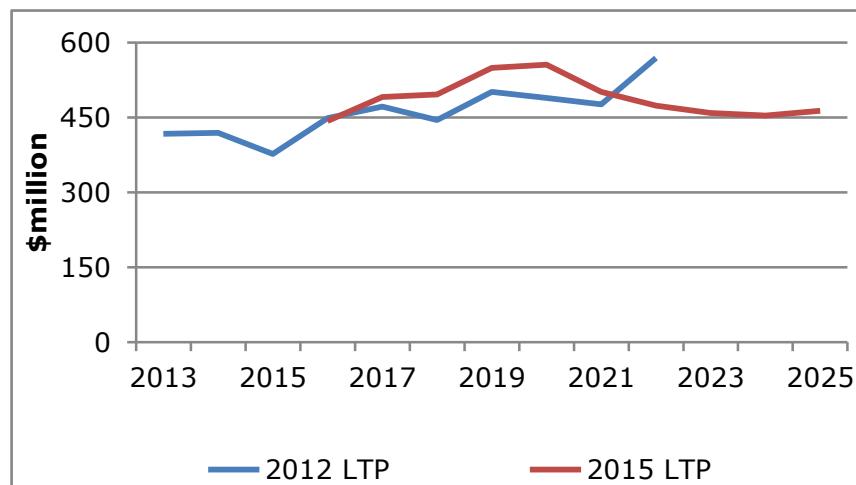
Type of Infrastructure	Capital expenditure	
	\$million	
Water treatment	234.85	7.3%
Water Other	844.49	26.3%
Sewage Treatment	429.75	13.4%
Sewerage Other	1,362.96	42.4%
Stormwater	339.91	10.6%
Total	3,211.96	100.0%

Source: DIA analysis of local authority 2014-2016 annual reports

Planned Investment

15. Local authorities have increased their expected investment in water supplies a little between 2012 and 2015.⁵ For the decade following 2012 they planned \$4.6 billion in capital expenditure on water supplies. For the decade following 2015 they planned \$4.8 billion on capital expenditure for water supplies.

Figure 1: Planned capital expenditure on water supplies, 2012 and 2015 long-term plans



Source: DIA analysis of local authority 2015 and 2018 long-term plans.

⁵ This data excludes Christchurch City Council. That Council did not have a long-term plan in 2012 as it was not feasible to produce a plan due to the uncertainty about earthquake recovery costs and how they would be financed.