

GUIDANCE MATERIAL

TRANSFER AGREEMENT TEMPLATE

BACKGROUND

The Local Government (Water Services) Act 2025 ("**Act**") provides councils with flexibility to determine the optimal structure and delivery method for water services in their service area. This could mean establishment of a new water organisation ("**Water Organisation**") to whom responsibility for providing water services is to be transferred through the council entering into a transfer agreement with the Water Organisation. The effect of this transfer agreement is that the Water Organisation that is party to the agreement replaces the council as the water service provider in relation to those services.¹

Before entering into a transfer agreement, a council must discuss and reach agreement with the board of the Water Organisation (or 1 or more representatives of the Water Organisation if the board has not yet been appointed) on the significant matters to be contained in the proposed transfer agreement, and the council must also establish and use a process for resolving any disputes arising from discussions relating to the proposed transfer agreement and for confirming the final version of the proposed transfer agreement with a representative of the Water Organisation.²

Where 2 or more councils have established a Water Organisation, the councils must reach agreement with each other on the significant matters to be contained in their respective transfer agreements, including agreeing a common date on which the transfer agreements will take effect.

Councils will need to make decisions in relation to the transfer of infrastructure and related assets, liabilities, responsibilities, resource consenting processes, contracts and/or other relevant matters to these new Water Organisations, in order for the Water Organisations to provide water services.

Councils must follow the process to identify employees whose employment relates to the water services being transferred to the Water Organisation and provide for the Water Organisation to offer employment to such identified employees.³ The additional mechanics required for the process under the Act are included in the transfer agreement.

The Act provides that, in specified circumstances, there will be no tax consequences for the transfer.⁴

WHO IS THIS TEMPLATE FOR?

Under section 9 of the Act, a council is responsible for ensuring that water services are provided in its district in accordance with this Act. However, a council may discharge its responsibility by entering into a transfer agreement with a water organisation. A transfer agreement is required as set out in section 12 of that Act and in the additional circumstances in section 15.

¹ Section 14(2) of the Local Government (Water Services) Act 2025.

² Section 13 of the Local Government (Water Services) Act 2025.

³ Clauses 1 to 3 of Schedule 1 of the Local Government (Water Services) Act 2025.

⁴ Section 255 of the Local Government (Water Services) Act 2025.

The transfer agreement is a contract between each council and the Water Organisation it has established or in which it is a shareholder, to enable the transfer of various matters from the council to the Water Organisation.⁵

The transfer agreement is also required to specify matters that are not being transferred, arrangements to manage matters of shared interest, arrangements relating to whether the council or Water Organisation will undertake charging and revenue collection, and who will be the responsible decision maker for certain decisions about revenue and expenditure.⁶

PURPOSE OF THIS TEMPLATE (once completed)

This Transfer Agreement template details the specific statutory responsibilities, functions, duties, and powers concerning the provision of water services, responsibilities for managing and/or operating the water services, infrastructure and other assets, liabilities, resource consents and associated rights and functions, contracts and other matters to be transferred by the council to the Water Organisation, and when and how the transfer will occur. It provides that all listed matters will be transferred, and specifically excluded matters will not transfer. Any other matters that are not specified in this template will not be deemed to transfer to the Water Organisation.

It specifies these matters for each of the water services (water supply, wastewater, and/or stormwater) being transferred to the Water Organisation and being retained by the council. If the transfer agreement relates to providing stormwater services, it is required to include:⁷

- a current and accurate description of any stormwater service zones in the service area; and
- the responsibilities relating to stormwater service zones (if applicable).

The consideration to be paid for the transferring matters will need to be determined by each council, but the council (in respect of the period up to transfer) and Water Organisation (in respect of the period post-transfer) will pay their respective apportionments (such as rent, electricity etc) and receive any relevant revenues, in respect of the transferring matters. This template also limits the council's liability to the consideration paid for the assets.

The transfer agreement must set out arrangements to be put in place for charging and revenue collection for the water services that are being transferred, including whether rates, fees, and other charges will be collected by the council or the water organisation. If the council will continue to do this, the agreement must include additional information and confirmations.⁸

The transfer agreement must specify whether the council or the Water Organisation will be responsible for making the final decisions about:

- the Water Organisation's capital expenditure and operating expenditure for the water services it provides;
- the Water Organisation's level of charges and revenue recovery for the water services it provides.⁹

⁵ Note there are some specific responsibilities that cannot be transferred, as set out in section 12(8) of the Local Government (Water Services) Act 2025.

⁶ See Schedule 2 of the Local Government (Water Services) Act 2025 for specific requirements.

⁷ Clause 3(1)(f)(ii) of Schedule 2 of the Local Government (Water Services) Act 2025.

⁸ See Schedule 2, clause 6 of the Local Government (Water Services) Act 2025 for further details – including the circumstances under which the council is and is not acting as a collection agent for the water organisation.

⁹ Schedule 2, clause 7 of the Local Government (Water Services) Act 2025.

If a transfer agreement specifies that the council is responsible for making any final decisions about the above matters, the practical implications of this approach must be explained in the agreement or the Water Organisation's foundation documents.

The template specifies this in Schedule 3. It also provides for the detail of these decision-making responsibilities to be included in the Constitution, which provides information on the nature of shareholder involvement in preparing and finalising a water services strategy and the water services annual budget (with those documents including, amongst other matters, the level of capital and operating expenditure, as well as the level of charges and revenue recovery, for the water services that the Water Organisation provides).¹⁰ The decision as to who will hold the final decision-making responsibilities for those matters may have significant implications because:

- the “decision-making local government water service supplier” (of which there may be more than one) will also be the regulated supplier subject to economic regulation by the Commerce Commission;¹¹ and
- despite elected members and employees of a shareholder council not being permitted to be appointed to the board of a Water Organisation under the Act, any decision-maker that is not on the board of the Water Organisation but is making decisions of a nature expected of a company director should be cautious in respect of being considered a deemed director (which could attract director's duties) under the Companies Act 1993; and
- it may affect borrowing arrangements with the LGFA (for example, it may be a factor for consideration in any bespoke arrangement between the LGFA and a Water Organisation regarding the application of financial covenants).

This transfer agreement establishes an Interface Governance Group to be the first point of contact in relation to managing ongoing matters of shared interest. Each party may appoint representatives to the Interface Governance Group in accordance with this transfer agreement.

KEY CONSIDERATIONS FOR COUNCILS

Before completing and entering into this transfer agreement, each council must:

- have complied with all relevant statutory requirements relating to establishing or changing the shareholding arrangements in a Water Organisation (including consultation requirements), and the mandatory actions required before entering into a transfer agreement in section 13 of the Act;
- understand the current state of their water services networks;¹²
- identify which matters **will not** be transferred to the Water Organisation, and which matters **will** be transferred (including responsibilities related to providing each of the water services being transferred or retained);

¹⁰ See B4 & A2 Guidance Material – Constitution.

¹¹ See new section 57D of the Commerce Act 1986 – inserted by the Local Government (Water Services) (Repeals and Amendments) Act 2025 (section 14, New subpart 12 of Part 4 inserted).

¹² This will have been required in the water services delivery plan by section 13 of the Local Government (Water Services Preliminary Arrangements) Act 2024 but may need to be updated depending on when the transfer agreement is being prepared.

- decide whether the council or Water Organisation will be the responsible decision-maker regarding the Water Organisation's:¹³
 - capital expenditure and operating expenditure for the water services it provides; and/or
 - level of charges and revenue recovery for the water services;
- consider which arrangements will be put in place for charging and revenue collection for the water services that are being transferred (within the requirements specified in clause 6 of Schedule 2 of the Act);
- consider how any existing contract, agreements, or arrangements between council and a third party that relate to providing water services will apply in relation to the Water Organisation – and, if the third party is a “Māori third party” (as defined in section 47 of Act), the council and the iwi, hapū, or other Māori organisation must together determine how the contract, agreement, or arrangement will apply to the Water Organisation.¹⁴

After completing this transfer agreement, the council must:

- confirm the final version of the proposed transfer agreement with a representative of the Water Organisation;
- adopt the transfer agreement by resolution;¹⁵
- make the transfer agreement publicly available.¹⁶

How to use this document / template

Complete the transfer agreement with the required information. The Council will have to make decisions on the following key issues to complete this template

DECISIONS	
<i>All matters being transferred in relation to the relevant water service (see clause 3 of Schedule 2 of the Act)</i>	<input type="checkbox"/>
<i>All matters that relate to water services and are not being transferred (see clauses 3 and 4 of Schedule 2 of the Act)</i>	<input type="checkbox"/>
<i>Whether the council or the Water Organisation will be the responsible decision maker regarding the capital expenditure and operating expenditure for the water services the organisation provides</i>	<input type="checkbox"/>

¹³ Where a water organisation has two or more council shareholders, and one or more of those shareholders wishes to be the responsible decision maker for these matters, the shareholders will need to consider how to give effect to such an approach, and what this means in practice. If a council continues to make decisions on either or both of these matters, it would be a “decision-making local government water supplier”, and subject to regulation under the Commerce Act 1986, even if other responsibilities for water services have been transferred to the water organisation. It may also be a “split decision-making model” as referred to in clause 7 of Schedule 7 of the Commerce Act 1986, and section 18 of the Local Government (Water Services) Act 2025.

¹⁴ Section 47 of the Local Government (Water Services) Act 2025.

¹⁵ Section 12(4) of the Local Government (Water Services) Act 2025. Note that, under section 12(5), if two or more councils have established the Water Organisation, one of those authorities must not enter into a transfer agreement unless both or all of them do.

¹⁶ Section 16 of the Local Government (Water Services) Act 2025 requires each party to the transfer agreement to make it “publicly available” – as defined in section 4 of that Act. If the agreement contains information that is commercially sensitive, the parties may redact that information from the published versions of the agreement.

DECISIONS

<i>Whether the council or the Water Organisation will be the responsible decision maker regarding the level of charges and revenue recovery for the water services the organisation provides</i>	
<i>The arrangements to be put in place between the council and Water Organisation to manage matters of shared interest (see clause 5 of Schedule 2 of the Act)</i>	<input type="checkbox"/>
<i>The purchase price for the transfer</i>	<input type="checkbox"/>
<i>The arrangements to be put in place for charging and revenue collection for the water services that are being transferred (see clause 6 of Schedule 2 of the Act)</i>	<input type="checkbox"/>
<i>Who they will appoint to the Interface Governance Group</i>	<input type="checkbox"/>

Note that nothing in the Act prevents a council from carrying out the transfer of responsibility to the Water Organisation in stages using multiple transfer agreements (i.e. to transfer subsequent assets). Section 15 requires a "new transfer agreement" if the council decides to add or remove responsibility for providing water services, water services infrastructure, or any other matters to the Water Organisation; or change certain key matters. The transfer agreement template will need amendment to accommodate use in these circumstances.

The Department can provide further information or support to councils if required. Please contact wmdp@dia.govt.nz.

Please note that neither this guidance nor the transfer agreement template constitutes legal advice. If unsure as to their position on any matter, councils should consider obtaining their own independent legal advice. Councils wishing to access LGFA funding are encouraged to contact the LGFA in relation to shareholder decision-making and related matters.