

Question and Answers

Te Kaunihera o Pōneke | Council

30 September 2021

2.1 Government Reform: Three Waters

Where did the idea that the Council could/should propose a law change as required in option B come from?

This was suggested in the Taituarā template that most Councils used as the basis for their reports. Under the current law balance sheet separation cannot occur.

Has any analysis been done about the likelihood the Government would entertain such an option which is inconsistent with their proposed reforms?

Analysis of that nature has not been undertaken. While the Government has signalled that it is open to feedback, it has also commented: 'It is not clear if sector-led reform under existing legislation would deliver the kind of transformation required'.

Why does the paper not include a public health analysis alongside the economic and other analysis?

The public health analysis has been undertaken by Government and is a main driver of the reform. This is described in the Government's Regulatory Impact Assessment.

[https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/\\$file/regulatory-impact-analysis-decision-on-the-reform-of-three-waters-service-delivery-arrangement.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/$file/regulatory-impact-analysis-decision-on-the-reform-of-three-waters-service-delivery-arrangement.pdf)

Context

The Havelock North Inquiry has been a catalyst for significant reform in how drinking water is provided

11. There are fundamental challenges facing the system for delivering three waters in New Zealand. Before 2016 there had been a general awareness of some of these challenges, but events in August of that year brought them all into sharp focus. The Havelock North tragedy saw a widespread outbreak of campylobacteriosis caused by contamination of the public water supply, leading to more than 5,000 people becoming ill and contributing to the deaths of four people in a town of 15,000 people.
12. The campylobacter outbreak in Havelock North highlighted the systemic failure across all parts of the drinking water system - regulation, service provision, and source protection of drinking water.
13. The Havelock North Drinking Water Inquiry (the Inquiry) commissioned in response to the tragedy identified failures across all levels of the system, failures that if addressed may have resulted in a different outcome³. These included:
 - widespread systemic failure among water suppliers to meet the high standards required for the supply of safe drinking water to the public;
 - failure by the Ministry of Health, the government body charged with administering the drinking water provisions of the Health Act 1956, to perform its statutory role and provide leadership and stewardship of the drinking water regulatory regime;
 - failure by the regional council to meet its Resource Management Act 1991 (RMA) responsibilities; and
 - no adequate or effective enforcement of water suppliers' the statutory obligations.
14. The Inquiry also identified the benefit of economies of scale as crucial to enabling smaller suppliers in rural and provincial areas to have access to the resources needed to produce and maintain a high-quality drinking water supply. It recommended the aggregation of drinking water suppliers to achieve this.

Has WCC engaged with Wellington Water in the development of this paper and our approach to the reforms given they have expertise in this area?

As the owners of the assets the onus for decision making is primarily with Councils. However, WWL has been involved throughout the process.

How has this occurred?

The initial Request for Information was completed jointly between WWC and WWL,

The WWL shareholding Councils meet fortnightly specifically to discuss reform, and WWL attends those meetings.

WWL and WCC officers meet formally monthly where reform is discussed.

Water reform is also discussed at Wellington Water Committee meetings, the most recent being 24 September.

Why is 'protections from further privatisation' assessed as more of a risk under the Government proposal than option B?

This risk differential is not significant. Under Option A protections are in proposed legislation. Under option B the protections actually exist already in law. Government collateral outlines how Government intends to address this risk under Option A.

Protections against future privatisation

Continued public ownership of three waters water infrastructure is a bottom line for the Government. The Government is developing safeguards against future privatisation, making it more difficult to privatise water services than under the current arrangements.

These protections include legislation specifying that:

- local authorities that constitute each water services entity would be the owners of the entity;
- any serious future privatisation proposal would need to firstly pass a 75 per cent majority vote from the Representative Group and then be put to a referendum, where a 75 per cent majority is required
- no provision for financial recognition of ownership, including no shareholdings and a prohibition on dividends;
- mana whenua involvement in oversight and representing 50 per cent of the Representative Group;
- restrictions on the entities on the sale or transfer of material, strategic water assets (similar to the current restrictions on councils); and
- a robust regulatory environment that includes Taumata Arowai, regional councils, an economic regulator, and proposed consumer forum.

Has paragraph 132 been prepared with the held of LGNZ or other Councils?

Yes, it has been developed with officers from other Entity C Councils.

Can I have clarification regarding the no Council worse off commitment - if we need \$300-400M to be no worse off is this what we are working with government officers to resolve?

Yes.

Stormwater - what scope/scenarios is the government/WCC suggesting at this stage?

Stormwater is the most complex of the three waters due to its relationship with land use planning and catchment management. A Stormwater Technical Working Group was established by DIA in March 2021 to identify future arrangements for the planning and management of stormwater services and how those services could be successfully delivered by the proposed three waters service entities, while protecting and enhancing the relationship between the proposed water service entities and local authorities.

The Stormwater Technical Working Group Transition Plan report identifies key issues, risks, opportunities, and options associated with the transfer, and includes proposals for:

- the future arrangements for the transfer of stormwater assets and management of stormwater systems and infrastructure.
- managing the interface between the roles and functions of the proposed water services entities, local authorities, mana whenua, transport providers, and regional councils to work together to manage stormwater systems and functions; and

- an approach and timeframe for the transfer of responsibility for managing stormwater from local authorities to the proposed water service entities.

This report and an accompanying video from the Chair of the working group is available on the three waters website here: <https://www.dia.govt.nz/three-waters-reform-programme-stormwater>

More locally, later this year the Whaitua Committee will report its findings to Council. This will outline how the Region will give effect to the NPS freshwater management.

How have we been engaging with other councils in Region C? What are the similarities in thought /concerns/ opportunities?

Entity C Mayors have met, as have Chief Executives. The CEs have developed a summary of views under these headings. Views are not necessarily unanimous.



Paragraph 55. - performing within expectations- seems to point toward an uplift in the status quo. This means I am still concerned about how projects like the Sludge treatment plant that we have in our LTP will be prioritised through the WSE 's as this decision came from a political desire to do better.

Community voice and influence has been identified as key area of feedback for the Government.

What signal is govt sending that these innovations will be pursued as a priority for communities?

The Government has produced a document outlining its view on this issue. Below is an extract:

What is proposed

There are some key proposals for consumer and community voice within the entity design, which are woven into the governance and oversight arrangements:

- local authority and mana whenua representatives on the Regional Representative Group to act on behalf of their communities – *see paper on Governance*;
- each entity will be required to engage with consumers and communities (including individual councils and iwi/Māori) on the key business documents that affect them, to publish those documents, and to report on how consumer and community feedback was incorporated into final decision making;
- Te Mana o Te Wai Statement to ensure mana whenua rights and interests are reflected locally; and
- each entity will be required to establish a consumer forum to assist with effective and meaningful engagement.

These mechanisms will work in conjunction with proposals across the wider system design. This will include the proposed economic regulation regime and consumer protection mechanisms which will play a critical role in protecting and enhancing the long-term interests of consumers and providing high-quality performance information. The Ministry for Business, Innovation and Employment is leading this work, and is expected to release a discussion document on the proposals in late 2021.

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Council influence through existing (and reformed) planning mechanisms would continue alongside the service delivery reforms – *see paper on influencing planning*.

Another consideration for consumer interests in the delivery of three waters services is how charging and pricing will be set by the entities. This is discussed in the appendix to this document.

Procurement opportunities- has there been any conversation about the procurement process following a strategic/ sustainable framework to deliver benefits to communities, the environment, local business as well as be cost effective?

The WICS analysis identified efficiencies from procurement (among other things) and how this could contribute to better community outcomes. This was supported by Farriersweir who peer reviewed the WICS analysis.

Reforms provide an opportunity to improve investment efficiency

WICS acknowledged that the remoteness of New Zealand may be a constraint on achieving UK levels of efficiency.

We agree with WICS that the large future pipeline of expenditures and the improved procurement capability expected from larger, more capable water entities will provide an important *opportunity* for the future New Zealand water industry to:

- assemble a construction project pipeline with significantly increased scale and predictability
- attract world class supply partners
- promote increased competition and supply chain efficiencies.

Larger, more capable water entities that work with suppliers, would also be better placed to contribute to addressing skill shortage, such as through improved training programs and improving the attractiveness of the water industry to potential employees.

However, we are of the view that the small, remote nature of the New Zealand economy and other factors such as skill mismatches appear likely to be ongoing constraints to achieving efficiency levels equivalent to those that have been achieved in the United Kingdom – which is a much larger market that is located close to the very large European Union market. In any event, we expect amalgamation and associated reforms would make it possible for New Zealand to achieve greater efficiency improvements than it can without those reforms.

Achieving such efficiency is also likely to depend, to some degree, on whether amalgamation and associated reform goes ahead or not. If it does not, then it is likely to be much harder for individual councils to realise efficiency improvements at the scale that amalgamated water entities could because their individual investment needs will be much lower – reducing, for instance, their negotiation position with potential international supply partners and their ability to batch up work into large enough parcels to attract contractors.¹¹⁹

[https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-Individual-council-models-and-slidepacks/\\$file/Entity-C-slide-pack-WICS-report.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-Individual-council-models-and-slidepacks/$file/Entity-C-slide-pack-WICS-report.pdf)

How / when will the council be updated on the views/ ideas/ concerns of mana whenua?

Mana whenua made their views clear during the Mayoral Taskforce. While Government has lead engagement (on the reform programme) with Mana Whenua to date, it is intended to engage closer and locally in the next phase which is expected in October.

Mana whenua

Taranaki Whānui and Ngāti Toarangatira have a long history in the settlement and development of Whanganui-a-Tara. At the start of the 19th Century there were many hapū and kainga along the coastal harbours. Hapū and whānau had access to mahinga kai (food gathering places rich with many kai sources and supplies) from various bush areas, cultivated gardens, freshwater streams and marine areas. This enabled much contact and trade between kainga and hapū and eventually Pākehā who arrived at the shores. Traditionally, Māori were kaitiaki (guardians) of their environment.

Today, our connection with Te Whanganui-a-tara continues to be based on a set of values which are about our relationships with people and the environment (including the built-up one). This plays out in a range of forms including our role as kaitiaki and through the provision of advice across a range of government, local government and policy forums. For mana whenua we have always taken our responsibilities as kaitiaki seriously. However, over the past 180 years our rights as mana whenua have eroded and our voices have been ignored. The establishment of the Pākehā system of law, regulation, funding models and public policy settings have been difficult mechanisms to influence. However, our interests have remained and our desire to ensure that the mana whenua and other citizens who have chosen to live, enjoy and play in our city - can do so safely and without harm to our environment.

Both Taranaki Whānui and Ngāti Toarangatira of this whaitua (region) share a vision - "Kei te pūtake o te whaitua o te Whanganui-a-Tara tōna mauri mana motuhake hei oranga mō te katoa / the mauri

of te Whanganui-a-Tara and the communities who live within it is nurtured, strengthened and able to flourish".

In March 2020, Mayor Andy Foster extended an invitation to both Taranaki Whānui and Ngāti Toarangatira to participate in the Mayoral Taskforce on Three Waters in the wake of a number of infrastructural and environmental problems in late 2019. These included:

- the partial collapse of a tunnel under Dixon Street leading to the discharge of raw wastewater into our harbour
- the failure of the wastewater sludge pipes under Mt Albert leading to over \$100k a day in transporting costs, so as to ensure the untreated sludge would not enter our harbour
- increased volume of wastewater and drinking water leaks across the city impacting on te mana me te mauri o te wai
- public criticism over wastewater entering our freshwater and coastal marine environment - reminding everyone of their lack of care when it came to our important role as kaitiaki of our streams and coastal catchments.

The costs and impact of these issues have unfairly impacted on many who reside in our city including tangata whenua. Members have lost trust in our City Council, WWL and the Greater Wellington Regional Council (GWRC) in terms of its ability to manage and look after our precious water assets and infrastructure for the people of the today and most of all for our mokopuna (grandchildren) of tomorrow.

We have sat and listened to the issues and participated in the various discussions about the possible solutions. As mana whenua, we are left in no doubt that the political nature of local politics and local politicians has had an important part to play in the poor infrastructure decision making over many decades. We know this will likely impact inequitably on Māori who live in our city. One thing is clear to us, the costs that we bear today should be an investment in a city for the future and this will impact on rate payers.

As mana whenua, our input to this important work has occurred amongst a great many of other issues like a Wellington housing crisis, a national increase in the costs of living, inequities across our social and health systems, pressure from our communities about environmental impacts of climate change and the COVID-19 pandemic. Despite this, we continued to meet online and engage in the debates.

Both Taranaki Whānui and Ngāti Toarangatira will continue to uphold our mana whenua rights, interests and responsibilities within our tribal boundaries. Our waterways are of huge significance to us, reflecting the sustenance they provide to us and the shared identity we have with them. Keenly we want to see a radical and meaningful shift that sees the active kaitiakitanga / guardianship of our waterways being led out by ourselves as mana whenua but also all people of our city. If we want to secure the future for those who come after us - we must together be bold and lead in a new direction that ensures our waterways no longer suffer from our human abuse.

Paragraph 102: There is significant underinvestment to mitigate low-performance standards that see councils being fined as part of the enforcement process from Greater Wellington. How will the three waters reform guarantee there will be a priority to clean up of these risks with urgency?

Primarily the reforms provide WSEs with the financial capacity to undertake work that needs to be done to comply with the regulations that are overseen by Taumata Arowai. Taumata Arowai will be active later this year. While its initial focus will be on drinking water standards, as these relate to human health, it is subsequently expected to focus on wastewater and stormwater.

2.2 Waka Kotahi Revenue Update

Please detail the resilience work, LED upgrades and laneways upgrades that will be deferred under option 2?

- The resilience work that will be deferred will be the strengthening of the retaining walls on Chaytor Street and Grosvenor Terrace.
- The LED programme will be truncated over the next three years to focus on infill lights in Tawa, Miramar and Courtenay Place – all other LED infills will be deferred to years 4 and beyond.
- The laneways and public space programme have received no funding so we will proceed unsubsidised with projects that we have already started (Karori Town Centre, Swan Lane and Garrett Street) and defer others.
- We are also proceeding unsubsidised on the town centre upgrades for Island Bay and Berhampore requested through the LTP.

Please detail the partially funded safe routes to school, walking improvement, bike network development and bike network minor repairs and build back better? What does the scaling back investment mean in practise?

- The safer route to schools programme has been partially funded (70% of funding received). We propose proceeding with years 1 and 2 as planned and scaling back year 3 to the same level as year 2. This will align our budget to the amount of funding received and deliver accordingly.
- For the next three years, the cycleways programme has received funding for:
 - Evans Bay stage 1 & 2
 - General Cycleways
- The transitional programme and Island Bay were assumed unsubsidised in the LTP and so these projects will proceed as planned.
- Build Back Better has received 9% of requested funding. This is a programme to make improvements to walking and cycling whilst doing BAU renewals work. The plan is to scale back investment to areas of high priority.
- In the recommended option, cycleways minor works is proposed to be scaled back from \$1m pa to \$800,000 pa for the 2021/22-2023/24 period.

Scaling back means that programmes and projects will be prioritised to deliver the greatest value for money and we will proceed with those whilst deferring others into years 4 and beyond. Having only received the final decision from Waka Kotahi on the 7th of this month, Council officers are still working through the projects that will be progressed.

We just approved the bike network last week, why wasn't this signalled then? What does it mean for it?

The decision by Waka Kotahi to delay funding parts of the Bike Network Plan does not significantly impact our investment over the next three years. Many of the longer-term projects (beyond year 3) are listed as either "probable" or "possible". This means that they will be funded if we either complete the business case process or when funding becomes available in the NLTF.

The only cycleway that is not funded by Waka Kotahi is the Tawa to Johnsonville connection (\$12.3m). The plan is to work on a transitional programme for this connection while working with Waka Kotahi to get this connection funded in the next LTP submission.

There is only 5% of the \$226m bike network plan that is confirmed unfunded (Tawa to Johnsonville). The impact of the Waka Kotahi decision has been factored into the Bike Network Plan that was presented last week in terms of phasing the programmes to align with when funding becomes available.

Beyond the LTP provision, funding matters were not explicitly covered in last week's Bike Network Plan paper as the paper's focus was on the draft network and not funding matters.

2.3 Te Ngākau Civic Precinct Framework

What amendments did Councillors make when the draft framework came for approval and where are they seen in this version?

The amendments made by Councillors were:

2. Agree to adopt the draft Te Ngākau Civic Precinct Framework in principle as amended and attached (attachment 1) with the following change to Policies 5.2, 5.4 and 6.3:
 - 5.2 The amount of green space will be increased and should be located and of adequate size and dimension to ensure safety, usability, and shelter
 - 5.4 The positioning and form of buildings and structures is to ensure a high degree of

sunlight access is achieved within the precinct throughout the day.

6.3 Te Ngākau Civic Square faces significant challenges due to climate change so the design of the space and buildings must meet current Ministry for the Environment guidance to local authorities on planning for sea level rise as a minimum. Future advice from the Ministry will inform future planning for the area over the long term.

These amendments are picked up verbatim in the Final Version under the same references.

What are the timelines/process for the conservation plan?

We have started work on this and have appointed a conservation architect to complete this work. The timing is to some extent determined by the availability of mana whenua and prioritising getting the conservation work required for Te Matapihi completed. We should have this completed over the next 3 months.

When will the Paratene Matchett Bridge be assessed for investment?

It is not on the work programme for this year where the focus is on the Town Hall, Te Matapihi, MFC carpark and MOB/CAB consent process. During this time we will advance planning and options for the other areas but with works planned or funded.

Do we have a rough idea of what we need to do for this?

The city to sea bridge is in service and no works are required. There are associated issues that impact on the city to sea bridge in relation to the Lagoon seawall and the Capital E building. Certainty around the plans of LGWM on the Quays will also inform future considerations around the bridge.

2.4 Support Response to Covid Alert Level 3 & 4

Please provide a list of commercial leaseholders who theoretically would be eligible to apply?

This is a commercially sensitive area. The businesses that meet the criteria are generally cafes and small businesses, some restaurants in hospitality and retail. It also includes arts organisations, harbourside market stallholders and Toi Poneke tenants

2.5 Michael Fowler Centre Carpark Long Term Ground Lease

Has the Council got legal advice about relying on a non-legally binding 2016 terms of development agreement and lease without re-starting the procurement process?

Council obtained external legal advice in late May 2020 as to whether Council was permitted to proceed with the development under the original procurement process initiated in March 2016. This advice considered the Government Procurement Rules, Council's Procurement Policy and the 2016 RFP for the development and determined that Council was permitted to proceed with the development and its negotiations with Willis Bond under the original procurement process.

Is it lawful?

As above, the advice confirmed that continuing the procurement process was lawful.

Is it procurement best practice?

See Question 1. In addition, Council officers have sought at all times to meet high level standards relating to procurement including seeking value for money outcomes, strategic alignment with wider Council objectives and transparency.

What were the arrangements/discussions with Willis Bond when the temporary ballet building went on there?

Council issued various letters to Willis Bond advising them that the process was suspended. Willis Bond have continued to engage with officers through-out the suspension period.