



MEMORANDUM

To: Te Wai o Pareira Rivercare Group
From: Kate Storer and Rebekah Hill
Cc:
Date: 3 March 2022
Subject: **THREE WATERS REFORM – AN OVERVIEW**

1. INTRODUCTION

1.1 We refer to your email dated 14 February 2022 requesting an overview of the Three Waters Reform Programme (“Reform Programme”) currently being pursued by the government.

1.2 Specifically, you have asked:

- (a) For an outline of the Reform Programme’s implications for Auckland;
- (b) Whether there is any published tentative schedule for the implementation of the Reform Programme;
- (c) Whether there are any investment prioritisation guidelines as part of the Reform Programme;
- (d) Whether community groups such as Te Wai o Pareira Rivercare Group (“TWPRG”) will have any opportunity for greater influence on investment priorities;
- (e) For an indication of impacts on TWPRG with regard to the prioritisation of works; and
- (f) Who will be responsible for the ongoing identification, protection, and enhancement of freshwater biodiversity in urban streams if / when the National Policy Statement on Indigenous Biodiversity comes into effect.

1.3 The purpose of this memorandum is therefore to provide an overview of the key features of the Reform Programme and to answer these questions.

Scope of memorandum

1.4 Specifically, this memorandum therefore addresses:

- (a) A brief overview of the context for the Reform Programme (Section 2);
- (b) An overview of the Reform Programme (Section 3);
- (c) Implications for Auckland (Section 4);

- (d) Investment guidelines and prioritisation of works (Section 5);
- (e) Implications for ecosystem and biodiversity management (Section 6);
- (f) Opportunities for influence over the new entities (Section 7); and
- (g) Next steps (Section 8).

2. CONTEXT

2.1 The Reform Programme is focussed on improving the regulatory and service delivery arrangements for drinking water, waste water and stormwater infrastructure ("water services") in New Zealand.¹

2.2 At present, 67 local authorities currently own and manage these water services. Under the current system many are unable to deliver them adequately. Key drivers for the reform include:²

- (a) 21.4% of water supplies (serving more than 100 people) did not achieve full compliance with New Zealand drinking water standards;
- (b) More than 34,000 New Zealanders are estimated to get sick from drinking water annually;
- (c) There were 3385 reported overflows from sewerage networks between 2019-2020 and the true extent of the problem is unknown;
- (d) A high proportion of underground pipes are in an unknown state; and
- (e) 43 out of 67 councils have three waters revenues that do not cover their operating expenditure, interest costs and full economic depreciation.

2.3 Estimates indicate that the investment needed to replace, maintain and upgrade existing pipes and plants across New Zealand is up to \$5 billion per year over the next 30-40 years.³ The government considers that achieving this will be beyond the ability of most local authorities and communities under the status quo.⁴

3. OVERVIEW OF REFORM PROGRAMME

3.1 The Reform Programme is to be implemented via the following proposed legislation:

- (a) The Water Services Entities Bill;
- (b) The Water Services Entities (Implementation) Bill; and
- (c) The Economic Regulation (Water Services) Bill.

3.2 The government released an exposure draft of the proposed legislation which will establish the new governance framework, the Water Services Entities Bill in

1 Ministry for the Environment *Transforming Aotearoa New Zealand's resource management system: Our future resource management system – Materials for Discussion*. (Ministry for the Environment, Discussion Paper, November 2021) at 16.

2 Nania Mahuta "Government to protect vital public water services for future generations - Key Facts and Figures" (27 October 2021) <https://www.beehive.govt.nz/release/government-protect-vital-public-water-services-future-generations>.

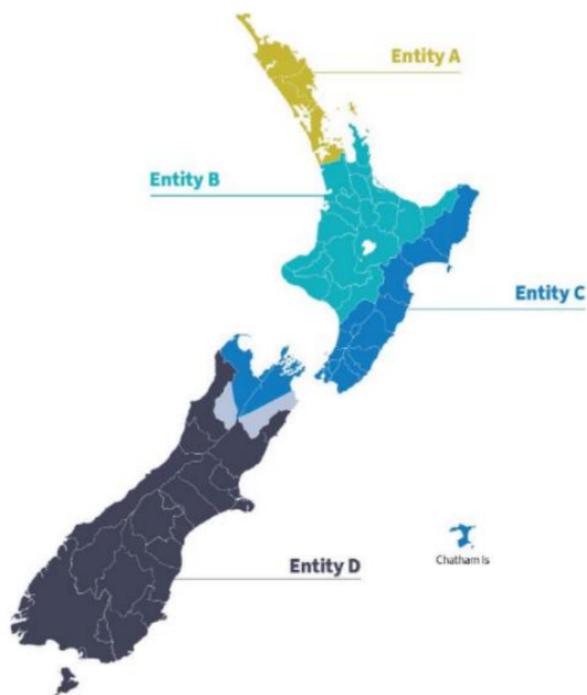
3 Three Waters Reform Programme NZ "Why the Government is proceeding with Reform" (27 October 2021) <https://www.youtube.com/watch?v=fyFdFVPM59E&t=199s>.

4 Above n 3.

November 2021 ("exposure draft"). An exposure draft is a version of a draft bill that is released by a government agency for public comment before the bill is introduced.⁵ The exposure draft was released to be considered by the public and a local government working group, before it undertakes the Select Committee process this year.⁶ Any public feedback will be considered by the Environment Committee before a final version of the bill is introduced.

- 3.3 The Government initially planned to introduce the Water Services Entities Bill by the end of 2021. However, after considering mostly negative feedback from local authorities, instead set up a working group to ensure that representations, governance and accountability concerns could be resolved.⁷ The working group comprises of representatives from local government and iwi / Māori and is expected to report its findings by 7 March 2022.
- 3.4 The proposals may therefore be amended before the bill is introduced. However, as currently proposed, the government intends to introduce large scale delivery entities to manage water services, as shown in Figure 1.⁸

Figure 1



- 3.5 Each entity will be a body corporate owned collectively by the territorial authorities in its service delivery area.⁹ Therefore, the water services assets will remain in public ownership and will not be sold.

5 Legislation Design and Advisory Committee "Exposure Draft Bills Guidelines" (12 November 2019) <http://www.ldac.org.nz/guidelines/supplementary-materials/exposure-draft-bills/#ftn1>.

6 Department of Internal Affairs "Working Group on Representation, Governance and Accountability of new Water Service Entities" (2021) <https://www.dia.govt.nz/three-waters-reform-programmeme-working-groups>.

7 Department of Internal Affairs "Working Group on Representation, Governance and Accountability of new Water Service Entities" (2021) <https://www.dia.govt.nz/three-waters-reform-programmeme-working-groups>.

8 Auckland Council "NZ's Three Waters Reform: What it means for Auckland" (2 February 2022) Auckland Council Website, <https://akhaveyoursay.aucklandcouncil.govt.nz/3waters>.

9 Water Services Entities Bill Exposure Draft 2021 (Consultation Draft), at 2.

- 3.6 The entities would own and operate three waters infrastructure on behalf of territorial authorities. They would therefore hold all three waters assets and associated debt.¹⁰
- 3.7 The intention is that these new entities, unlike local authorities, would be able to borrow enough to fund the future investment needed for water services and would likely deliver more efficiency in ensuring communities have safe, reliable and affordable water services.¹¹

Governance

- 3.8 In terms of governance, the proposal is that the water entities will comprise of two tiers involving:¹²
- (a) A regional representative group, which provides joint oversight of an entity by an equal number of representatives of the territorial authority owners and mana whenua from the entity's service area; and
 - (b) Corporate governance by an independent, competency based professional board. Appointments to the board will be made by a board appointment committee that is part of the regional representative group.

Decision making

- 3.9 The exposure draft also specifies that each regional representative group will have a constitution setting out:¹³
- (a) Its composition, including the appointments of territorial authority owners and mana whenua;
 - (b) How it will make decisions and regulate its internal procedure; and
 - (c) The number of its members, with a minimum requirement of six. The maximum is the number of territorial authority owners in the service area of the entity with an equal number of mana whenua representatives.

Regulation

- 3.10 A new regulator, Taumata Arowai, was given the legal authority to carry out its duties as New Zealand's water regulator by the Water Services Act 2021. This moves the regulation of water standards from the Ministry of Health into a dedicated agency.¹⁴
- 3.11 The purpose of Taumata Arowai is to improve the environmental performance of water services by enforcing standards with significant proposed penalties, including fines and criminal proceedings. Presently, standards are not being enforced and breaches are not prosecuted.¹⁵

10 Auckland Council "NZ's Three Waters Reform: What it means for Auckland" (2 February 2022) Auckland Council Website, <https://akhaveyoursay.aucklandcouncil.govt.nz/3waters>.

11 Above n 7 at 1.

12 Above n 9 at 3.

13 Water Services Entities Bill Exposure Draft 2021 (Consultation Draft), at 3-4.

14 Nania Mahuta "Bill to transform drinking water safety passes" (28 September 2021) <https://www.beehive.govt.nz/release/bill-transform-drinking-water-safety-passes>.

15 Above n 7.

- 3.12 An economic regulator will also be imposed, meaning it will not (in theory) be possible to underinvest, charge consumers too much or deliver poor quality service.¹⁶

No ability to opt out

- 3.13 Initially, the government indicated that local authorities would be able to “opt out” of the proposed governance arrangements, but announced in a cabinet paper on 18 October 2021 that participation would be mandatory.¹⁷ This is because the government considers that achieving the full benefits of the reform requires comprehensive participation by local government, and there are risks to achieving this under a voluntary opt out approach.¹⁸ Further, having regard to the new compliance and enforcement expectations, if local authorities were to opt out, they would find themselves in a very difficult landscape with large proportions of their expenditure and energy consumed by three waters investment and compliance.¹⁹

4. IMPLICATIONS FOR AUCKLAND

- 4.1 In Auckland, the Healthy Waters department of Auckland Council operates and maintains the stormwater network, while Watercare provides drinking water and wastewater services. Auckland is therefore at a different starting point to other local authorities because elsewhere in New Zealand each local council provides all three waters services.²⁰
- 4.2 Under the proposal, Watercare would be disestablished. Auckland’s water services (along with the water services in the Far North, Kaipara and Whangārei) would transfer to a new “Entity A”.²¹
- 4.3 The reforms will likely mean that the relationship between Auckland Council and Entity A will be more distant than it currently is between the Council and Watercare,²² simply by virtue of the fact that instead of only dealing with water services in Auckland, Entity A will also be providing water services for the Far North, Kaipara and Whangārei.
- 4.4 Auckland Council has stated that it is generally supportive of the outcomes envisaged by the Reform Programme, specifically that it:²³
- (a) Aims to lift the quality of drinking water supply and wastewater treatment;
 - (b) Provides for more investment in water infrastructure; and
 - (c) Addresses the need outside of Auckland to achieve greater scale and capability in the delivery of water.
- 4.5 However, the Council is concerned about who these new water entities are answerable to, and how accountable they are to the public.²⁴ Specifically, they

16 Above n 14.

17 Cabinet Paper “Three Waters Reforms Further Decisions” (18 October 2021) CAB-21-MIN-0419 at 1.

18 Cabinet Paper 4 and Minute “Delivering the Three Waters Reforms” (12 July 2021) CAB-21-MIN-0269 at 24.

19 Local Government New Zealand “Three Waters – drinking, waste and storm” (2022) <https://www.lgnz.co.nz/reforms/three-waters/>.

20 Auckland Council “NZ’s Three Waters Reform: What it means for Auckland” (2 February 2022) Auckland Council Website, <https://akhaveyoursay.aucklandcouncil.govt.nz/3waters> at 2.

21 At 2.

22 At 2.

23 At 5.

24 At 1.

have indicated that they do not support the government's proposed ownership and governance arrangements which remove democratic accountability (through responsiveness to Aucklanders through their elected representatives) and the loss of direct control by local authorities over water service entities.²⁵

4.6 Overall, the Council has indicated that its position is that:

*"Under the reform, councils would be the owners of the entities through legislation, but without shareholdings or financial interests, holding only the advocacy role on behalf of their communities"*²⁶

4.7 The Council is therefore concerned that its role will be undermined unnecessarily through having less financial control.

Submissions to Auckland Council

4.8 A consultation document outlining the above position from Auckland Council was released for public comment on Friday 3 December. Contributions to this document closed on Sunday 19 December 2021. From now (early 2022) onwards, Auckland Council will provide input and submissions to the government.

5. INVESTMENT GUIDELINES AND PRIORITISATION OF WORKS

5.1 The intention of the Reform Programme is to facilitate infrastructure delivery. However, what that mean for Auckland is currently unclear.

5.2 The exposure draft indicates that the board of a water services entity must provide an asset management plan to the entity's regional representative group at least once in every 3-year period.²⁷ The contents of this must set out the investment priorities for the infrastructure assets of the entity.²⁸ It is also possible that further direction will be included in the final draft bill as to how those investment priorities must be approached.

5.3 It is currently unknown what Entity A's asset management plan might look like and how it might approach decision making on infrastructure provision. How the reforms will impact on Watercare's timelines for infrastructure delivery in Auckland is therefore unclear. It is to be expected that existing Watercare workstreams will be carried over to Entity A to some degree given that that agency currently holds all of the institutional knowledge and experience to manage Auckland's water infrastructure, but to what extent Entity A will adopt a change in direction is unknown.

6. OPPORTUNITIES FOR INFLUENCE OVER THE NEW ENTITIES

6.1 The government has indicated that communities and community groups like TWPRG will be able have some input into decision making by the new entities. Entities will be required to directly consult with their customers, businesses and residents on their strategic direction, investment priorities, and prices and charges to a level that is projected to exceed the current consultation obligations of local authorities.²⁹ However, whether this equates in reality to increased opportunities for engagement compared with the existing arrangements is uncertain.

25 At 3.

26 At 3.

27 Water Services Entities Bill Exposure Draft 2021 (Consultation Draft), s128(1).

28 Section 129(a).

29 Above n 27.

- 6.2 Having regard to the above, community groups such as TWPRG will not necessarily have greater influence on investment priorities by virtue of working closely with iwi. However, the reform does provide for greater mana whenua influence in decision making. The high level aims of the Reform Programme are to enable local expression of Te Mana o te Wai. This means that mana whenua whose rohe or takiwā includes a freshwater body in the service area of the entity can make a Te Mana o te Wai statement for water services. The board must respond to the statement within two years and include a plan for how the entity intends to give effect to Te Mana o te Wai.³⁰
- 6.3 Additionally, the proposed governance structure provides for an equal number of representatives of the territorial authority owners and mana whenua from the entity's service area. This is intended to better provide for Māori to participate in the new delivery arrangements.

7. **IMPLICATIONS FOR BIODIVERSITY MANAGEMENT**

- 7.1 Although the operation and maintenance of stormwater systems will transfer to the new entities, water quality and biodiversity management will remain the responsibility of local authorities (in Auckland, Healthy Waters).
- 7.2 There is, however, little detail available in respect of how that will work in practice. In the exposure draft of the Water Services Entity Bill, stormwater is only discussed in the context of:³¹
- (a) being included under the definition of "water services"; and
 - (b) being required in the statement of intent and statement of service delivery performance made by the water services entities.
- 7.3 Obligations to give effect to the requirements of the Resource Management Act 1991 and planning documents promulgated under the RMA such as the National Policy Statement for Freshwater Management 2020 ("NPSFM") will remain with local authorities (though the exposure draft does provide that the new entities will be required to give effect to Te Mana o Te Wai, which is also the objective of the NPSFM).
- 7.4 It follows that if the Proposed National Policy Statement for Indigenous Biodiversity ("NPSIB") is passed, obligations to give effect to that document will also remain with the local authority.³²
- 7.5 In summary, however, it is unclear how the new entities will approach stormwater management obligations, nor how the entities will communicate with local authorities in respect of the overlapping ecosystem health issues arising. It is to be hoped that the answer to this question will become clearer as the bill progresses and in this regard, a Planning Technical Working Group has been appointed to provide advice to the government to support policy development related to the intersection between the role and functions of the new entities and the resource management system.

30 Water Services Entities Bill Exposure Draft 2021 (Consultation Draft), at 5.

31 [Water Services Entities Bill Exposure Draft 2021 \(Consultation Draft\), ss 5, 126 and 139.](#)

32 As an aside, the timeframe for finalisation of the NPSIB is uncertain – the document has been highly contentious and MfE currently states it is working to address the issues raised during consultation in 2019 and 2020 and that decisions on the release of an exposure draft of the NPSIB will now be made in the first half of 2022. It remains to be seen whether that will eventuate.

8. **NEXT STEPS AND OPPORTUNITIES FOR INFLUENCE**

- 8.1 As noted above, the working group is expected to report back on the exposure draft of the Water Services Entities Bill by 7 March 2022 so that recommendations can be considered before the Bill is introduced.
- 8.2 This year, Select Committee, public submissions and hearing processes will be undertaken for each of the three proposed bills. There is a published schedule³³ **attached** as **Appendix A**. This indicates that, if passed according to the schedule, the four new entities will commence delivery of water services from 1 July 2024.³⁴

Kate Storer / Rebekah Hill

3 February 2022

33 Above n 2.

34 Three Waters Reform Programme NZ "Why the Government is proceeding with Reform" (27 October 2021), <https://www.youtube.com/watch?v=fyFdFVPM59E&t=199s>.