

Communities **4** Local Democracy
He hāpori mō te Manapori

**Fresh ideas.
Better water.**

**3 WATERS REFORM: AN ALTERNATE
APPROACH THAT EVERYONE CAN SUPPORT**

Presentation to Hon. Nanaia Mahuta,
Minister of Local Government
4 April 2022

INTRODUCTION

- Thank you for the opportunity to meet with you.
- The 31 Partner Councils of Communities 4 Local Democracy representing 1.4 million people, came together to work collectively to find a better way to achieve the health and environmental outcomes that we all desire.
- It is our view that the Government should be specifying the required health and environmental policy outcomes but it should not be micro-designing how to achieve those outcomes.
- The obligation should be on council asset owners, working, partnering, and co-designing with mana whenua, to structure and operate their assets to achieve those outcomes, with clearly understood consequences if they do not.
- This approach would better support local voice and protect community property rights.
- The current set of proposals do not achieve that goal. Opposition parties have publicly committed to repeal them if they become Government. Public polling continues to show widespread dissatisfaction with the proposed set of reforms.
- However, if the Government were open to our alternative approach, Communities 4 Local Democracy would champion that approach standing alongside the Government.
- It is a way to achieve a durable and bipartisan regulatory framework.
- It is not too late to find a middle ground.

PART A
ALTERNATIVE MODELS: KEY
ASPECTS

WE SUPPORT THE RECOMMENDATIONS OF THE PRODUCTIVITY COMMISSION

1. The 3 Waters sector has substantial room for improved performance
2. A key contributing factor to this state of affairs is a poor regulatory framework governing water quality (health and environmental)
3. The Government should encourage (but not direct) aggregation and improved governance over 3 Waters service delivery
4. The performance of the three-waters sector would substantially improve by using an approach that:
 - i. rigorously enforces minimum performance standards
 - ii. is permissive about the way councils structure and operate their three-waters businesses
5. The Government should consider also having backstop arrangements to deal with councils that fail to lift performance sufficiently to meet minimum health and environmental performance standards
6. Financial assistance to communities will likely be needed to assist deprived communities meet minimum health and environmental standards. The assistance needs to be designed to avoid rewarding past inaction and instead reward action for sustainably lifting the performance of water providers to these communities

ORGANISATIONAL DESIGN

Jointly Owned Council Enterprise

- Protects community property rights and community voice
- IFRS 10 achieves balance sheet separation if no one council holds more than 50% (deals substantially with the Government's desire for balance sheet separation)
- Allows for co-design with mana whenua
- Establishment process potentially subject to ministerial oversight (e.g. through Energy Companies Act 1992 type process to provide comfort to Government)

Single Council Owned Enterprise

- Protects community property rights and community voice
- Would require commitment to a credible financing plan to ensure needed investments proceed
- Allows for co-design with mana whenua
- Establishment process potentially subject to ministerial oversight (e.g. through Energy Companies Act 1992 type process to provide comfort to Government)

Both options were independently reviewed and assessed by Castalia as workable approaches that can address the core policy issues

WORKING WITH MANA WHENUA

- All our members value the importance of developing strong and meaningful partnerships with Iwi Māori for the future of 3 Waters

BUT

- The Government's 'one size fits all' model does not reflect local realities and communities of interest and, importantly, iwi and hapū rohe and areas of interest.
- We believe any arrangements will be more effective if they reflect common local interests, decision-making and build on existing relationships.
- We actively seek to initiate authentic discussions with mana whenua at a local level that consider co-design and partnership arrangements that acknowledge and enable Te Tiriti based pathways at a local and regional level.
- We seek a pause so we can have more time to work on a way forward that works for everyone.

REGULATORY BACKSTOP

- To assist with creating a strong incentive on asset owners to improve outcomes, Communities 4 Local Democracy agree with the Productivity Commission's recommendation to include in the legislative framework a “regulatory backstop” provision
- A regulatory backstop provision requires careful design to take account of consenting and construction timeframes BUT it would require certain outcomes to be achieved by a fixed point in the future
- Failure to achieve the required outcomes would justify further Crown intervention (see for example: former subpart 3 of Part 4A of Gas Act 1992)

BALANCE SHEET SEPARATION

- Where financing requirements necessitate this, then NZ International Financial Reporting Standard 10 delivers the required outcome provided no one council in a regional grouping holds more than 50% of the shareholding in a combined entity
- An Auckland specific regime would require design as IFRS 10 would not work for Auckland
- Where a single council owned model applies, council would have to show a credible financing strategy and if not, would need to move to join a larger collective

FINANCIAL ASSISTANCE TO COMMUNITIES

- Two key aspects:
 - Allocation mechanism
 - Funding source
- Allocation mechanism could be built on principles used to allocate financial assistance (FAR) in transport (not suggesting that this involves Waka Kotahi in any funding allocation role)
- Allocation decisions should support best practice in service delivery
- Allocation regime should be supported by a Road Efficiency Group/One Network Framework type regime for 3 Waters
- Funding could be built on a per connection charge across the country (C4LD has had limited time to design more options but consider this an appropriate model with precedent in other regimes)
- This is a form of cross-subsidisation but it is transparent to consumers and the funding pool is spread nationally rather than regionally

WATER EFFICIENCY GROUP

An owners organisation with a competency based board, funded by a levy on three water connections responsible for:

1. Identifying and approving investment criteria and distribution of funding to three water delivery agencies (identified by the criteria) as having challenges to meet regulatory standards in a suitable timeframe or other reasons. Criteria could include:
 - A high level of deprivation
 - A static or declining population / commercial base which impacts on their ability to pay
 - Condition of the network the timeframe needed to bring it up to a regulatory standards
 - Support for tourism destinations with peak day pressures and a small number of water connections.
 - Would potentially breach borrowing debt limits (LGFA or self improved)
2. Investing in programmes continuous improvement in governance/ management and sector performance these would include activity asset management standards, meta data, procurement, training and development, benchmarking

PART B

ASSESSMENT OF WORKING GROUP RECOMMENDATIONS



ASSESSMENT (1)

Shareholding model:

- Does not address the core legislative taking of property rights – “With ownership comes rights, responsibilities and obligations” – Mayor Goff

Accountability to communities and customers:

- Remains weak (despite new sub-committees idea)
- Complex governance arrangement - diagrams in the paper oversimplify what is a messy accountability framework. This will weaken the incentives on management to meet the objectives (safe, resilient, environmentally sound water services at least cost)
- Retains the flawed uniform pricing and cross-subsidy at the level of the whole Water Services Entity

Management and operational performance:

- Likely to be weakened as even more complex oversight

ASSESSMENT (2)

Access to financing:

- Any improvements in access to financing will require **explicit** Crown support.
- Undermines the financing concerns that drives the case for the mega-entity approach
- **Increases** the likelihood of Crown intervention in future since fiscal risk would be directly and explicitly linked to the Crown. England and Wales from 1972-1989 had exactly this issue: Whitehall took over financing and investment decisions to manage Crown fiscal risk, and ultimately privatised the Regional Water Boards into 10 private companies

Diseconomies of scale or loss of economies of scope:

- Fails to address the valid critique that significant economies of scale not available
- Fails to address the loss of coordination and scope benefits from planning, transport and water services being aligned (Mayor Goff picks up those points)

Inflexible to change and new information due to sprawling and complex nature

Working group does not explain how the large Water Services Entity model improves affordability

PART C
PARAMETERS OF A POSSIBLE
REVISED REFORM PROPOSAL

A 10 Point Plan

COMPROMISE PROPOSAL: 10 POINT PLAN

1. Foundation principle - community property rights in Three Waters assets are to be both respected and meaningful
2. The Government agree to pause its reform process to allow time for the revised approach to be refined
3. With respect to investment decision-making, asset owners should actively seek to initiate authentic discussions with mana whenua at a local level that consider co-design and partnership arrangements that acknowledge and enable Te Tiriti based pathways at a local and regional level.
4. Asset owners agree to commit to meeting health and environmental standards, once known, within an appropriate time frame
5. The regulatory framework should specify a “backstop” provision that identifies a set of circumstances which would justify future Crown intervention if an asset owner was not making acceptable progress towards meeting those regulatory requirements
6. Progress should be reported on annually by asset owners and be benchmarked across the sector
7. To further incentivise sector progress, a formal process might be established that requires an asset owner to prepare a plan that would map out the steps it proposes to take to meet the required standards in a financially viable and sustainable manner
8. A process to finance and allocate funds to areas that will require financial assistance be designed that is national in application and independently administered accordingly to objective and transparent criteria
9. This subsidy scheme will be designed to meet investment shortfalls until such time as sufficient progress has been made. At which point the scheme will cease and asset owners will finance matters on a business-as-usual approach
10. A sector-wide sector best-practice improvement process be created and membership made compulsory

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