8.8 CONSIDERATION OF JOINING COMMUNITIES 4 LOCAL DEMOCRACY IN RELATION TO THREE WATERS REFORM

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References: Nil

Significance of decision – In terms of the Significance and Engagement Policy 2021, the recommended decision is not significant.

Recommendation

That the Council does not join Communities 4 Local Democracy in relation to three waters reform

Executive summary

Communities for Local Democracy (C4LD) presented to Council on 15 February 2022 requesting Council join the organisation to campaign the government for an alternative way to achieve their three waters reform objectives. This report outlines these objectives of C4LD, together with its proposed alternative models for the delivery of the three waters.

On 10 March 2022 the Three Waters Reform Governance Working Group (the Working Group) tasked with looking at the representation, governance and accountability model in the three waters reform released its report. This item also considers this report due to its relevancy in addressing some significant concerns many local authorities, including Whanganui, raised with the government's proposal.

Background

This report outlines the following:

- The genesis of the three waters reforms including the government's preferred option of four regional water service entities;
- Communities 4 Local Democracy and their alternative three waters delivery models;
- The Three Waters Reform Governance Working Group's report to the Minister of Local Government on the representation, governance and accountability model in the three waters reform.

The genesis of the three waters reforms

The rationale for the three waters reform relates to a belief that the three waters sector is facing a significant crisis and will continue to suffer from a series of challenges without necessary action. Key issues identified by the government include:

- Poor compliance with drinking water standards
- A large, accumulated infrastructure deficit
- Poor health outcomes
- Poor outcomes for iwi/Maori
- Poor environmental outcomes
- Lack of resilience

The government has repeatedly stated that the status quo is not acceptable. Most parties, including local authorities, Local Government New Zealand and C4LD agree with this statement.

The government believes that changing the way the three waters are managed will be more efficient, deliver better services, reduce the future costs for households and improve the environment. In considering a new way of delivering three waters the government's four bottom lines are:

- Protection against privatisation.
- Partnership with mana whenua.
- Balance sheet separation.
- Professional competency based boards.

Modelling undertaken by Water Industry Commission of Scotland (WICS) suggested the investment required at a national level over the next 30 years is between $120B and $185B. This level of investment would put significant financial pressure on many communities.

After reviewing various three water delivery models, the government's preferred option is delivery through four regional Water Services Entities. Officer reports to Council meetings on 14 September 2021 and 7 December 2021 explain in detail this preferred option.

Officers concerns with the overall reform process include:

The results of the financial modelling undertaken by WICS. While officers accept the financial modelling at a macro level, there is doubt on the level of accuracy when the model was applied at a micro level, i.e. when applied to Whanganui. Without credible financial data at a local level, it was difficult to determine the impact of reforms on the community.

During the time period set aside by the government for local authorities to consider the impact of the reform proposals on their communities and provide feedback, councils were being asked to evaluate and provide this feedback in the absence of key information, e.g. what the new three water regulations will be.

Given the scale and impact of these reforms, there has been no proper public consultation. The rules outlining the process for local authorities to consult with their communities on significant matters involving strategic assets have been bypassed by the government.

As part of the reform process, local authorities had the opportunity to provide feedback to the government on their proposed delivery model. Whanganui submitted two sets of questions, the first in August 2021, and the second in September 2021. Council received a response for the first set of questions, but awaits a response to the second set. In addition to Council questions, additional questions were submitted through Council channels from Federated Farmers. These questions focused on issues unique to the rural sector, using Pakaraka as a case study.

It is noted that similar concerns raised by Whanganui were also raised by many local authorities. Some of these concerns have been addressed in the report to the Minister of Local Government from the Working Group tasked with looking at the representation, governance and accountability model in the three waters reform *(see below for details)*.

Timelines and achievability

In October 2021, the Government announced it would introduce legislation to establish four new publicly owned Water Services Entities to manage the three waters infrastructure. These new entities are planned to be operational from 1 July 2024.

Should this aspect of the reform proceed, i.e. the delivery of three water services by the proposed new Water Services Entities, it is evident that a significant amount of work still needs to be completed prior to these new entities becoming operational. Given the relatively short amount of time remaining it is becoming increasingly difficult to see this date of 1 July 2024 being met.

Communities for Local Democracy (C4LD)

Who are Communities for Local Democracy (C4LD)?

Communities 4 Local Democracy He hapori mo te Manapori is a new group committed to working with central government to ensure all New Zealanders have access to safe drinking water and that all local communities continue to have a say on the use of assets purchased on their behalf using ratepayer and central government funds.

Who has joined C4LD?

32 Councils have voted to joint C4LD, representing a population of over 1.6 million people (some of these councils have yet to be formally accepted by C4LD).

What are C4LD's main concerns?

1) Policy process flawed – C4LD believe the government did not clearly specify policy outcomes and work through an appropriate process, including consultation.

2) Lack of local input – C4LD are concerned that in the mega-entities, the voice of local communities will be massively diluted.

3) Expropriation of assets without compensation – C4LD are concerned that the government's proposal removes from the current owners (councils) the key characteristics of property ownership.

4) Concern regarding future privatisation – C4LD believe that 61 votes in parliament could let a future government privatise three waters assets.

What is C4LD's position?

C4LD state their objective as:

Our objective is an alternative model which would enable local ownership and local say while creating additional funding options.

We recognise that it is not enough to say no, we must provide a workable alternative model to that which the Government has proposed.

In doing so we are operating to several guiding principles, in particular:

- We accept and support the new drinking water regulator
- We accept and support efforts to improve environmental outcomes

- We agree that there is a case for investment in parts of New Zealand
- We agree that mana whenua should be involved in three waters investment decisions

BUT we do not agree that to progress these issues:

- Community property rights should be confiscated without compensation
- Direct community input into local decision-making should be removed

The key points of the advice we've received are:

- The proposed regulatory framework could be beneficial
- But potential benefits will be largely nullified by the proposed governance and ownership model
- It is possible to develop an alternative governance and ownership model which will deliver on the objectives and also allow a well-designed regulatory framework to achieve the goals sought.
- Initial Castalia analysis shows (1) improving council-owned model, or (2) creating regional CCOs would work better than mega-entities.

What alternatives are C4LD proposing?

C4LD and their consultants, Castalia, have proposed two broad alternative models for government consideration. Further information on the proposals can be found in the C4LD presentation to the Ministerial Working Party and the supporting advice to the presentation from Castalia.

1) Council-owned plus regulation

Amend the current council-provided three waters delivery model with targeted interventions to address financing and funding constraints, and regulation (both environmental and economic).

Introduce a contestable water fund and a water efficiency group, both funded by a per connection charge across the country. The fund could be allocated using a mechanism similar to the Waka Kotahi roading Funding Assistance Rate (FAR). The water efficiency group would be an owner's organisation with a competency-based board and responsible for:

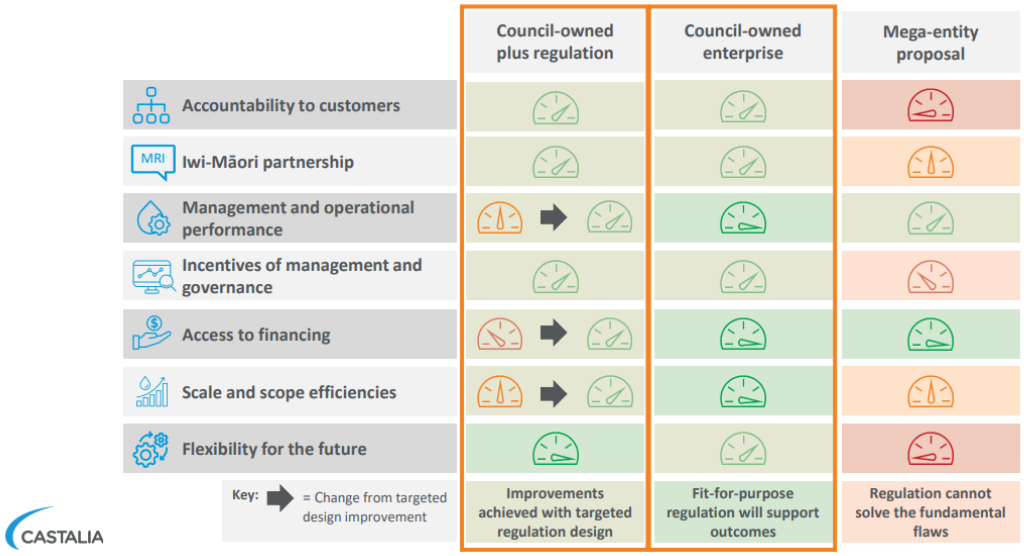
- Identifying and approving investment criteria and distribution of funding to three waters delivery agencies identified by the criteria as having challenges meeting regulatory standards in suitable timeframe, or other reasons e.g. high level of deprivation, declining/static population, condition of network and timeframe to get it up to standard, support for tourist centres with high seasonal peaks, or where investing would breach borrowing limits.
- Invest in continuous improvement programmes e.g. asset management, meta-data, procurement, training and development and benchmarking.

2) Council-owned regional enterprise

Each territorial authority would own shares in a regional organisation, in proportion to assets or number of connections. No single council would control the entity (i.e. each must own less than 50% of shares). The territorial authorities would remain democratically accountable to water consumers

and exercise appointment rights over the organisation's board. The organisation would own and manage three waters services for the region.

Castalia and C4LD have assessed these options alongside the government's proposed model (Mega-entity proposal) and their assessment is as follows:



Officers have not undertaken a detailed analysis of C4LD's proposals as there are significant information gaps, including:

- How the councils/regional enterprises will achieve balance sheet separation.
- How the council's/regional enterprises will have the debt capacity required to undertake the significant investment programmes.
- How cost efficiencies will be greater under the C4LD models in comparison to the government proposal.
- Whether the contestable water fund is funded by central government as well as water connection levy funds, or purely though the water connection levy funds.
- Whether the contestable water fund will have any ability to borrow.
- How the contestable water fund will interact with councils normal work programmes and funding if it only funds in certain circumstances e.g. high level of deprivation, poor condition of network, borrowing limit constraints.

From our preliminary analysis, our findings are:

Benefits

1) Increased local representation, voice and focus, however it should be noted that this has typically resulted in underinvestment leading to significant asset failure in some areas.

2) Slowing down the government process, to allow more effective decision-making and potentially more opportunities for consultation with communities.

3) For the Council-owned plus regulation model, direct ownership and control of the three waters infrastructure remains with individual councils.

Areas of concern

1) Joining C4LD may compromise council's ability to negotiate with the government on three waters reform, particularly regarding reimbursement for the value of the community assets we previously sold in order to reduce three waters debt.

2) The C4LD proposal does not appear to address two primary issues that are critical to government approval and reform success – balance sheet separation and debt capacity. While accounting rules provide for balance sheet separation if there is no more than 50% control by any one owner, credit rating agencies are concerned about the degree of governor influence in decision-making and the likelihood of emergency financial support being required, and this affects the debt capacity that the organisation will have. The proposal of increasing the Regional Representative Group (RRG) membership to one representative per council (matched by iwi) failed to meet the test for balance sheet separation as it was considered by credit rating agencies as being too high in potential governor influence in decision-making, and there was a likelihood of emergency financial support by local authorities. If this applies to a RRG with one representative per council, it will apply even more so to a regional council owned enterprise. Without access to balance sheet separation, significant borrowing and increased debt limits, the only way to fund the required investment programmes is through substantial price increases to customers.

3) A regional approach may see Whanganui worse off, as some of our regional neighbours have significant issues with their three waters systems to address urgently which will require significant funding.

4) The levy per connection and contestable fund model will have significant cross subsidisation and will potentially reward those who have not and do not look after their networks which is unlikely to be palatable, particularly to those councils who have good quality assets and do not meet the funding criteria. Funding allocation to councils will be vexed. It would seem that the fund would also need the ability to borrow or central government contribution.

5) We do not believe that the C4LD proposals provide increased protection against privatisation. There are a number of provisions in the bill already to assist to protect against privatisation, and ultimately a government majority can at any time amend legislation. The requirement for the entities to reinvest any profits means there is no commercial profit-making incentive.

6) A number of councils concerns have since been addressed in the Three Waters Reform Governance Working Group's report (see below). While the government may or may not take on board the Working Group's recommendations, it is expected that some changes will be made. The government is set to proceed along its path and there is a low likelihood of the government making a significant change to their direction at this stage in the process. There is potentially a reputational risk if we are seen to be pushing back against what is needed for the broader country.

7) Joining C4LD does not mean that council necessarily has a decision-making influence in the group. C4LD's oversight group of up to 7 representatives looks after day to day governance of the C4LD campaign. Partner councils each have one vote.

8) The government has already considered a number of alternative reform models and ruled them out. This includes consideration of up to 13 entities, regulatory reform alone, sector-led shared service delivery, and a national centralised fund similar to Roading.

NOTE: Council is currently organising a public workshop with Castalia (on behalf of C4LD) and the Three Waters Reform Governance Working Group prior to the Council meeting where questions and concerns can be addressed.

Cost

Joining C4LD will cost council $15,000 as a provincial council member. This cost is not provided for in council's budgets.

Three Water Reform Governance Working Group report

Since C4LD presented to council on 15 February 2022, the Three Waters Reform Governance Working Group has issued its recommendation report to the government on the representation, governance and accountability of the proposed new water services entities.

Some of the key recommendations to the government from the Governance Working Group are:

1. That the Water Services Entities (WSEs) are collectively owned by communities through a direct shareholding interest at 1 share per 50,000 people, rounded up. As shareholding owners, each TA would be required to vote on any proposal for the WSE to be privatised or merged, and will only proceed with unanimous approval. This is in addition to the protections currently outlined in the bill (75% support of both the RRG and a poll of electors in the WSE's area). The existence of shares would be non-voting and not confer other decision-making rights.

2. That the bill entrenches the need for a 75% majority in Parliament to repeal or amend provisions of the bill.

3. That the bill prohibits local authorities providing financial support to the WSEs in any form (to ensure the ownership model is not seen by credit rating agencies as a form of parent-company support).

4. That the bill requires co-chairs of the RRG – one council, and one iwi/hapu.

5. That the bill requires consensus decision-making for all RRG decisions, and if consensus cannot be reached, then a 75% majority sought in order for matter to pass, with one vote per representative.

6. Many additions to clarify and strengthen the role of and accountability to the RRG.

7. That the bill allows for a minimum of 12 and maximum of 14 representatives on the RRG (compared to a maximum of 12 in the draft bill).

8. That the bill requires that council representatives should reflect a mix of urban, provincial and rural councils.

9. That there is provision for sub-RRGs (regional advisory groups), reporting to the RRG, responsible for agreeing regional strategic priorities, with 50/50 co-governance between council and iwi/hapu for each sub-RRG. The group have recommended that consideration be given to these sub groups having one appointee per council within the regional area.

10. That the bill includes provision for the WSEs to engage with councils on development of their asset management plans.

11. That a national water services ombudsman is established.

12. That the RRG have input into the investment prioritisation methodology and framework (acknowledging that councils having input into investment prioritisation is considered operational, and therefore not permissible to achieve balance sheet separation).

13. That there is increased engagement between the Crown and its Te Tiriti partner.

14. Strengthening of Te Mana o te Wai.

15. That the Crown provides equitable resourcing to enable the full and effective participation of iwi and hapu.

16. That there is provision for a non-voting Crown liaison to the RRG.

17. That a review of the structure be undertaken 5 years after the WSEs are operationalised.

18. That the Crown provide some investment to the WSEs, particularly in relation to historic degradation of waterways and inequalities in provision of water services.

The report has addressed a number of the concerns that council raised with the government during the consultation period in August and September 2021. The process and timing of government consideration of the Working Group's report is not clear.

Options

1) The council decides not to join C4LD (recommended)

2) The council decides to join C4LD

Council needs to consider whether supporting C4LD will lead to beneficial outcomes for its community, taking into account the benefits, risks and areas of concern outlined in this paper and further discussed in the presentations by Castalia (on behalf of C4LD) and the Three Waters Reform Governance Working Group at the public workshop to be held on Tuesday 22 March ahead of this Council meeting.

While officers have concerns about some aspects of the government's proposed three waters reform model and the process that has been followed, we do not see a credible alternative put forward in the C4LD proposals for council to support. Officers' recommendation is to continue to work with the government on our key issues to advocate for the best outcome for our Whanganui community.

Summary of Considerations

Fit with purpose of local government

The consideration of joining C4LD aligns with the purpose of local government.

Section 10 of the Local Government Act 2002

Fit with strategic framework

Select checkboxes to indicate whether the decision / report contributes, detracts or has no impact

	Contributes	Detracts	No impact
Leading Edge Strategy	☐	☐	☑
Long-Term Plan	☑	☐	☐
Infrastructure Strategy	☑	☐	☐
Economic Development Strategy	☐	☐	☑
Other Policies or Plans -	☐	☐	☑

Leading Edge Strategy

Risks

The recommended decision has a minor degree of risk.

The following risks have been considered and identified:

☑ **Financial** *risks related to the financial management of Council and the ability to fund Council activities and operations, now and into the future*

☐ **Service delivery** *risks related to the meeting of levels of service to the community*

☑ **Reputation / image** *risks that affect the way the Council and staff are perceived by the community - nationwide, internationally, by stakeholders, and the media*

☐ **Legal compliance (regulatory)** *risks related to the ability of management to effectively manage the Council, comply with legal obligations and avoid being exposed to liability*

☐ **Environmental** *risks related to the environmental impacts of activities undertaken by the Council. Includes potential or negative environmental and / or ecological impacts, regardless of whether these are reversible or irreversible*

☐ **Health, safety and wellbeing** *risks related to the health, safety and wellbeing of Council staff, contractors and the general public when using Council's facilities and services*

☐ **Information technology and management** *risks related to the integrity of the Council's IT network, including security, access and data management*

☑ **Infrastructure / assets** *risks related to the inability of assets to provide the required level of service in the most cost effective manner*

☐ **Project completion** *risk of failure to complete on time, on budget and to plan*

Risk Management Policy 2018

Policy implications

None.

Financial considerations

There is a cost of $15,000 for a provincial council to join C4LD. This expenditure is unbudgeted.

☐ Nil ☐ Approved in LTP / AP ☑ Unbudgeted $

Legislative considerations

None.

Significance

The recommended decision is considered not significant as per Council's Significance and Engagement Policy.

Significance and Engagement Policy 2021