

# Three Waters Reform Proposal:

## Governance

This document is part of a series providing a high-level overview of key elements of the three waters reform proposals. Its purpose is to support discussion and feedback on these proposed arrangements.

### *Foundational elements of the governance proposals*

The proposed governance and oversight arrangements for the three waters service delivery entities are designed to meet key objectives of the reforms. These core design features were first agreed in principle [by Cabinet in June 2020](#) as minimum expectations and [reconfirmed by Cabinet in 2021](#) following engagement with local government, iwi, and the water industry between July 2020 and June 2021.

They include that the entities should have competency-based boards, be asset-owning, and financially independent from local authorities to ensure they have greater funding and financing capacity and flexibility than councils.

Given the public nature of the underlying assets and service delivery needs, public ownership of the proposed entities is a bottom line. Therefore, it is proposed that local authorities comprising the entity area will be written in legislation as collective owners of each entity – on behalf of their communities.

Communities will therefore retain an influence on three waters assets and services through their council and through other consumer and community interest mechanisms (noted below) that provide for direct input into key strategic planning processes, including asset management planning, investment prioritisation and pricing and charging. Entities will need to operate within a highly transparent accountability framework, with strong customer and community consultation and engagement expectations, much like local government does now.

### **What is the proposed role of local government in the reformed system**

The reform proposals aim to make it easier for individual consumers and communities to directly influence the entities themselves, through ongoing engagement, reporting and transparency obligations – see separate discussion paper on community voice.

The Government has proposed a core role for local government and mana whenua in setting the strategic direction, performance expectations, and oversight of the entities. However, with independent competency-based boards governing the new entities' day-to-day management of three waters service delivery, and strong direct influence for consumers into the entities, the Government is proposing that councils will have a reduced level of direct control.

The Government is proposing a range of mechanisms for community and consumer voices to enable councils, iwi/Māori and communities to have influence over future three waters service delivery for their area. This includes:

- Strategic influence and oversight by local authority and mana whenua including through representatives on the Representative Group to act on behalf of their communities (the subject of this paper);
- Requirements on the entities to directly engage and consult with consumers and communities (including individual councils) on the key business documents that affect them (see paper on community voice);
- Economic and water quality regulation, combined with consumer protections to ensure investment is undertaken in the best interests of the community (see separate document on the regulatory environment); and
- Requirements for each entity to establish a consumer forum to assist with effective and meaningful engagement (see paper on community voice).

A summary of the key features in the entity structure is attached at the appendix of this document.

The oversight and governance framework will be supplemented by other relevant documents and processes including local government planning instruments (see separate document on planning interface), Te Mana o Te Wai Statements and any future Government Policy Statements.

### ***Governance of the entities***

The entities will be governed by independent competency-based boards, appointed by an Independent Selection Panel (discussed further below).

It is proposed that the boards will be made up of no more than 10 members, with the chairperson holding the casting vote. It is proposed that board members will require relevant competencies – to be set out in legislation, and will be subject to:

- Requirements to formally report to the Representative Group annually on the performance of the entity against the Statement of Strategic and Performance Expectations and other strategic documents; and
- Annual performance reviews undertaken by the Independent Selection Panel.

Further detail on board member responsibilities (individual and collective) will need to be included in legislation, as the general provisions in existing legislation (such as the Companies Act 1993) would not apply to the new statutory entities.

The board will be accountable for:

- Appointing (and removing) the chief executive officer;
- Preparing the Statement of Intent in response to the Representative Group's Statement of Strategic and Performance Expectations and any Government Policy Statement issued
- Preparing an Asset Management Plan, which outlines the investment priorities for the entity and describes how the entity will operate, maintain and renew its existing assets and provide new assets over a 10-year period and is in accordance with the Statement of Intent;

- Preparing a Funding and Pricing Plan, which describes how the entity intends to fund and finance its business activities (including the Asset Management Plan) over a 10-year period and is in accordance with the Statement of Intent; and
- Preparing an annual report, which complies with generally accepted accounting practice, and is audited.

The independence of the boards is important to ensure balance sheet separation from councils and unlock greater borrowing capacity for these services<sup>1</sup>.

Board appointments and removals would be conducted by Independent Selection Panels which are in turn appointed by the proposed Representative Groups. This will support the appointment of high calibre boards, with the requisite knowledge, skills and experience to govern the new water services entities. The boards of the new entities would also be required to have competence in understanding the principles of the Treaty of Waitangi, mātauranga Māori, tikanga Māori, and te ao Māori.

### ***About the Representative Group***

The Representative Group is designed to enable efficient oversight and strategic direction of an entity on behalf of a potentially large group of local authorities and mana whenua within the jurisdiction of the entity. Each entity will have its own Representative Group.

The proposed functions and powers of the Representative Group include:

- establishing and monitoring the Independent Selection Panel that appoints members to the entity's board;
- developing and agreeing a Statement of Strategic and Performance Expectations that will guide the entity in its formation of key strategic and planning documents e.g. Asset Management Plans; and
- monitoring performance against the Statement of Strategic and Performance Expectations and Statement of Intent.

The Representative Group would undertake its functions and exercise its powers in accordance with both legislation and with its charter. It is likely the Representative Group will need to engage secretariat and executive support to assist it in performing its functions. This support would be funded by the relevant water services entity.

It is proposed that members of the Representative Group will be subject to minimum requirements in legislation. For example, local authority representatives will be limited to elected members, chief executives or other appropriately qualified senior managers of a local authority with mana whenua Representatives appointed through a kaupapa Māori approach.

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<sup>1</sup> The Department engaged with Standard & Poor's (S&P) to test six hypothetical entity design scenarios through a process known as a 'Ratings Evaluation Service' (RES). The assessment by S&P of potential credit rating implications associated with the can be found here.

- [Rating Evaluation Service \(RES\) Letter - Three Waters Reform Programme](#)
- [Information Memorandum - Standard and Poor's - Three Waters Reform Programme](#)
- [Credit Implications of New Zealand's Proposed Three Water Reforms](#)

The Representative Group would be required to consider the interests of the relevant jurisdictions within an entity area when exercising their functions and decision-making powers. Representatives would likely vote on decisions that require a Representative Group decision and will typically have a single vote each. However, as outlined in the [Cabinet paper](#), no single local government or mana whenua representative would have a veto right or ability to exert negative control over decisions for the Representative Group.

### ***Strategic influence and oversight by the Representative Group***

It is proposed the Representative Group would influence the strategic direction of the entity through a Statement of Strategic and Performance Expectations to inform the entities' planning and monitor performance against these documents.

The proposed Statement of Strategic and Performance Expectations would set the specific objectives and priorities that the board of the entity would need to take into account. This document provides collective governance expectations regarding how the objectives and priorities for the entity are delivered.

The boards of each entity must take the Statement of Strategic and Performance Expectations into account when producing their Statement of Intent. The entity may also be required to report against performance indicators set out in the Statement of Strategic and Performance Expectations annually.

The Statement of Intent is the primary accountability document for the board. It sets out how the entity will deliver the objectives and priorities in accordance with the Government Policy Statement and Statement of Strategic and Performance Expectations, with minimum requirements to be outlined in legislation.

Indicative contents for both the Statement of Strategic and Performance Expectations and Statement of Intent are outlined in Appendix B of the [Cabinet paper](#). In sum, these would be a collective/collaborative expression of a set of expectations and aspirations at a strategic level for these entities.

The Representative Group will also establish and monitor the Independent Selection Panel that appoints and removes members to the entity's board. The Representative Group can request a board member be removed and/or assessed by the Independent Selection Panel, with the Independent Panel having final discretion.

### ***Protections against future privatisation***

Continued public ownership of these services is a bottom line for the Government, and the reform proposals include a series of proposals that together help safeguard against future privatisation, making it more difficult to privatise than under the current arrangements. Key protections include:

- requiring that any proposal for privatisation be (1) endorsed by the Representative Group by at least a 75 per cent majority (including by mana whenua representatives) and (2) put to a referendum so that the public can have its say on whether this should occur. The referendum would also require 75 per cent or more votes in favour of the proposal for it to proceed, at which point it would go through the legislative and select committee processes, which would provide further democratic protection.

- legislative provisions specifying that local authorities that constitute each water services entity would be the owners of the entity;
- no provision for financial recognition of ownership, including no shareholdings and a prohibition on dividends (these features would make privatisation difficult without significant legislative change);
- mana whenua involvement in oversight and representing 50 per cent of Representative Group;
- statutory restrictions on the entities on the sale or transfer of material, strategic water assets, similar to the current approach in the Local Government Act 2002 (which prevents local authorities from selling or disposing of strategic assets or the infrastructure necessary for providing water services); and
- a robust regulatory environment that includes Taumata Arowai, regional councils, an economic regulator, and proposed consumer forum.

## Appendix – Summary of key features in the proposed entity structure

Key features the proposed approach	Summary
Purpose, objectives, operating principles, and responsibilities of entities	Details would be specified in legislation and supplemented by Statement of Strategic and Performance Expectations and Government Policy Statement to provide high-level strategic direction to the entities.
Ownership of entities	Local authority owners of each entity will be listed in legislation, with no shareholding or financial benefits of ownership. The legislation is proposed to specify that local authority ownership is on behalf of their communities.
Ownership of water assets	Assets will be owned by the water services entities (which are owned by local authorities on behalf of communities). Legislation will include similar provisions to the Local Government Act 2002 regarding retaining ownership and control of public assets (such as restrictions on disposal). Note: further work will be undertaken during the transition process to identify which assets and responsibilities will be transferred from local authorities to the water services entities.
Governance structure and framework	Legislation will provide for the corporate governance structures; governance ‘bottom lines’; minimum requirements and restrictions; and powers, processes and procedures, including guidance on appointments to the Representative Group.
Role of Representative Group	The Group would provide the entity with a Statement of Strategic and Performance Expectations that will influence the Statement of Intent that an entity produces. Monitor performance and delivery on Statement of Intent and Statement of Strategic and Performance Expectations. It would also establish and monitor the Independent Selection Panel that appoints and removes members to the entity’s board.
Appointment of Representative Group	Each entity will have a Representative Group with equal local government and mana whenua representation. Local Government Representatives would be elected members (or a relevant and appropriately qualified senior council officer) appointed via a nominations and voting process. Mana Whenua Representatives would be appointed through a kaupapa Māori approach enabled by the establishing legislation. It is proposed that the Representatives would need to: <ul style="list-style-type: none"> <li>comprise a distribution of metropolitan, provincial and rural local authorities (noting 50:50 representation between local government and mana whenua); and</li> <li>represent a geographical spread across the jurisdiction of the entity.</li> </ul>

Key features the proposed approach	Summary
Oversight and setting the strategic direction entities	<p>Via Representative Group and the Government Policy Statement. Statement of Intent drafted by the entity in response to the Statement of Strategic and Performance Expectations.</p> <p>Requirement to produce Statement of Intent is outlined in legislation, including any content and consultation requirements.</p> <p>Purpose is to publicly state the activities and intentions of the entity, and provide a basis for the accountability of the board.</p>
Independent Selection Panel	<p>The role of the Independent Selection Panel is to ensure independent, competent and appropriately qualified people are appointed to key governance positions of the entity boards.</p> <p>Panel members and Chair will be appointed by the Representative Group, with a legislative requirement that Independent Selection Panel members must be independent and appropriately qualified.</p> <p>The Panel may also remove or assess board membership on request from the Representative Group ,with the Independent Selection Panel having the discretion to ultimately remove a member of the board.</p>
Appointment of entity board	<p>Independent Selection Panel appoints board members, utilising a skills matrix.</p> <p>It is proposed that Representatives may remove an Independent Selection Panel member via a super-majority vote.</p>
Board, including appointments and removal	<p>Board members would be appointed by Independent Selection Panel. Representative Groups can request a board member is removed and/or assessed by the Independent Selection Panel.</p> <p>All decisions relating to the operation of the entity are to be made by or under the authority of the board.</p> <p>The board may establish sub-committees to assist in the governance of the entity (for example, Audit and Risk Committee; Strategic and Major Projects Committee).</p>
Executive	<p>The entity board will appoint (and can remove) the chief executive officer.</p> <p>Chief executive officer and executive management are responsible for day-to-day management of the entity's operation, in accordance with the general policies and specific directions of the board.</p>