

8.1 THREE WATERS REFORM PROGRAMME

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| Report To: | Full Council |
| Meeting Date: | 29 September 2021 |
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| Report Number: | RCN21-09-10 |

1 Purpose of Report

1.1 This is the second report following the first report that the Council considered at its meeting on 12 August 2021. This subsequent report updates the Council regarding:

- context and background to the Three Waters Reform Programme initiated by the Government;
- more detail on the direct impacts of the Water Industry Commission of Scotland (WICS) assumptions, modelling and outcomes released by the Government in June 2021;
- assessments of the WICS assumptions in relation to the three waters activities in Tasman;
- specific data and modelling that the Council has received to date;
- the implications of the revised Three Waters Reform proposal for the Council and alternative service delivery options;
- a sensitivity analysis of the WICS financial forecasts undertaken by Council to determine whether there is a case for change from a financial perspective;
- other non-financial impacts that need to be considered by the Council; and
- next steps.

2 Draft Resolution

That the Full Council;

- 1. receives the Three Waters Reform Programme report, RCN21-09-10, and;**
- 2. notes the analysis of the three waters information provided to Council, the impacts and the service delivery options available to the Council at this time, and;**

3. notes that from a financial perspective the sensitivity analysis indicates that there may be a financial case for change for the Tasman District, but the other non-financial factors relating to governance, ongoing Council influence on the Water Service Entity and the impacts, benefits, issues and risks of reform may influence the Council's final decision, and;
4. notes that a decision to support the Government's preferred three waters service delivery option is not lawful (would be ultra vires) at present due to section 130 of the Local Government Act 2002 (LGA), which prohibits the Council from divesting its ownership or interest in a water service except to another local government organisation, and what we currently know about the Government's preferred option, and;
5. notes that if the Council chooses to opt out of the Three Waters Reform then the Water Services Bill, in its current form, will transfer responsibility to the Council for non-council supplies being brought up to the higher standards (this will affect a significant number of community and small rural supplies and will be beyond the Council's ability to resource currently), and;
6. notes that the Council cannot make a formal decision on its three waters service delivery without doing a Long Term Plan (LTP) amendment and ensuring it meets section 130 of the LGA, and;
7. notes that the Government intends to make further decisions about the three waters service delivery model after 30 September 2021, and;
8. agrees that it would be desirable to gain an understanding of the community's views once the Council has further information from the Government on the next steps in the reform process, and;
9. agrees that the Council's preferred entity, should it opt in to the Three Waters Reform, is Entity C, based on the future more favourable cost projections compared to Water Service Entity D, noting a preference that the Council's current territorial boundary remains intact, and;
10. authorises the Mayor to formally write to the Minister of Local Government requesting an extension in the Three Waters Reform timeline to enable:
 - a) the Council to undertake more detailed work to quantify the specific benefits and disbenefits to the Tasman District communities of the proposed Three Water Reforms, and;
 - b) the Council to obtain greater clarity on the Water Entity governance arrangements and in particular the influence Tasman District Council will have on the prioritisation of the capital and renewal investment within the Tasman District, and;
 - c) the Government to undertake a factual and extensive programme of public education in relation to the proposed three water reforms, and;
 - d) the Council to better understand the impacts of the Waters Services Bill in terms of the responsibilities that will be transferred to the new Water Service Entity C and those that remain with the Council, and;

- e) **the Council to obtain more certainty on the financial transition arrangements to Water Services Entity C and the associated impacts, and;**
 - f) **the Council to better understand the Government's position on transferring the Council's interests and associated debt in the Waimea Community Dam into the Water Service Entity C, and;**
 - g) **the Council to have greater certainty of the Three Waters Reform in the context of the Future of Local Government Review, and;**
11. **notes that Council staff will report back with advice once further information and guidance has been received from the Government, Local Government New Zealand and Taituarā on the next steps, and;**
12. **notes that Council's Significance and Engagement Policy lists the three waters as significant activities and this along with the provisions of the Local Government Act 2002 require a special consultative procedure on a Long Term Plan variation proposal before any decision can be made to opt in or opt out of the Three Waters Reform Programme and;.**
13. **notes that the Council's Significance and Engagement Policy also lists the Council's Shareholding in Waimea Water Ltd (Waimea Community Dam) as a strategic asset, and that the current agreements for the project do not allow the Council to transfer its interest in the dam.**

3 Executive Summary

- 3.1 This is the second report that the Council has considered on the Three Waters Reform Programme. The first report (RCN21-08-03) “Three Waters Report Update – Revised Version with Correct Boundaries” is provided in **Attachment 1**. This gives the background to the Three Waters Reform Programme up until July 2021.
- 3.2 Over the past four years, central and local government have been considering the issues and opportunities facing the system for regulating and managing the three waters (drinking water, wastewater and stormwater) – Three Waters Reform. The background is provided in **Attachment 2** including information on Taumata Arowai (which became a new Crown entity in March 2021 and will become the dedicated water services regulator later this year).
- 3.3 The Government has concluded that the [case for change](#)¹ to the three waters service delivery system has been made and this is detailed in **Attachment 3**.
- 3.4 During June and July 2021, the Government released information and made announcements on:
- the direction and form of Three Waters Reform, including the proposed four new Water Service Entities with indicative boundaries, its governance arrangements and public ownership;
 - individual assessments of the Council data undertaken by the Water Industry Commission of Scotland (WICS) based on the information supplied by the Council under the Request for Information (RFI) process;
 - a package of investment (\$2.5b) for councils to invest in the future for local government, urban development, and the wellbeing of communities (\$2.0b ‘better off’ funding), ensuring no council is worse off as a result of the reforms (\$0.5b ‘no worse off’ funding), and funding support for transition;
 - an eight-week process for councils to understand the implications of the reform announcements, ask questions and propose solutions and for the Government to work with councils and mana whenua on key aspects of the reform (including governance, integrated planning and community voice).
- 3.5 The Council has been placed in Water Service Entity C and our ‘better off’ funding allocation is **\$22,542,967**. This is in addition to the \$9.78 million funding in the first tranche of government funding.
- 3.6 While the Government and Local Government New Zealand (LGNZ) consider that a national case for change has been made, each council will ultimately need to make a decision based on its local context if the process to join one of the proposed entities remains voluntary.

¹ [Transforming the system for delivering three waters services \(dia.govt.nz\)](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/$file/transforming-the-system-for-delivering-three-waters-services-the-case-for-change-and-summary-of-proposals-30-june-2021.pdf);

[https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/\\$file/transforming-the-system-for-delivering-three-waters-services-the-case-for-change-and-summary-of-proposals-30-june-2021.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/$file/transforming-the-system-for-delivering-three-waters-services-the-case-for-change-and-summary-of-proposals-30-june-2021.pdf)

- 3.7 This report provides the Council with staff analysis of the information provided and assesses the Government's proposal and currently available service delivery options.
- 3.8 The Council's specific information looks at the impacts of the Government's assumptions, modelling and assessments undertaken by the Water Industry Commission of Scotland (WICS).
- 3.9 Given the peer reviews of the modelling and underlying assumptions (which always carry a degree of uncertainty), no further analysis of this work has been done or is proposed and staff have focused on the reasonably practicable options and their implications for the Council and the community.
- 3.10 Doing nothing is not an option, as increased regulation will result in increased expectations and cost of delivery of the three water activities.

Option A - Government proposal:

- 3.11 This option has the Council as part of Water Service Entity 'C', a publicly owned water services entity that owns and operates three waters infrastructure on behalf of councils, mana whenua and communities.
- 3.12 The greater financial capability, efficiency, affordability, and community/water benefits (as published by the Government) of delivering three waters to the community by the proposed new Water Services Entity is likely to be of significant value if they can be realised.
- 3.13 The likely transfer of Council interest in and debt related to the Waimea Community Dam.
- 3.14 Our analysis suggests there should be reduced risk to the Council (non-compliance with standards and processes, lower costs for delivery, procurement). The Council would also not be responsible if a non-Council supplier could not meet standards.
- 3.15 There are risks that need to be mitigated including integration with spatial, growth and local planning and transparent prioritisation, households' ability to pay, and the Council's net debt and stranded overheads.

Option B – Continued delivery of three water services by the Council (Status Quo):

- 3.16 This option is the status quo option in which Council continues to deliver the three waters activities in accordance with its LTP 2021/2031
- 3.17 The potential benefits of this option include Council control and certainty over local infrastructure integration (planning and delivery) with land use plans and Council objectives.
- 3.18 The Council however faces risks, including potentially high costs, in meeting the new water standards, environmental requirements and achieving compliance.
- 3.19 The ability of non-Council water supplies to meet standards and requirements from Taumata Arowai and so to default to the Council for delivery also poses a risk to the Council and the community.
- 3.20 The causes of most of these risks are not within the Council's control. This makes mitigation difficult, and many potential mitigation options (such as greater investment,

larger costs than currently planned, lower levels of service and compliance risk) may not be palatable to the Council or to the community.

Option C - Delivery of three water services by the Council at a higher level of service and increased investment:

- 3.21 This is a modified version of Option B. Council continues to deliver the three waters activities but modifies its budgets, resourcing and service delivery aspects to reflect the anticipated regulatory environment.
- 3.22 This is a realistic option but difficult to assess by the end of September 2021. The issues and opportunities associated with this option are much greater than the Council delivering three waters at the service levels forecast in the LTP 2021-2031
- 3.23 This option would retain the opportunity of better integration with the Council's outcomes, objectives and plans. However, even if the Council could predict the investment required to meet the new standards, environmental and/or compliance requirements in the short term, the costs of service provision and levels of service may change significantly over the next 30 years. This would cause affordability issues for households, lower levels of service and increase compliance risks.
- 3.24 The ability of non-Council water supplies to meet standards and requirements from Taumata Arowai and so to default to the Council for delivery also poses a risk to the Council and the community.
- 3.25 It should also be noted that any changes to levels of service or material changes to the cost of service would require consultation and an LTP amendment (or consultation on those changes as part of the next LTP 2024-2034 and potentially later ones). To avoid special consultative procedures outside the normal LTP processes would limit the flexibility to modifying levels of service to comply with changing regulatory requirements to every three years.
- 3.26 The risks of this option and the associated costs would need to be compared to the value of retaining more direct control of the service delivery aspects of the three waters

Option D - Regional aggregation of three waters services into a Council Controlled Organisation:

- 3.27 This option comprises the establishment of a council-controlled organisation (CCO) as provided for in the LGA. The CCO would be given governance, management and operational oversight. This option enables asset ownership to be transferred from local authorities into the CCO.
- 3.28 The Council would still need to be satisfied that the changing regulatory environment was adequately provided for, including ensuring there was sufficient funding to meet legal and regulatory obligations. Due to the smaller scale, this option would increase the likelihood that the size of investment required to meet new standards and community expectations would probably be achieved better by the Council on its own.
- 3.29 It enables the CCO to focus on the group's three water challenges and prioritise investment decisions across the region, which should lead to better environmental and community outcomes.

- 3.30 It provides for greater strategic, management and operational capacity and capability, workforce development and planning.
- 3.31 It enables efficiencies (in planning, programming, procurement and delivery).
- 3.32 As a result, household costs should be more affordable. There are, however, integration risks with spatial, growth and local planning and uncertainties around the future costs to households.
- 3.33 The Government's WICS assessments and economic work considered that between 600,000 and 800,000 connections provided optimal efficiency. Depending on which councils "opt in" to the new entities, groups of that scale might be difficult to find.
- 3.34 Under section 97 of the LGA2002 a decision to transfer the ownership and control of a strategic asset (like the three waters assets) into a CCO can only be taken by Council if it is provided for in the LTP. Therefore, a LTP amendment will be required as part of any decision-making process to transfer the ownership or control of the assets to the new water entities.

Option E – Delivery of Three Waters services by a Council Controlled Organisation (non-asset owning) under contract

- 3.35 Effectively, this is the Wellington Water model.
- 3.36 This option includes efficiencies in planning, procurement and service delivery, greater strategic management and operational capacity and capability, workforce development and planning.
- 3.37 However, this model will not greatly assist the funding challenges as a result of Taumata Arowai and the potential Water Services Act requirements. The infrastructure deficit WICS has identified, climate change and faster growth would add to the funding challenges.
- 3.38 Under this model, the contributing councils would still be responsible for the funding and the prioritisation of investment. This could be viewed by some as a positive, but the messaging from the Government is that more efficiencies and investment headroom can be gained through aggregation and single management and service delivery.
- 3.39 This model may be hard to develop depending on the number and location of councils which decide to 'opt in' to the new water supply entities.
- 3.40 Under section 97 of the LGA2002 a decision to transfer the ownership and control of a strategic asset (like the three waters assets) into a CCO can only be taken by Council if it is provided for in the LTP. Therefore, a LTP amendment will be required as part of any decision-making process to transfer the control of the assets to the new water entities.

Conclusion

- 3.41 Under all the options except Option A, the Government proposal, the Council bears the risk of meeting the new water standards, environmental requirements and achieving compliance. There are also implications and challenges for non-Council

supplies to meet water quality requirements, with the risk that these supplies might default to the Council in the future.

- 3.42 Other Government reforms (Resource Management Act, Future of Local Government) pose opportunities and challenges for each option.
- 3.43 Managing transition risks related to other reforms are likely to be more challenging for the Council (and others in its grouping) than the risks associated with the Government proposal. If the Government's proposal were to proceed, effective management of the transition by the Council, Government and partners will be critical.
- 3.44 The law currently prohibits councils deciding to opt-in to the current proposal (given section 130 of the Local Government Act 2002 and what we know about this option at present). Current decision-making requirements, including the need to take account of community views and the strategic nature of the assets involved, would also preclude the Council deciding to opt-in at this time without consultation.
- 3.45 Similar requirements apply if the Council wishes to consider alternative arrangements that involve asset transfers, divestment, change in ownership and or the setting up of a Council Controlled Organisation (CCO) to deliver water services in the future.
- 3.46 There are several issues, concerns and uncertainties for the Government and councils to work through before a robust Council decision (and decision-making process) can be made, including whether legislative change will enable or require the Water Services Entity or CCO approach to be adopted. Therefore, there is no expectation that councils will decide to opt-in (or out) or commence community engagement or consultation over the eight-week period.
- 3.47 Government decisions on entity boundaries, governance and transition and implementation arrangements will occur after the eight week-process ends (30 September 2021).
- 3.48 On the assumption that the reforms go ahead, it is anticipated that councils will continue to deliver water services until at least early 2024 and the Council's involvement in transition will be required throughout.
- 3.49 A two-page summary of the three water reforms has been prepared by LGNZ and is attached (**Attachment 7**). This summary includes the following 'What's the problem?', 'Government's proposed Solution' and the 'Impact on Councils'. It then summarises 'what's important for the sector' and 'what the sector needs from central government'.

4 Background and Context

Context

- 4.1 This is the second report that the Council has considered on the Three Waters Reform Programme. The first report was considered by the Council at its meeting on 12 August 2021. This first report (RCN21-08-03) "*Three Waters Report Update – Revised Version with Correct Boundaries*" is provided in **Attachment 1**. This gives the background to the Three Waters Reform Programme up until July 2021.
- 4.2 For many years Central and Local Government have considered issues and opportunities related to the three waters. This was amplified by the serious

campylobacter outbreak of 2016 in Havelock North which led to a Government Inquiry, which has been the catalyst for change.

- 4.3 The focus has been on how to ensure safe drinking water, improve the environmental performance of wastewater and stormwater networks and deal with funding and affordability challenges, particularly for communities with small rating bases or high-growth areas that have reached their council prudential borrowing limits.
- 4.4 The initial stage, announced in July 2020, provided Three Waters Project funding to councils and was an opt in, non-binding approach. It did not require councils to commit to future phases of the reform programme, to transfer their assets and/or liabilities or establish new water entities but did require us to provide comprehensive data for financial modelling purposes. The 2020 indicative reform programme and the anticipated next steps at that stage can be found in **Attachment 2** – ‘DIA 2020 Background Information’. In return for that participation, significant Government funding was provided. The Council received \$9.78 million to fund three water capital projects.

Government’s June and July 2021 Announcements and Information Releases

- 4.5 Over Christmas and New Year 2020/21 period, Council staff completed the Request for Information (RFI) process and the Government has used this information, evidence and modelling to make preliminary decisions on the next stages of reform.
- 4.6 The Government has concluded that the [case for change](#)² to the three waters service delivery system has been made. This is outlined in **Attachment 3** and during June and July 2021 it released information and made announcements on:
 - the direction and form of Three Waters Reform, including the proposed four new Water Service Entities with indicative boundaries, its governance arrangements and public ownership. The details are included in **Attachment 4** – DIA Summary;
 - individual assessments of the Council data undertaken by the Water Industry Commission of Scotland (WICS) based on the information supplied by the Council under the Request for Information (RFI) process;
 - a package of investment (\$2.5b) for councils to invest in the future for local government, urban development, and the wellbeing of communities (\$2.0b ‘better off’ funding), ensuring no council is worse off as a result of the reforms (\$0.5b ‘no worse off’ funding), and funding support for transition.
- 4.7 The Government’s stated preference has been for publicly owned multi-regional models (with a preference for local authority ownership). The Department of Internal Affairs (DIA), in partnership with the Three Waters Steering Committee (which includes elected members and staff from local government) commissioned specialist economic, financial, regulatory, and technical expertise to support the Three Waters Reform Programme and inform policy advice to Ministers.

² [Transforming the system for delivering three waters services \(dia.govt.nz\)](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/$file/transforming-the-system-for-delivering-three-waters-services-the-case-for-change-and-summary-of-proposals-30-june-2021.pdf);

[https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/\\$file/transforming-the-system-for-delivering-three-waters-services-the-case-for-change-and-summary-of-proposals-30-june-2021.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/$file/transforming-the-system-for-delivering-three-waters-services-the-case-for-change-and-summary-of-proposals-30-june-2021.pdf)

- 4.8 The June 2021 suite of Government information covered estimated potential investment requirements for New Zealand, scope for efficiency gains from transformation of the Three Waters service and the potential economic (efficiency) impacts of various aggregation scenarios³.
- 4.9 The modelling indicated the likely investment requirements at a national level over the next 30 years until 2051 would be in the order of \$120 billion to \$185 billion. The annual average household cost for most councils if they opted out and continued with the three waters on a standalone basis would range between \$1,910 and \$8,690 per household per annum by 2051 (note these figures are not inflated, they are in 2021 NZ\$).
- 4.10 If the reform process went ahead the average household costs are estimated to be between \$800 and \$1,640 per household per year and efficiency gains in the range of 45% over 15 to 30 years. Also, an additional 5,800 to 9,300 jobs and an increase in GDP of between \$14 billion to \$23 billion (in Net Present Value terms) over 30 years are forecast.
- 4.11 As a result of this modelling, the Government has decided to:
- a) establish four statutory, publicly owned water services entities that own and operate three waters infrastructure on behalf of local authorities;
 - b) establish independent, competency-based boards to govern the entities;
 - c) set a clear national policy direction for the three waters sector, including integration with any new spatial / resource management planning processes;
 - d) establish an economic regulation regime; and
 - e) develop an industry transformation strategy.
- 4.12 As stated previously in this report, the Government announced a package of \$2.5 billion to support councils to transition to the new Water Service Entities (WSEs) and to invest in community wellbeing. This funding is made up of a **'better off' element of \$2.0 billion** and a **"no worse off" element of \$500 million**.
- 4.13 The **'better off' element of \$2.0 billion** investment has \$1 billion from the Crown and \$1 billion from the new WSEs. Note that \$500 million will be available from 1 July 2022. The **'no council worse off'** element of \$500 million is available from July 2024 and is totally funded by the WSEs. The WSEs funding component will be financed by the water entities with costs recovered through future fees and charges.
- 4.14 The **"better off"** funding can be used to support the delivery of local wellbeing outcomes associated with climate change and resilience, housing and local placemaking, and there is an expectation that councils will engage with iwi/Māori in determining how to use their funding allocation.

³ This information, including peer reviews and the Minister's briefing can be accessed at: <https://www.dia.govt.nz/Three-Waters-Reform-Programme-and-release-of-second-stage-evidence-basereleased-june-2021>.

- 4.15 Tasman District Council's funding allocation is **\$22,542,967**. The detail of the funding (including expectations around the use of reserves) and the full list of allocations can be found in **Attachment 6**. Conditions associated with the package of funding have yet to be worked through.
- 4.16 In addition to the funding announcements, the Government committed to further discussions with local government and iwi/Māori during August/September 2021. These were intended to cover the following matters:
- a) the boundaries of the WSE's;
 - b) how local authorities can continue to have influence on service outcomes and other issues of importance to their communities (e.g. chlorine-free water);
 - c) ensuring there is appropriate integration between the needs, planning and priorities of local authorities and those of the WSE's; and
 - d) how to strengthen the accountability of the WSE's to the communities that they serve, for example through a water ombudsman.
- 4.17 As a result of this arrangement, the original timetable for implementing the reform (outlined in **Attachment 2**) and for councils to consult on a decision to opt-in (or not), no longer applies. Further advice on the difficulties and risks of making a decision to opt-in or not is included in the 'Significance and Engagement' section of this report.
- 4.18 The next steps are expected to be announced after 30 September 2021, which would include the timeframes and responsibilities.
- 4.19 It is also important to note that the Government has not ruled out legislating for an "all-in" approach to reform.
- 4.20 In the interim, the DIA continues to engage with councils on transition matters. These discussions do not pre-empt any decisions about whether to progress the reforms or whether any individual council will transition.
- 4.21 On the assumption that the reform goes ahead, it is anticipated that councils will continue to deliver water services until at least early 2024 and council involvement in transition will be required throughout.

Tasman District Council within Water Service Entity 'C'

- 4.22 The Government confirmed that under the Three Waters Reform proposals, Tasman District Council would be placed in Water Service Entity (WSE) 'C'. The precise boundaries across the Top of the South councils are still up for discussion.
- 4.23 WSE 'C' comprises 22 councils across the top of the South Island (Te Waipounamu) the lower part of the North Island (Te Ika a Maui), up the east coast of the North Island and the Chatham Islands. The following map (**Figure 1**) outlines all four entities including the details and extent of Entity C.

Figure 1 – The Four Entities announced by the Government June 2021

Entity A



Auckland
Far North
Kaipara
Whangarei

Entity A

| | |
|--|---------|
| Connected population (2020) | 1.7m |
| Average household cost (2051, real)¹ | |
| With reform | \$800 |
| Without reform | \$2,170 |

Entity B



Hamilton
 Hauraki
 Kewerau
 Matamata-Piako
 New Plymouth
 Opoiki
 Otorohanga
 Rangitikei
 Rotorua Lakes
 Ruapehu
 South Taranaki
 South Waikato
 Stratford
 Taupo
 Tauranga
 Thames-Coromandel
 Waikato
 Waipa
 Waitomo
 Western Bay of
 Plenty
 Whakatane
 Whanganui

Entity B

| | |
|--|---------|
| Connected population (2020) | 0.8m |
| Average household cost (2051, real)¹ | |
| With reform | \$1,220 |
| Without reform | \$4,300 |

Entity C



Carterton
 Central Hawke's Bay
 Chatham Islands
 Gisborne
 Hastings
 Horowhenua
 Kapiti Coast
 Lower Hutt
 Manawatu
 Marlborough
 Masterton
 Napier
 Nelson
 Palmerston North
 Porirua
 South Wairarapa
 Taranua
 Tasman
 Upper Hutt
 Wairoa
 Wellington

Entity C

| | |
|--|---------|
| Connected population (2020) | 1.0m |
| Average household cost (2051, real)¹ | |
| With reform | \$1,260 |
| Without reform | \$3,730 |

Entity D



Ashburton
 Buller
 Central Otago
 Christchurch
 Clutha
 Dunedin
 Gore
 Grey
 Hurunui
 Invercargill
 Kaikoura
 Mackenzie
 Queenstown
 Lakes
 Selwyn
 Southland
 Timaru
 Waimakariri
 Waimate
 Waitaki
 Westland

Entity D

| | |
|--|---------|
| Connected population (2020) | 0.9m |
| Average household cost (2051, real)¹ | |
| With reform | \$1,640 |
| Without reform | \$4,970 |

- 4.24 The boundary between Entities C and D are determined by Ngāi Tahu takiwā and would result in water services in Murchison being managed under Entity D. The initial response from the Tasman District Mayor and Councillors following the announcement indicated a strong preference for Tasman District to remain undivided in the water reforms. Entity C is forecast to have lower future three waters costs. Marlborough District Council has expressed a similar view for its District, where a similar boundary separation is proposed.
- 4.25 However, there is arguably a clearer community of interest for Tasman District to join with the south. Entity D is also preferred by Te Tau Ihu iwi chairs. Following a meeting with Minister Mahuta immediately prior to the Local Government New Zealand Conference the Minister committed to following up with iwi about both Tasman and Marlborough District Council's concerns on the split. A final decision has not yet been received.
- 4.26 The Government has been clear the continued public ownership of water services and infrastructure is a bottom line. It has proposed implementing legislative safeguards against privatisation – essentially requiring at least 75% support from both the Regional Representative Group⁴ and a referendum of the public within the entity serviced.

5 Water Service Entity – Proposed Ownership, Governance and Management

Ownership of the Water Service Entity (WSE)

- 5.1 The government has stated that the local authorities within each of the WSEs are the 'owners' of that WSE on behalf of their communities. This is a 'no shareholding' ownership with no financial recognition of ownership as full balance sheet separation between the WSE's and Local Authorities is required.
- 5.2 Mana whenua will have a joint oversight role.

Governance of the Water Service Entity

- 5.3 The governance hierarchy is outlined in Diagram 1 in the DIA two-page summary in **Attachment 4**.

Regional Representative Group and Independent Selection Panel

- 5.4 The WSE will have a Regional Representative Group (RRG) that provides for proportionate representation of the local government and mana whenua. The RRG will;
- issue a Statement of Strategic and Performance Expectations to inform the WSE's planning and monitor performance against these documents.
 - be required to produce a Statement of Intent in response to the Strategic and Performance Expectations.

⁴ The Regional Representative Group is the governance group that comprises representatives appointed by the local authorities and mana whenua. The governance diagram is outlined in **Attachment 3**.

- c) establish and monitor the Independent Selection Panel (ISP) that appoints and removes members to the WSE's Board.

5.5 The appointments to the Regional Representative Group will be as follows:

- a) Local authorities and mana whenua will appoint representatives to the RRG via a nomination and voting process.
- b) Representatives would be elected members (or a relevant appropriately qualified senior council officer) and iwi/Māori representatives;
 - Preferably 10 or fewer representatives per WSE – but no more than 12.
 - Appointments of iwi/Māori representatives will be guided by a kaupapa Māori approach.
- c) Representatives must:
 - comprise a distribution of metropolitan, provincial and rural local authorities (noting 50:50 representation between local government and mana whenua), and:
 - represent a geographical spread across the jurisdiction of the WSE.
- d) There will be a requirement to rotate Representatives after a maximum period.
- e) The Minister of Local Government will have the ability to appoint a group to work with councils and mana whenua, if needed, to facilitate the appointments of representatives.

5.6 The composition and roles of the Regional Representative Group are summarised in **Attachment 5**. The implications of Council being involved in both WSE C and D are unclear at this stage.

Water Service Entity Board

- 5.7 The WSE will be governed by a Board. The Board will be an independent board, appointed by the Independent Selection Panel (ISP).
- 5.8 The WSE Board will govern the WSE and will require relevant competencies that will be set out in legislation.
- 5.9 A Government Policy Statement (GPS) will provide direction to the WSE on national policy priorities.
- 5.10 The Board will be accountable to the RRG, local authorities, mana whenua and the wider public and be subject to:
 - a) a requirement to formally report to RRG annually on the performance of the WSE against the Statement of Strategic Performance and Expectations and other strategic documents;
 - b) a process for the ISP to conduct an annual performance review of the Board; and
 - c) reporting to the RRG on carrying out the board's functions.

5.11 The Board will be made up of no more than 10 members, with the chairperson holding the casting vote.

5.12 The RRG can request a board member be removed and/or assessed by the ISP, with the ISP having the discretion to remove a member.

Iwi/Māori Rights and Interests

5.13 The reforms provide opportunities for a step change in the way iwi/Māori rights and interests are recognised. These are woven throughout the new system through:

- a) statutory recognition of the Treaty of Waitangi and Te Mana o te Wai;
- b) creating a mana whenua group in the governance of the WSE, with equal rights to local government;
- c) Te mana o te Wai statements;
- d) the WSE Board will be required to have;
 - Treaty of Waitangi, mataurangi Māori, tikanga Māori and Te Ao Māori competencies;
 - Specific expertise in kaitiakitanga, tikanga and mataurangi Māori in delivering water services.
- e) The WSE will fund and support capability and capacity of mana whenua to participate in its activities.

Water Service Entity Oversight and Accountability

5.14 The WSE will be subject to:

- a) consultation requirement on its strategic direction, investment plans and prices/charges;
- b) mechanisms that enable communities and consumers to participate in the WSE's decision making processes;
- c) economic regulation to protect consumer interests and drive efficiencies; and
- d) chairing and pricing frameworks to protect consumers.

5.15 The Ministry of Business Innovation and Employment (MBIE) is developing advice on the new economic regulation regime and consumer protection mechanism and will consult with local government on this.

5.16 As a 'last resort', a Crown intervention framework with a risk-based approach will be introduced.

Consumer and Community Protections

5.17 MBIE are refining the consumer protection framework. However, the WSE will be required to engage in a meaningful and effective manner on key documents, including:

- a) investment prioritisation methodology;
- b) asset management plan; and

- c) funding and pricing plan.
- 5.18 The WSE will be required to publish these plans and to report on how consumer and community feedback was incorporated into decision making.
- 5.19 It will also be required to establish a consumer forum to assist with effective and meaningful engagement.
- 5.20 A new set of charging and pricing arrangements are also being established to improve pricing transparency and affordability of water services.

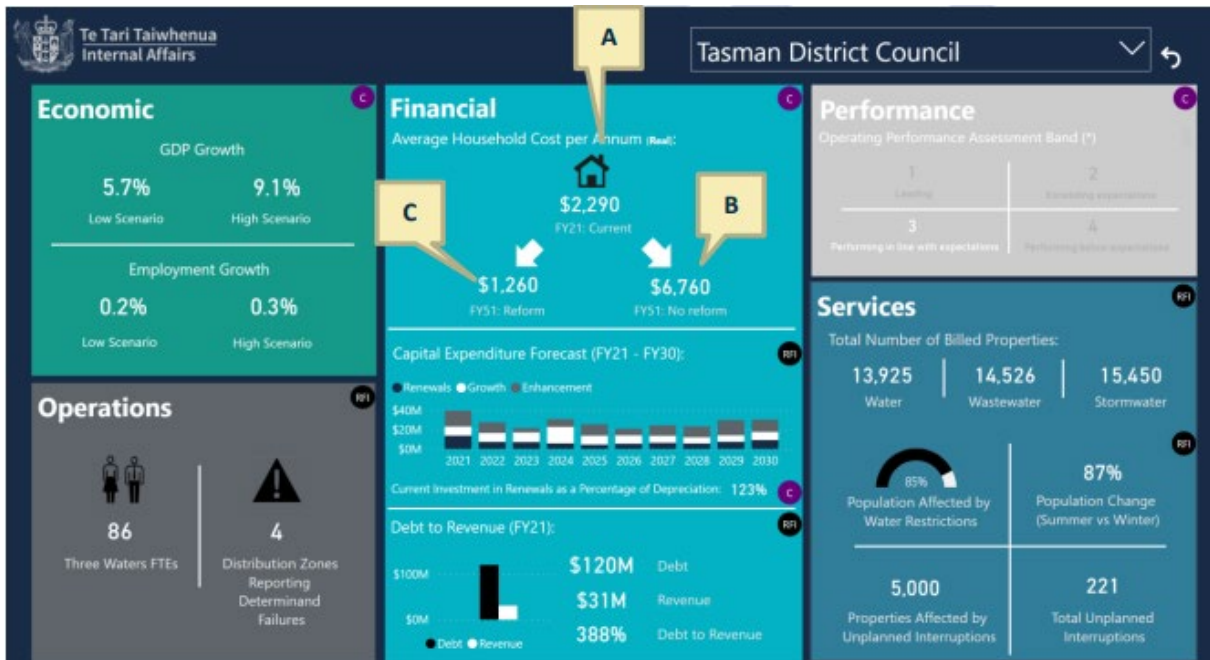
6 Tasman District Council – Specific Information and Analysis

- 6.1 While the Government considers that a national case for change has been made, the Council will ultimately need to make a decision based on its local context.
- 6.2 The Council does not have a national interest test for its decision making. The Council is required to act in the interests of its communities and the community's wellbeing (now and into the future), provide opportunities for Māori to contribute to its decision-making processes, ensure prudent stewardship and the efficient and effective use of its resources in the interests of the District (including planning effectively for the future management of its assets) and take a sustainable development approach.
- 6.3 The Council currently delivers three waters on a standalone basis utilising an alliance comprising in-house staff and a contractor.
- 6.4 The first report was considered by Council at its meeting on 12 August 2021 (**Attachment 1**). The Council passed the following resolution:

That the Full Council:

- 1. receives the Three Waters Report Update - Revised Version with Correct Boundaries report, RCN21-08-3; and**
 - 2. confirms continued engagement with the Department of Internal Affairs so that the Full Council can then make a more informed decision on Three Waters Reform at a future date; and**
 - 3. notes that further engagement be undertaken with Te Tau Ihu iwi to provide better understanding prior to any decision of the Full Council on the Three Waters Reform.**
- 6.5 The WICS dashboard for Tasman was included in the 12 August 2021 report to the Council, however it is included in **Figure 2** below for reference in this report.

Figure 2 – WICS Dashboard for Tasman District Council

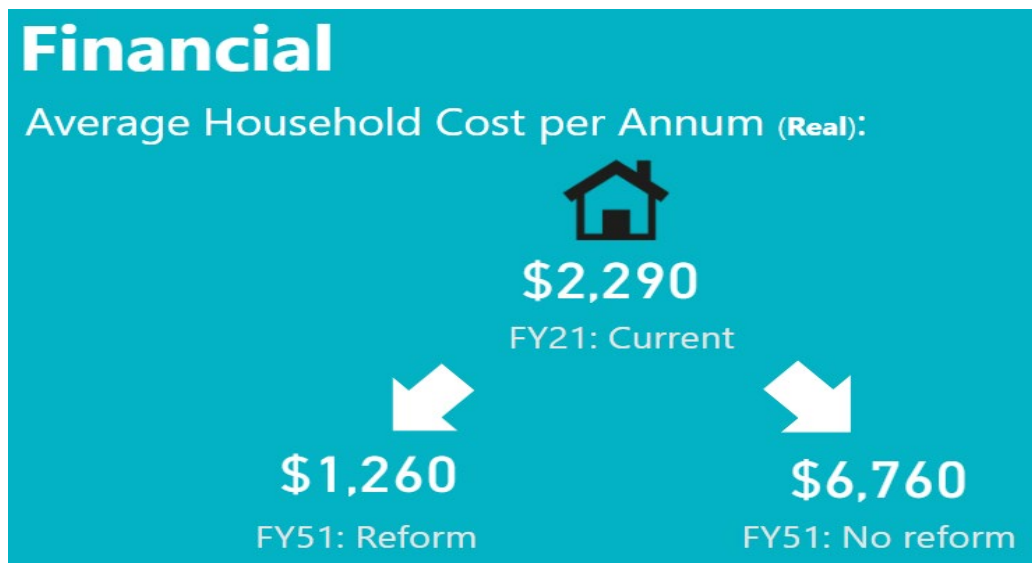


6.6 Since the Council meeting on 12 August 2021, there has been ongoing discussions with DIA and with LGNZ on the various matters related to the Government’s stated intentions. The Level 4 Covid-19 lockdown has meant that those discussions have largely been via zoom or webinars, both at governance and executive management levels. This has been further supplemented by numerous emails and electronic correspondence containing a plethora of information; some of which is not new but interspersed with more relevant new information.

6.7 The Government assessment and modelling of the Councils’ RFI was undertaken by the Water Industry Commission of Scotland (WICS). The summarised outcome of this assessment and modelling is in the form of a ‘dashboard’.

6.8 The financial component of the WICS dashboard is outlined in **Figure 3** below.

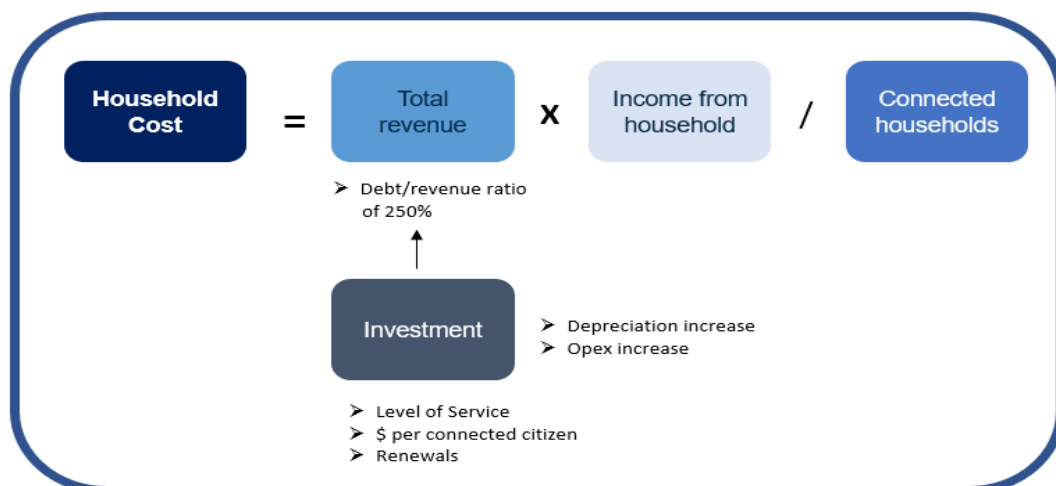
Figure 3 – Outlining WICS Assessments of the Financial Impacts for Council



Note Figure 3 is from the WICS dashboard and although it says the costs are in FY21 (Financial Year 2021) they are based on Council's RFI which was actual 2019/2020 costs.

- 6.9 The 2019/2020 annual costs per household within the Tasman District for the three waters is **\$2,290**.
- 6.10 If the Council was to opt out of the reforms, then the forecast annual household cost would rise to **\$6,760** in 2051.
- 6.11 However, if the Council opted into the reforms and became a part of the new Water Service Entity then the forecast annual cost per household would drop to **\$1,260** in 2051.
- 6.12 The following **Figure 4** outlines how the household cost is determined by calculating the total investment required to determine the total revenue. The total revenue is then multiplied by 70%, which is the WICS assumption of the proportion of the total revenue coming from households, divided by the average number of households billed across all three waters.

Figure 4 – Outlines the formula used by WICS to determine Household Costs



- 6.13 **Table A** summarises WICS assessment for the Council. It lists the average cost per household for all three waters as per the RFIs submitted by each of the 22 councils within WSE 'C'. Then WICS predicted cost per household in 2051 in the scenario of the Council opting into reform and opting out of reform. The table also lists the number of properties connected to water and wastewater and the number of properties rated for stormwater services.

Table A Detailing Councils Average costs/household and the number of billed properties

| | Average Annual Cost per Household | | | Billed Properties | | | |
|---------------------|-----------------------------------|------------------|----------------|-------------------|----------------|----------------|------------------|
| | 2021 | 2051 With Reform | 2051 No Reform | WS | WW | SW | Ave of WS and WW |
| Tasman | \$2,290 | \$1,260 | \$6,760 | 13,925 | 14,526 | 15,450 | 14,226 |
| WSE C Totals | \$974 | \$1,260 | \$3,623 | 383,114 | 374,861 | 392,256 | 378,988 |

Note - The figures in Table A are in 2021 \$NZ. No escalation has been applied.

- 6.14 **Table A** shows that if all councils 'opted in' then the forecast average costs per household per annum would be \$1,260 in 2051. It also shows that the Council's current annual cost averages \$2,290 per household (note each household would have a different cost – this is just an average across all three waters).
- 6.15 If the Council 'opted out' of the reforms, then WICS has indicated that the forecast average annual household cost in 2051 would be \$6,760. But if the Council 'opted in' then the forecast average annual cost would be \$1,260.
- 6.16 There are several contributors to the varying 2051 average household costs. The assumptions implemented by WICS all contribute to this variation. However, the main contributor is the predicted capital, growth and renewals investment.

Assessment of WICS Assumptions

- 6.17 Immediately after the 12 August 2021 Council meeting, staff convened a project team to undertake a more detailed assessment of the WICS data and assumptions for the Tasman District. These included:
- Impact of the 250% Debt/Revenue Ratio Limit (as applied to the three waters activities)
 - Number of Household Connections
 - Valuation and Depreciation Assumptions
 - Capital Investment Assumptions
 - Operations and Maintenance Assumptions
 - Growth Predictions
 - 70% Revenue from Households Assumptions

- 6.18 The varying impacts of WICS assumptions are discussed in the following sections.

Impact of the 250% Debt/Revenue Ratio Limit

- 6.19 The Government has instructed WICS to take a different approach to its modelling for the Council and for the WSE 'C'. The 250% Debt/Revenue ratio limit has only been applied to the Council (three waters activities) if it opted out of the reform and continued to deliver the three water services. Conversely, the WSE 'C' has no limit on its debt/revenue ratio. For WSE 'C', WICS has assessed that the amount of debt it needs would result in a maximum debt/revenue ratio of 640% compared to the Council's 250% limit.
- 6.20 Staff have assessed the impact of the 250% three waters debt/revenue ratio limit. The following **Table B** contains specific information related to the Debt/Revenue ratio limit and its impact on three waters revenue.

Table B - Comparing Revenue with and without 250% Debt/Revenue Cap

| Year | With 250% Debt/Revenue Limit | | | Without 250% Debt/Revenue Limit | | |
|------|--|---------------|-----------------|--|---------------|-----------------|
| | Annual Price Increase | Revenue | Debt to Revenue | Annual price increase | Revenue | Debt to Revenue |
| 2022 | 34% | \$50,791,164 | 1.8 | 10% | \$42,977,139 | 2.2 |
| 2023 | 25% | \$65,267,960 | 2.3 | 10% | \$48,599,527 | 3.3 |
| 2024 | 22% | \$81,858,112 | 2.5 | 10% | \$54,957,451 | 4.2 |
| 2025 | 20% | \$100,982,200 | 2.5 | 10% | \$62,147,137 | 4.9 |
| 2026 | 10% | \$114,192,970 | 2.5 | 10% | \$70,277,397 | 5.4 |
| 2038 | 3.0% | \$259,129,078 | 2.46 | 3.0% | \$219,182,909 | 6.46 |
| 2051 | 2.2% | \$504,180,096 | 2.49 | 2.2% | \$426,457,967 | 7.98 |
| | WICS Modelled \$6,760 per household | | | Debt to Revenue 800% Limit: \$5,718 per household | | |

6.21 **Table B** outlines the first five years, plus 2038 and 2051. It details the revenue under the WICS application of the 250% three water debt/revenue ratio. It also outlines the revenue if this cap was removed and that if we place no restriction on the debt/revenue ratio it reaches 800%. Correspondingly the 2051 household bill reduces from \$6,760 to \$5,718 per annum. However, the maximum leverage increases to 100% (debt equals asset value). The 'debt equals asset value' would only apply if the three waters debt was ring fenced to the three waters. The Council currently does not ring fence activity debt and funds its balance sheet as a whole, so this the ratio would not necessarily apply.

6.22 **Table B** also outlines the impact on revenue. The actual revenue in 2019/2020 for the three waters activity was \$38,005,194. To stay within the 250% activity debt limit would require significant increases in annual revenue over the first five years. The annual increases dropping to 5.0% in 2028 and then gradually decreasing to 2.2% increase in 2051.

6.23 The revenue for the three waters would primarily come from users. So, the required increases in revenue will directly affect users. The impact of increasing the revenue from \$38,005,194 to \$50,791,164 in the first year will have significant implications for those connected to any of the three water services. Currently that increase is a 34% increase in the first year.

Conclusion – The Impact of not having the 250% Debt/Revenue Ratio Limit is that the predicted household cost in 2051 drops from WICS assessment of \$6,760 to \$5,718.

Number of Household Connections

6.24 In the RFI, the Council provided detail on household properties which were 13,303 connections for Wastewater, 12,213 for Water Supply and 14,124 for Stormwater. The average number of connections is 13,213.

6.25 The following **Table C** outlines the 2020/21 Revenue for each of the three water activities. This revenue does not include revenue from Development Contributions which was \$9.03 million as per **Table I** below.

Table C – Details of Revenue and Household Connections by water service activity

| Activity | 2020/21 Revenue | | | | Household Nos | \$/Household |
|---------------|----------------------|---------------------|---------------------|---------------------------|--------------------|--------------------|
| | Household | Non-Household | Other Revenue | Revenue Total | | |
| Water | \$ 9,868,605 | \$ 2,399,378 | \$ 880,764 | \$ 13,148,747 | 12213 | \$ 1,076.62 |
| Wastewater | \$ 8,846,790 | \$ 2,090,287 | \$ 321,729 | \$ 11,258,806 | 13303 | \$ 846.34 |
| Stormwater | \$ 4,433,128 | \$ 779,956 | \$ 119,922 | \$ 5,333,006 | 14124 | \$ 377.58 |
| Totals | \$ 23,148,523 | \$ 5,269,621 | \$ 1,322,415 | \$ 29,740,559 | | \$ 2,300.54 |
| | | | | Ave Households Nos | 13213 | |
| | | | | Ave \$/Household | \$ 2,250.80 | |

6.26 **Table C** shows that the individual household costs in 2020/21 total **\$2,300** and the WICS assumption of averaging the household numbers results in an average cost of **\$2,251** per household per year.

6.27 WICS have chosen to use the population divided by 2.7 people per household. The 2.7 is too high for Tasman District as the average residents per household is only 2.1. The net effect is that the WICS modelling will give a lower number of households (11,606) which in turn predicts the household revenue to be inflated by around 14%. This would effectively reduce the 2051 without reform household cost from \$6,760 down to \$5,950.

6.28 Although this has an impact, it is not considered significant in the whole context of the impacts of the three waters reform.

Conclusion – the WICS assumption using population and 2.7 persons per household underestimates the number of connections compared to the actual connections. The effect would be to lower the predicted household costs by around 14%.

Valuation and Depreciation Assumptions

6.29 Staff have assessed the valuation and depreciation predictions made by WICS and compared them to what the Council has included in its LTP.

6.30 The following **Table D** outlines the Council's valuation and depreciation figures as at June 2020. These were the figures that were included in the RFI upon which WICS made its predictions. These figures have changed slightly for the 2021/2022 year but not significantly.

Table D – Detailing Council's Valuation and Depreciation as at 30 June 2020

| Utility | Replacement Value (\$000) | Depreciated Replacement Value (\$000) | Annual Depreciation (\$000) | Average Life (years) |
|--------------|---------------------------|---------------------------------------|-----------------------------|----------------------|
| Stormwater | \$192,075 | \$148,515 | \$1,759 | 109 |
| Wastewater | \$244,926 | \$171,587 | \$3,940 | 62 |
| Water Supply | \$196,634 | \$120,922 | \$3,826 | 51 |

| | | | | |
|--------------|------------------|------------------|----------------|-----------|
| Total | \$633,634 | \$441,024 | \$9,525 | 67 |
|--------------|------------------|------------------|----------------|-----------|

- 6.31 The stormwater activity is primarily made up of fixed infrastructure; namely catchpits, pipes, manholes, headwalls, detention dams and lined and unlined open channels. If designed and installed appropriately, these assets will last much longer than water and wastewater assets. This is reflected in the average life of 109 years.
- 6.32 The water and wastewater activities are similar in that both have fixed infrastructure but also have components that have smaller life spans. The treatment plants and pumpstations contain expensive operational equipment that often needs major maintenance or replacement more frequently than the fixed infrastructure. That is why the average life of water and wastewater assets is lower than stormwater assets.
- 6.33 **Table D** notes that the average life across all the three waters is around 67 years.
- 6.34 WICS has assumed an average life across the three waters as being 43 years, which is 64% of our 67 years of average life. The natural consequence is that WICS has assessed that the Council's renewal investment will be 50-60% greater than what the Council has predicted. The Council may have overestimated the lives of its three waters assets, however it is unlikely to be in the order of 50-60%.

Conclusion – WICS has stated that the Council has undervalued its three water assets and that the lives of those assets in general are much lower than the Council has stated. The result is that WICS assess a 50-60% greater investment is needed in the Council's three water activities.

Capital Investment Assumptions

- 6.35 WICS have forecast a large investment required to lift New Zealand's three waters infrastructure to higher standards from a quality, environmental and efficiency viewpoint. It has considered international standards particularly those in the UK and in its own achievements in Scotland.
- 6.36 In its modelling, WICS has assumed a 45.0% efficiency gain in capital costs over the next 30 years. This is based on the Scottish Water and UK experience. So, although significant cost increases are forecast, the efficiency gains would have had a moderating effect on the increases modelled.
- 6.37 For the Tasman District, WICS estimate a more than trebling of the forecast capital expenditure between now and 2051 (30 years). The following **Table E** summarises what the Council has forecast in its LTP 2021-2031 and in its Infrastructure Strategy 2021/51.

Table E – Council's Capital Investment in LTP 2021/31 and Infrastructure Strategy 2021/51

| | Capex (\$ million) | | | |
|-------------------------|--------------------------|-----------------|-----------------------------------|-----------------|
| | Long Term Plan 2021-2031 | | Infrastructure Strategy 2021-2051 | |
| | Total | Average/year | Total | Average/year |
| Water Supply | \$ 124.33 | \$ 12.43 | \$ 280.61 | \$ 9.35 |
| Wastewater | \$ 103.77 | \$ 10.38 | \$ 377.80 | \$ 12.59 |
| Stormwater | \$ 62.84 | \$ 6.28 | \$ 203.12 | \$ 6.77 |
| Total Investment | \$ 290.94 | \$ 29.09 | \$ 861.53 | \$ 28.71 |

6.38 The Council has forecast a total investment of \$290 million in the next 10 years and then a total investment of \$862 million in the next 30 years. The average annual spend is around \$29 million.

6.39 In comparison, the following **Table F** compares what the Council has forecast with what WICS has forecast for both the next 10 years and for the next 30 years.

Table F – Comparison of Council and WICS Forecast Capital Investment.

| Capital Investment (\$'000) | | | | |
|--|-------------------|---------------------|-------------------|-------------------|
| Item | WICS | | Council | |
| | 2031 | 2051 | 2031 | 2051 |
| Renewals and Capital | \$ 198,675 | \$ 1,069,446 | | |
| Levels of Service, Enhancements and Growth | \$ 657,528 | \$ 1,972,585 | | |
| Total Capital Investment | \$ 858,234 | \$ 3,044,082 | \$ 290,946 | \$ 861,523 |

6.40 **Table F** shows that over the next 30 years WICS forecasts a total capital investment of **\$3.04 billion** compared to the Council's **\$0.86 billion**.

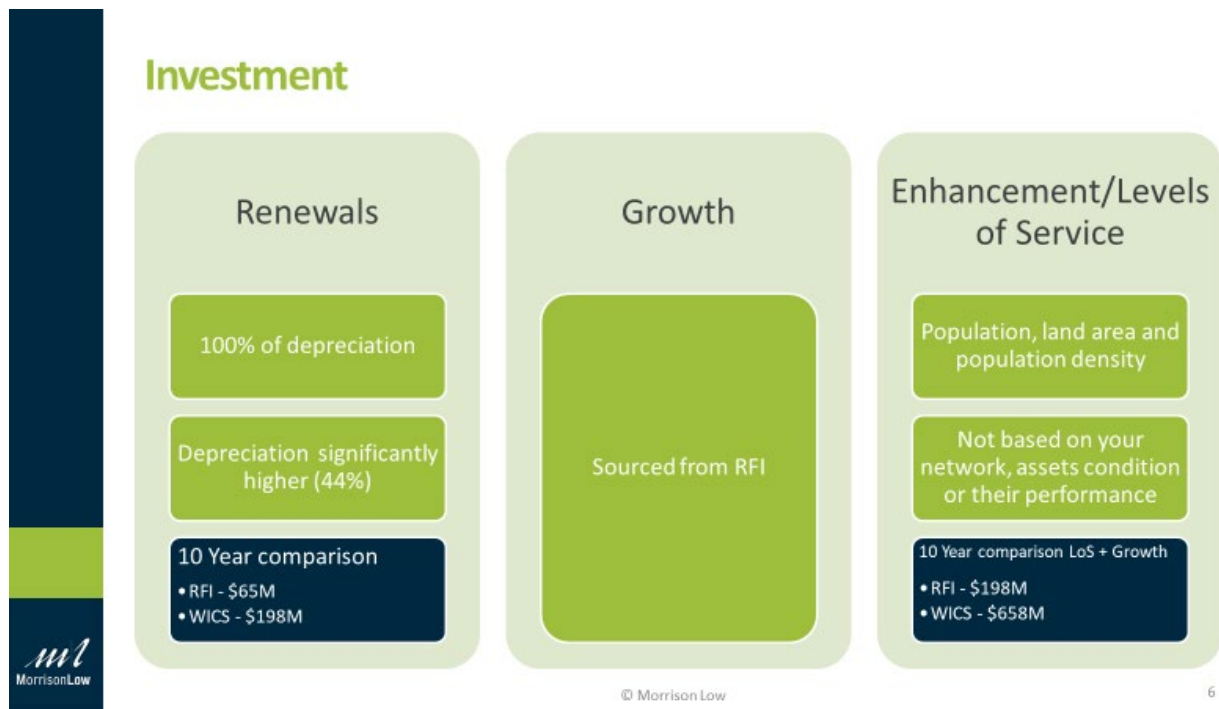
6.41 What we do know is that the Council will need to deal with significant capital cost challenges not yet reflected in its LTP or in its 30-year infrastructure strategy. This is due to the unconfirmed but predicted future increased service delivery standards likely to be required by the new water regulator, Taumata Arowai. Some of these are becoming more certain because of the water reform programme. More details on the quantum of the increased service delivery standards are outlined in **Section 8** of this report.

6.42 Capital investment is the single biggest driver of cost in the WICS model. The potential investment requirement over the next 30 years is estimated by WICS for each council. There are three contributory aspects to this investment:

- Renewals (Replacement and Refurbishment);
- Levels of Service (Enhancement); and
- Growth investment.

6.43 Morrison Low has developed a diagram (**Figure 5**) that outlines the renewals, levels of service and growth investment in the WICS model.

Figure 5 – Outlining the WICS assessment of Renewals, Levels of Service and Growth Investment



6.44 In its RFI, the Council has a depreciation rate of 1.14% per year on average. WICS has modelled a depreciation rate of 1.35% initially, rising to 1.75%. The impact of this compounds with the increased investment and a larger asset base. The net result is that WICS has assessed that the Council's renewals investment over 30 years is \$1 billion and the levels of service enhancements will cost \$1.9 billion over 30 years.

6.45 These capital investment revenue requirements have a very significant influence on future household costs.

6.46 Of all the WICS assumptions, this is the biggest contributor to the revenue requirements of the next 30 years.

Conclusion – WICS modelling has indicated that at least 3 times as much capital investment will be required over the next 30 years than what the Council has determined in its Infrastructure Strategy for the three waters. This is to fund renewals, growth, meet the new regulatory standards and increased levels of service.

Operations and Maintenance Assumptions

6.47 The total operating costs for the three waters in 2019/20 was \$19.6 million.

6.48 In its modelling, WICS has assumed a 45.0% efficiency gain in operating costs over the next 30 years. This is based on the Scottish Water and UK experience. So, although significant cost increases are forecast, the efficiency gains would have had a moderating effect on the increases modelled.

6.49 The following **Table G** outlines estimated funding for the Operational and Maintenance (Opex) for Water, Wastewater and Stormwater. These are the estimates

(\$ millions) that are included in the Council's LTP 2021-2031 and Infrastructure Strategy 2021-2051.

Table G - Outlining Council's 30-year Opex and Capex Estimates

| | Opex (\$ million) | | | |
|-------------------------|--------------------------|-----------------|-----------------------------------|-----------------|
| | Long Term Plan 2021-2031 | | Infrastructure Strategy 2021-2051 | |
| | Total | Average/year | Total | Average/year |
| Water Supply | \$ 139.43 | \$ 13.94 | \$ 539.79 | \$ 17.99 |
| Wastewater | \$ 116.48 | \$ 11.65 | \$ 421.54 | \$ 14.05 |
| Stormwater | \$ 34.64 | \$ 3.46 | \$ 111.93 | \$ 3.73 |
| Total Investment | \$ 290.55 | \$ 29.05 | \$ 1,073.26 | \$ 35.77 |

6.50 The increasing operational expenditure over time is related to both the additional operational requirements that will be required to meet the new regulatory standards and the increased capacity due to growth.

6.51 WICS has applied the following assumptions to the operating costs over time to determine its forecast:

- a) an annual increase in operating expenditure of 2.8% per annum;
- b) an annual increase in operating expenditure by 3.0% of the capital and renewals investment to meet the new regulatory requirements, increased levels of service and growth investment;
- c) operating inflation rate of 2.2% per annum;
- d) capital inflation rate of 3.2% per annum; and
- e) interest rate on existing and new borrowing is 3.5%.

6.52 Although WICS has modelled increased operating costs compared to the Council's predictions, they do not affect the revenue requirement as much as the capital investment predictions.

Conclusion – Based on its assumptions WICS modelling has predicted increased operating costs compared to what the Council has predicted. In the context of the impact of the reforms these are not considered significant.

Growth Predictions

6.53 In the LTP 2021-2031, the Council has assumed a growth of 1.7% on average across the 10 years. This has come out of the growth model that the Council developed. The Infrastructure Strategy has growth at around 1.3% for the 30 years, so with growth around 1.7% in the first 10 years, we predict reduced growth rates over the following 20 years.

6.54 WICS has assumed a compounding growth rate of 2.8% per annum in the number of connections added to the three water services. The Council has estimated an average annual increase of around 1.3% over the 30-year period.

6.55 **Table H** compares the WICS assumed growth with what the Council has predicted in its LTP and Infrastructure Strategy.

Table H Comparing WICS and Council's Growth Predictions

| Growth in Rateable Properties | | | |
|-------------------------------|--------|--------|--------|
| Year | WIC | TDC | Var |
| Year 1 | 25,186 | 24,941 | 245 |
| Year 5 | 28,128 | 26,681 | 1,447 |
| Year 10 | 32,292 | 28,799 | 3,493 |
| Year 15 | 37,073 | 30,873 | 6,201 |
| Year 20 | 42,563 | 32,932 | 9,631 |
| Year 25 | 48,865 | 34,612 | 14,253 |
| Year 30 | 56,100 | 36,306 | 19,794 |

6.56 The difference in the WICS growth rate of 2.8% per annum compared to the Council's 1.3% results in a variance of 19,794 connections by 2051. The WICS growth assumptions would reduce the impact of its increased operating and capital investments, because there would be more connections to cover the costs. It is very difficult to assess the exact impact of this assumption other than if it eventuates, it significantly lessens the impact of the increases on each connected household.

6.57 However, if Council's growth figures prove to be correct then there would be less households to fund the investment and the household costs would be greater than the \$1260 forecast by WICS. The actual increase on Tasman households would depend on the overall growth all households within WSE 'C'.

Conclusion – WICS has assumed a much greater growth rate than what the Council has predicted in its LTP 2021-2031 and in its 30 year Infrastructure Strategy. Although the growth predictions are significantly different the overall financial impact is not likely to be significant in the context of the entire reforms. Primarily because the required investment to cater for growth will be determined by the extent of growth.

70% Revenue from Residential Households

6.58 Staff have assessed the impact of this assumption. We have reviewed the current water (urban and rural), wastewater and stormwater funding sources and this is outlined in **Table I** below. The household and non-household revenue includes both the uniform targeted rate on each water and wastewater connection and each property within the urban drainage areas plus the volumetric water charges.

Table I - Detailing the 2020/21 Revenue Sources for each Water Activity

| Source 2020-21 | Stormwater | Water Supply | Wastewater | Total |
|--------------------|--------------------|---------------------|---------------------|---------------------|
| Household | (4,433,128) | (9,868,605) | (8,846,790) | (23,148,524) |
| Non-household | (779,956) | (2,399,378) | (2,090,287) | (5,269,621) |
| DCs | (2,327,765) | (2,819,641) | (3,887,521) | (9,034,928) |
| Sub total | (7,540,850) | (15,087,625) | (14,824,598) | (37,453,073) |
| % Household | 59% | 65% | 60% | 62% |

| | | | | |
|----------------------------|--------------------|---------------------|---------------------|---------------------|
| Port and Airport Dividends | (119,922) | (275,194) | (321,729) | (716,845) |
| Waimea Dam | | (605,570) | | (605,570) |
| Total | (7,660,772) | (15,968,389) | (15,146,327) | (38,775,488) |

- 6.59 It should be noted that the total revenue for the three waters included in the RFI (February 2021) was \$38,005,194. This was the 2019/20 actual revenue. The total revenue in **Table I** is \$38,775,488 and this was the 2020/21 actual revenue.
- 6.60 **Table I** shows that the household revenue equates to an average of 62% of the total revenue for all three waters. This differs from the WICS assumption of 70%.
- 6.61 The 70% assumption probably would not be a significant factor for the Council nor on the overall impact of the reforms.
- 6.62 **Table I** lists the types of revenue that do not originate from households. The non-household revenue would be for commercial and industry connections and any other ancillary income from water sales or wastewater disposal charges. Any unspent development contributions would be transferred to the new entity as well.
- 6.63 The Port and Airport Dividends would stay with the Council and not be transferred to the new entity.
- 6.64 Council's interest and associated debt in the Waimea Community Dam may also be transferred to the new entity.
- 6.65 **Table J** includes more detail on the revenue that the Council received in 2020/21 to help fund its commitment to the Waimea Community Dam.

Table J - Waimea Community Dam 2020/21 Revenue Sources for Water

| Actual Waimea Dam 2020/21 | Revenue | Source |
|------------------------------------|--------------------|----------------------------|
| Environmental Flow Districtwide | (373,342) | In Household/Non-household |
| Environmental Flow Zone of Benefit | (137,621) | In Household/Non-household |
| Waimea Dam - Urban | (784,813) | In Household/Non-household |
| Sub-Total | (1,295,776) | |
| NCC Portion Environmental Flow | (13,017) | In Waimea Dam above |
| Share of JV income | (231,895) | In Waimea Dam above |
| Interest Income Pre Funding | (360,658) | In Waimea Dam above |
| Sub-Total | (605,570) | |
| Total | (1,901,346) | |

- 6.66 The first sub-total of \$1,295,776 is included in the household and non-house revenue in **Table J**. The second sub-total of \$605,570 is reflected as the Waimea Community Dam income in **Table J**.
- 6.67 **Table J** outlines the actual revenue for the Waimea Community Dam in 2020/21. The dam is still being built and all costs have not been spent yet. The dam is scheduled to be completed late 2022 and therefore most of the costs would have been incurred during the 2022/23 year.
- 6.68 If the Waimea Community Dam is transferred to the new WSE, then the revenue from the Environment Flow Districtwide rates and the Environmental Flow Zone of Benefit

rates would likely no longer be rated by the Council. Those properties within those two areas that are rated and are not connected to a Council water supply would likely not have the either of those rates levied from the day the WSE operates i.e. from the proposed 1 July 2024. This could not be confirmed until the financial details are resolved during the transitional phase of establishing the WSE. The transfer of the Councils interest in the Waimea Community dam would be subject to a separate due diligence process.

6.69 **Table K** below outlines the revenue that would be required after the dam is completed. This is for the 2023/24 financial year and is included in the Long Term Plan 2021-2031. This table has been included to show the scale of revenue required once the Waimea Community Dam is commissioned. This is on the LTP assumption that the capital cost of the dam is \$158.5m.

Table K - Waimea Community Dam 2020/21 Revenue Sources for Water

| Waimea Dam 2023/24 | Revenue | Source |
|------------------------------------|--------------------|----------------------------|
| Environmental Flow Districtwide | (1,175,471) | In Household/Non-household |
| Environmental Flow Zone of Benefit | (503,773) | In Household/Non-household |
| Waimea Dam - Urban | (1,216,152) | In Household/Non-household |
| NCC Portion Environmental Flow | (23,316) | In Waimea Dam above |
| Share of JV income | 0 | In Waimea Dam above |
| Interest Income Pre-Funding | 0 | In Waimea Dam above |
| Total | (2,918,712) | |

Conclusion – The WICS assumption that 70% of the revenue comes from households is not accurate for the Council. In 2020/21 the Council assessed it at 62% on average. The overall impact is not likely to be significant for the Council.

7 Financial Implications

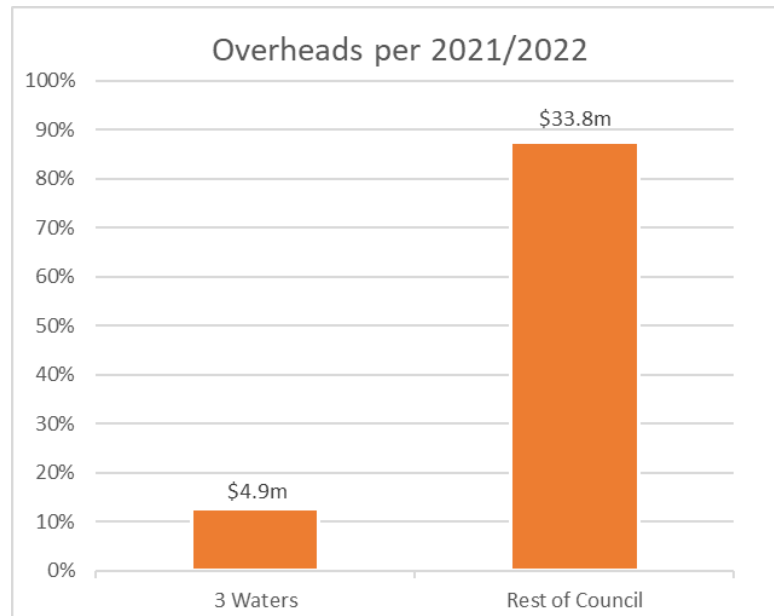
7.1 The Council has several questions around how big a financial impact the three waters leaving the Council would have on its overall financial performance. This report focuses on six specific areas of Council business and outlines the potential impact should the three waters be transferred to the new WSE 'C'. The six specific areas are;

- Overheads Allocated
- Rates Levied
- Capital Expenditure
- Gross Debt
- Staff and Suppliers
- Revenue Impacts

Overheads Allocated

7.2 The overheads attributable to the three waters represents a total cost of around **\$4.88 million** in Year 1 of the LTP 2021-2031. This equates to around 13.7% of the overhead costs associated with the Council as depicted in the **Graph 1** below.

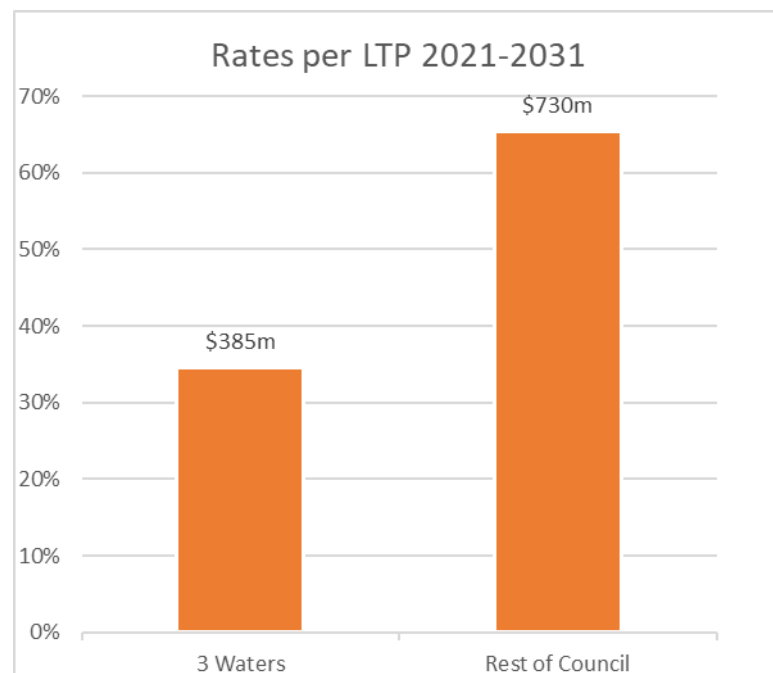
Graph 1 – Showing the Proportion of Overheads covered by the Three Waters Activities



Rates Levied

7.3 The rates that the Council has levied in Year 1 of the LTP 2021-2031 for the three water activities are around 34.6% of the total rates that the Council levies across the district. **Graph 2** outlines this proportion.

Graph 2 – Outlining the portion of rates levied for the 3 waters activities.



Capital Expenditure

- 7.4 The following **Graph 3** outlines the proportion of Capital expenditure in Year 1 of the LTP 2021-2031. This is around 46.4% of the whole capital expenditure programme.

Graph 3 – Outlining Three Waters Proportion of Capital Funding



Gross Debt

- 7.5 The following **Graph 4** outlines the proportion of gross debt that is attributed to the three waters activities. This is around 52.2% of the Council's gross debt.

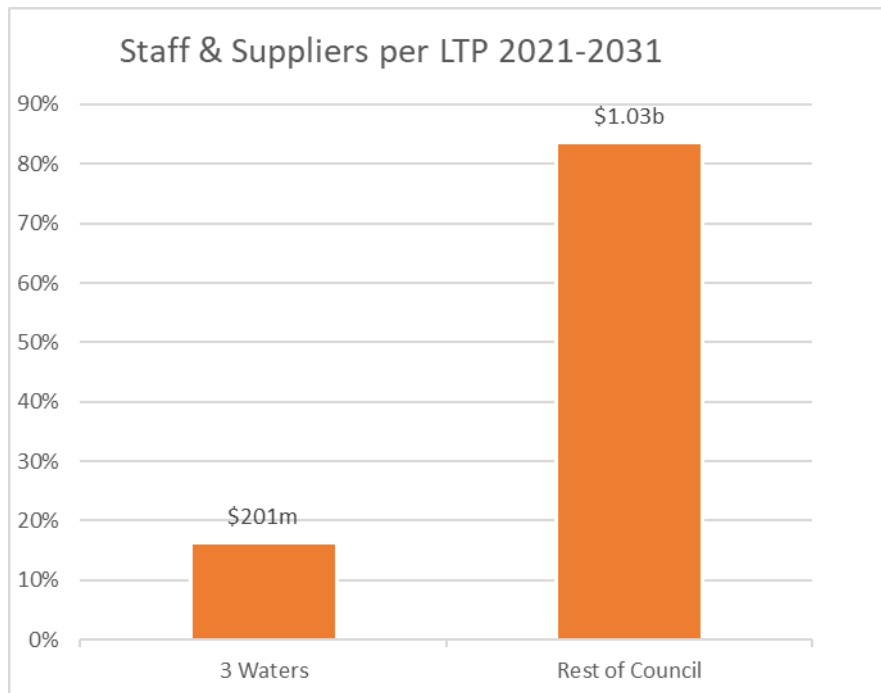
Graph 4 – Outlining Three Waters Proportion of the Council's Gross Debt



Staff and Suppliers

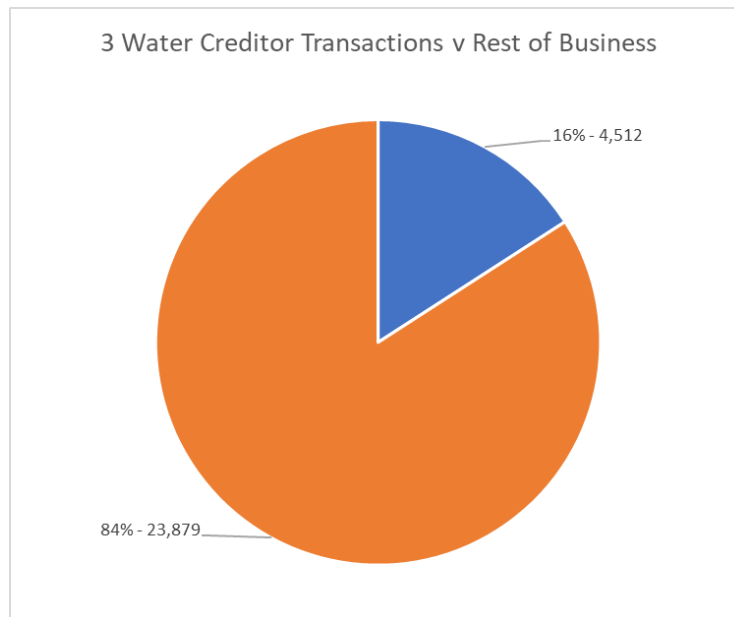
- 7.6 The following **Graph 5** outlines the proportion of staff and supplier costs that are attributed to the three waters activities. This is around 46.4% of the Council's total costs.

Graph 5 – Outlining Three Waters Proportion of the Council's Operating Costs



- 7.7 Although the proportion of the cost is 46.4%, the number of creditor transactions that are generated by the three waters is only 16% of the total creditor transactions undertaken by the Council. As a proxy, staff have analysed the numbers of payments made to suppliers in these activities and compared it to the Council as a whole. **Graph 6** below outlines this.

Graph 6 - Showing the portion of Water Creditor Transactions of All Council Transactions



- 7.8 Other areas of the business will be impacted. There is unlikely to be a reduction for example in the resourcing required for the rates function. That is because while some properties will not have the three water rates, their removal does not alter the number of Rates notices or transactions per se. Other areas like Water Billing will no longer be required so will reduce workloads.

Revenue Impacts

- 7.9 Staff have reviewed the income and expenditure streams associated with the three waters (excluding Waimea Community Council non-extractive use income). The only income stream that would not transfer would be the dividends received associated with Councils shareholding in Nelson Airport Ltd and Port Nelson Ltd.
- 7.10 In 2020/21 this dividend income was \$716,845 and is predicted to vary slightly over the next 10 years. **Table L** below illustrates the quantum of these for each water service activity as outlined in the Council's LTP 2021-2031.

Table L – Detailing the Predicted Dividends in the LTP 2021-2031

| Dividend Income | Year 1 | Year 4 | Year 10 |
|-----------------|-----------------------|-----------------------|-----------------------|
| | LTP Budget 2021/22 | LTP Budget 2024/25 | LTP Budget 2030/31 |
| Stormwater | \$ 106,000 | \$ 126,000 | \$ 130,000 |
| Water | \$ 277,000 | \$ 330,000 | \$ 339,000 |
| Wastewater | \$ 284,000 | \$ 340,000 | \$ 348,000 |
| Total | \$ 667,000 | \$ 796,000 | \$ 817,000 |

- 7.11 The total revenue in 2020/21 for the three waters activities was \$38.8 million (**Table I** above). With the dividend income staying with the Council, the three waters revenue that will be transferred to the new WSE would be around \$38.1 million.

- 8.1 Staff have assessed the increased regulatory requirements that are likely to be implemented by Taumata Arowai, the new water regulator. Taumata Arowai's statutory powers will be through the Water Services Act as and when it is enacted.
- 8.2 It should also be noted that the Water Supply Authority (WSA) will still have Resource Management Act (RMA) compliance obligations and the new three waters environment will still require compliance with conditions of resource consents issued under the RMA.
- 8.3 For this report, the WSA is either the Council, if it chooses (and is able to) to 'opt out' of reforms or the new WSE, if the Council chooses to 'opt in' to the reforms. The increased regulatory requirements for any WSA are summarised as follows:
- a) Proposed lifting of New Zealand Drinking Water Standards which will require much greater monitoring and reporting against specific key performance indicators.
 - b) Requirement of the Water Services Bill for local authorities to ensure non-council supplies are brought up to the higher standards. This will affect hundreds of community and small rural supplies and will be beyond the Council's ability to resource currently.
 - c) Lift in stormwater and wastewater discharge standards. Although our wastewater treatment plants and discharges are all consented and compliant at present, future upgrades are inevitable. However, the Council has allowed for relocating the Motueka Wastewater Treatment Plant within the next 30 years.
 - d) Climate change mitigation is requiring greater focus. NIWA's recent report to the government's Environment Committee on 22 April 2021, predicts more frequent and heavier rainfall events which will present stormwater infrastructure capacity and sewage inundation and infiltration challenges.
 - e) The upgrade costs to maintain current standards will be more than we have budgeted for and even higher when Taumata Arowai impose higher discharge quality requirements.
 - f) Potential increased investment in infrastructure to cater for growth both adjacent to the larger urban centres but also in rural townships that may not have sufficient water and wastewater capacity at this stage.
- 8.4 Staff have assessed that the WSA will need to focus on the following:
- a) **Treatment Plant Upgrades** (Water and Wastewater)
 - Treatments plants to be upgraded in accordance with the size of the respective scheme and/or the requirements of consent conditions.
 - Most have already been identified and funding provided for in the Council's LTP 2021-2031 to comply with the current drinking water standards and the resource consent conditions for discharge.
 - Any increase in drinking water standards and/or resource consent conditions will require greater investment initially and ongoing operational costs.

- b) **Water Safety Plans** - Implementation of Water Safety Plans and the ongoing monitoring and reporting against these WSPs.
- c) **Emergency Response Plans** – these will have to be developed and implemented for both the water and wastewater services. This includes managing the various chemicals that are stored at the treatment plants.
- d) **Inflow/Infiltration (I/I)** - Ongoing programme of identifying, locating, and repairing I/I sources. It is not clear what the I/I compliance standards will be. However, we know that we have significant I/I problems with all our wastewater networks, and these will require greater investment in compliance monitoring of private properties as well as inspecting and repairing wastewater reticulation.
- e) **Manhole Condition Assessments** – to determine that all manholes are functional and clear. This will be for wastewater and stormwater activities.
- f) **Source Protection Plans** - These essentially identify water source catchments and implement measures to minimise the risk of raw water being contaminated. There will be regulatory requirements that manage the activities undertaken in catchments. The Council has its water supply locations mapped and the resource consent applications are checked against the National Environmental Standards for Sources of Human Drinking Water. The aim is to protect source of drinking water from becoming contaminated. Being a unitary authority, it has visibility of all the district and land use consents and it has water expertise that most district councils lack. Additionally, the Council manages its water takes and has specific rules to protect at risk aquifer recharge areas. These are to ensure that aquifer recharge is maintained, and water takes are within sustainable limits. The Council is currently waiting for MfE to finalise their guidance on specific source protection zones for large scale drinking water takes. The Council aims to implement this as part of the Tasman Environment Plan (under development).
- g) **Resource Consents Conditions** – Improve monitoring to ensure continual compliance with resource consent conditions for water takes, wastewater and stormwater discharges.
- h) **Standard Operating Procedures (SOPs)** - All water treatment plants require SOP's. Additional resources will be required to develop and maintain SOPs for all water treatment plants and wastewater schemes. At this stage there are 15 independent standard operational procedures that need to be implemented. These not only affect treatment plants, but pumping stations, reservoirs and major pipeline breaks. They also involve customer charters that require consultation with consumers.
- i) **Trade Waste Management** – increased monitoring of trade waste discharges into the wastewater network. The WSE will need to have statutory powers to manage trade waste discharges. Currently the Council has bylaws. It is not clear how WSE will obtain its statutory powers.
- j) **Sampling and Monitoring** – There will be a need to increase sampling and monitoring to meet the key performance indicators established by Taumata Arowai. At this stage we understand this will include:

- Additional zone sample taps required throughout all water supply reticulation.
 - Continuous monitoring requirements for all large supplies including turbidity meters.
 - Adequate storage and backup of monitoring data and records.
 - Regular SCADA software upgrades/maintenance.
 - Upgrade and maintenance of Water Outlook (centralised database accessible by Taumata Arowai).
 - Regular maintenance of all plant monitoring equipment/replacement of probes and equipment where required.
 - Regular testing for all large supplies (currently seven in the District) for Trihalomethanes (THM) & Halogenic Acetic Acid (HAA) disinfection by-products.
 - Annual P2 chemical testing for the seven large water supplies and three-yearly for the seven small water supplies (tests include for pesticides and chemicals).
 - Radiological testing for all supply bores once every five years.
- k) **Automated Bulk Water Supply Points** – currently water takes are by permit and location, utilising approved hydrant upstands. In future we will have to install accessible permanent automated bulk water supply points at specific locations.
- l) **Zone Metering** – The water supplies will have to be zoned with water meters to determine demand and leakage. The smaller supplies won't need to be zoned but the larger supplies like Richmond already have the necessary zones established. They are currently not connected to the Council's SCADA⁵ system but will need to be so that continuous monitoring can occur.
- m) **Restrictors** – need to be checked at least annually. The Council undertakes annual checks now.
- n) **Pipe Condition Analysis** – more intensive material testing required. Currently only desktop analysis based on when pipes are exposed for repair or new connections.
- o) **Backflow Prevention** – currently approximately 90% of the current household and commercial connections have backflow prevention installed. The LTP includes funding to complete the final 10% of connections.
- p) **Fire Hydrants** – Most urban areas meet code for flow and pressure, however some high points in the residential network need improvements to comply. We more than comply in major commercial areas.
- q) **Climate Change** – currently the Council has no plan for impacts on surface or shallow groundwater takes. The Waimea Community Dam will provide greater resilience during droughts. Taumata Arowai will be focusing on the safe management of water supplies during weather events and will require that all

⁵ The Supervisory Control and Data Acquisition system to remotely manage and control key components within the three water activities as well as receive monitoring data real-time.

water supplies be managed appropriately when there are events which will become more common with climate change. Without adequate treatment barriers and reservoir storage in place this will require extra staff hours for management of compliance at the plant. Applying a 'boil water' notice every time to seemingly mitigate the public health risk will not be an acceptable response. 'Boil water' notices must be used sparingly in extreme cases and as a last resort.

- r) **Service Delivery Performance** – the Water Supply Authority will have key performance indicators that measure the following:
- Response times for different types of failures/supply disruption;
 - Service Interruptions – the number of unplanned interruptions per 1000 properties per year;
 - Complaints - the number of complaints per 1000 properties per year;
 - Hydrant Testing – the number of tests undertaken per year by %;
 - Reservoir Storage – a minimum of 1.3 days of water storage;
 - Backup Generation – minimise interruptions and overflows by ensuring backup generation for all treatment plants and pumpstations;
 - Water Metering – install and monitor all water meters and restrictors;
 - Residential Water Demand – monitor water demand per household per day; and
 - Water Loss – Report in Infrastructure Leakage Index (ILI).
- s) **Annual Report Levels of Service** – there are numerous levels of service parameters in addition to the ones listed above that the Water Supply Authority will need to report on annually. These range from resource consent condition compliance, Drinking Water standards compliance, planned and unplanned interruptions to supply and all the aspects noted above.

- 8.5 The reason these have been highlighted is that the new regulatory environment for the three waters is going to be far more stringent not only for monitoring but also for reporting. These obligations will apply to the Council if it opts-out of the three waters reform or the new WSE if the Council opts in.

9 Service Delivery Implications

- 9.1 Staff have reviewed the new regulatory environment and completed an assessment of the impacts of the three waters reform on resourcing, staff numbers and on its three waters service delivery contracts.

Staff Employment Considerations

- 9.2 While no decisions have been taken on whether to proceed with the reforms as proposed, Council staff/contractors that work in the three waters will be affected by the reforms proposed.

- 9.3 At this stage the Government has confirmed the certainty for existing Council-employed staff regarding their ongoing role. The Government maintains that the water service delivery reforms will provide real opportunities to workers, both through increased career opportunities and in removing any systemic issues that have been constraining their ability to deliver water services at a level that is in the best interest of their communities.
- 9.4 A major focus of both central and local government is on ensuring that reform does not result in a loss of current staff, but in fact creates a platform to attract, develop and retain talent and enhance local expertise.
- 9.5 The Government has confirmed that any member of staff who works primarily within the three waters will be guaranteed a role in the new WSEs whilst retaining key features of their current role, salary, location, leave and hours/days of work. A more bespoke approach is required for senior executives, other staff and contractors. The Government will work with councils, staff, and unions further on this through the transition period.
- 9.6 The Government has stated that it wants to provide as much certainty as possible, noting there is still more work to do. These workers should be assured that their wellbeing is a critical objective for both central and local government.

Staffing Requirements

- 9.7 Whether the Council decides to opt-in or opt-out of the three waters reform, there will be a more stringent regulatory regime for all three waters. The Council is aware that a water regulator, Taumata Arowai has been established and its role is to ensure these higher regulatory requirements are complied with.
- 9.8 Staff have assessed the likely resourcing requirements to enable compliance. The following **Table M** outlines the current fulltime equivalents (FTEs) involved in the three water activities for the Council and the FTE requirements predicted by Council staff based on the new regulatory environment. These include Council staff as well as staff contracted through the alliance with Downer. The Downer staff are included in the service delivery row in **Table M**.

Table M – Outline the Current and Predicted Full Time Equivalent Staffing Requirements based on the Predicted new Regulatory Environment

| Functional Area | Full Time Equivalents | |
|--------------------------|-----------------------|-------------|
| | Current | Predicted |
| Three Waters Operational | 18.7 | 26.5 |
| Strategic Planning | 3 | 3 |
| Project Management | 5 | 7 |
| Support Service | 5.5 | 7 |
| Service Delivery | 37.5 | 43 |
| Total FTEs | 69.7 | 86.5 |

- 9.9 Currently the Council has a total of just under 70 FTEs committed to delivering the three water services. With the new regulatory environment outlined above, staff have

assessed that we would need just under 87 FTEs to deliver the three water activities and meet the regulatory requirements.

- 9.10 It should be noted that WICS has assessed 86 FTEs would be required by the Council to meet its obligations. This can be seen on the WICS dashboard in **Figure 2** above.

Contracted Service Delivery

- 9.11 The Council is aware that currently the service delivery aspects of the three waters is undertaken under an alliance contract with Downers. The initial stage of this contract finishes on 30 June 2023, with the option to extend for another two years on two occasions. The contract could remain in force until 30 June 2027.
- 9.12 The contractual commitments will need to be considered during the transition phase should the Council choose to 'opt in' to the reforms. My understanding is that all the contracts within each of the councils will be honoured until the time for renewal. The WSE will then decide how best to aggregate, if necessary, procure and deliver those services into the future.
- 9.13 The renewal of these contracts is probably not the major risk for this region. The greater risk is the increased capacity and capability that will be required within the suppliers in the service delivery sector. More resources and investment will be required regardless of who is the Water Supply Authority.
- 9.14 If the Council chooses to 'opt out' of the reforms, then there is no reason why the current contractual arrangements wouldn't continue.

| |
|-----------------------------------|
| 10 Waimea Dam Implications |
|-----------------------------------|

- 10.1 The Waimea Community Dam considerations are primarily financial. Discussions to date have centred around the Council transferring its interest in the dam into the new three waters entity. It is not practicable to attempt to separate the urban water supply aspects of this water augmentation project from the other public good aspects. It is the same water release that services both outcomes. So, the proposal would be to transfer the Council's entire interest and associated debt into the new water entity. This presents a unique advantage to the Tasman District.
- 10.2 If a transfer of the Council's interest occurred that would be arranged so it did not directly impact the current arrangements between Waimea Irrigators Ltd (WIL), Waimea Water Ltd (WWL) and the Council. That would include WIL's rights and obligations under the shareholders agreement, the project deed, or the Wholesale Water Augmentation agreements.
- 10.3 There are a large number of interrelated agreements that relate to the Waimea Community Dam project. These include financing arrangements, loan security documents, land and access, agreements between shareholders, the project deed and the ongoing Wholesale Water Augmentation agreements with WIL and WWL. These and other Waimea Community Dam arrangements do not provide for the Council to transfer its interests, obligations, or rights in the dam. To give effect to a transfer there will need to be specific transitional provisions in the legislation setting

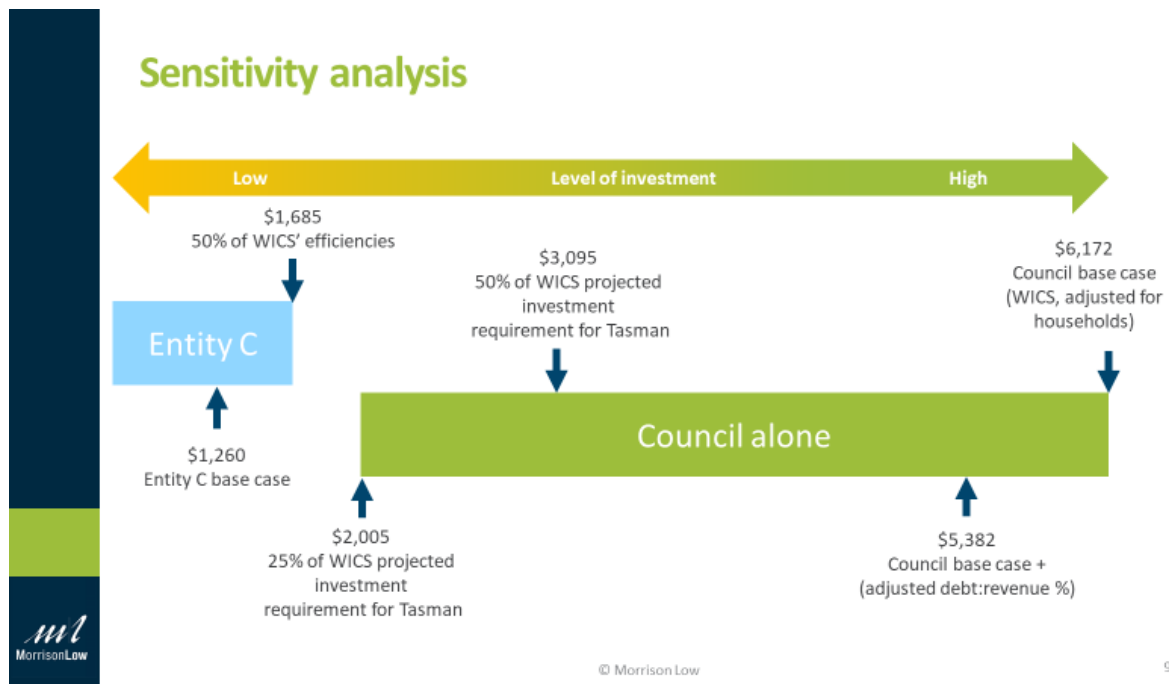
- up the three waters entities. Some arrangements would also require changes as they rely on LGFA back-to-back financing.
- 10.4 It is anticipated that the existing (and proposed) shareholder advances between the Council and WWL would transfer to the three waters entity. These advances are not included in the net debt limit set by the Council as part of its financial strategy. The shareholder advances comprise \$27.475m in relation to irrigator capacity and \$11.6m in relation to the Council's capacity.
- 10.5 The Council has forecast using up to \$18.75m of income from its Enterprise activities (primarily forestry) to repay debt in relation to advances for the project. This relates to two loans.
- a) A \$8.75m loan agreement between the Council and WWL. This loan is serviced by WIL for the first 15 years, then by the Council. The Council plans to repay the outstanding amount at year 15. Funds are being put aside from the Enterprise activity over the first 15 years to enable repayment of the outstanding amount. Given the three water developments, the Council should consider the timing of any funds transfer as part of the transition arrangements. Any specific reserves related to the dam would automatically transfer to the three waters entity.
- b) The \$10m environmental loan from Crown Irrigation Investments Ltd (CIIL). This loan is over 20 years with the first repayment of \$2.5m due on 21 December 2023. This repayment is forecast to be funded from the Enterprise activity income. As part of any transitional arrangement council could consider refinancing this \$2.5m repayment through the Local Government Funding Agency (LGFA). That approach would be consistent with some other funding and would reflect the delayed completion date for the project. In that case any outstanding LGFA loan liability would likely transfer to the three waters entity.
- 10.6 If the Council's interest in the dam transfers to a three waters entity then from 1 July 2024 the Enterprise activity income stream previously assigned to repaying dam debt, would become available for other Council activities including re-investment in income earning assets and/or reducing Council debt.
- 10.7 How the proposed three waters entity would recover the costs of the dam not currently planned to be recovered through the council water charges, is not yet clear. A similar matter is outstanding regarding the recovery of stormwater costs which also do not align well with physical water connections to the property.

11 Three Waters Reform – Opt-in and Opt-out Sensitivity Analysis

11.1 Morrison Low, as part of its assessment of the WCIS modelling and outputs, has undertaken a sensitivity analysis for the Council. This analysis looks at the financial aspects of 'opting in' to the reforms or 'opting out' and going alone.

11.2 The following **Figure 6** outlines the results of that sensitivity analysis:

Figure 6 – Financial Sensitivity Analysis detailing the Council alone or the new WSE



11.3 **Figure 6** shows that the WICS dashboard outlined in Figure 2 states that within Entity C the average household cost in 2051 would be **\$1,260 per annum**. It also shows that if the efficiency gains over the 30 years was only 50% of the predicted 45% modelled by WICS, that the household cost would rise to **\$1,685 per annum**.

11.4 Conversely, **Figure 6** shows that the WICS assessment of the Council going alone, the 2051 household cost would be **\$6,172 per annum**. (Please note that this differs from the **\$6,670** on the WICS dashboard because Morrison Low have applied a more realistic number of connections than what WICS had assumed).

11.5 Figure 6 also shows that with the Council going alone and the WICS assumptions on projected investments are overstated, then the 2051 predicted household cost drops to the following levels:

- a) With no Debt/Revenue Limit it drops **\$5,382** per annum;
- b) With 50% of WICS projected investment it then drops to **\$3,095** per annum;
- c) With 25% of the WICS projected investment it drops to **\$2,005** per annum.

11.6 Staff noted in **Table G** above, that the WCIS projected total capital investment over 30 years was **\$3,044 million** compared to the Council's **\$861 million**. Therefore, the Council's 30-year capital investment is around 28% of WCIS projected capital investment.

11.7 This suggests that based on the Council's projected investment the 2051 household cost is likely to be slightly higher than the \$2,005 shown in Figure 6. The Entity C 2051 household cost would increase to \$1,685 if only 50% of the efficiencies are gained.

11.8 Staff assess that the projected capital investment plus the increased operational costs required by the new regulatory environment, will result in the cost per household in 2051 being greater than the \$2,005 outlined above. It could be closer to the \$3,095, if

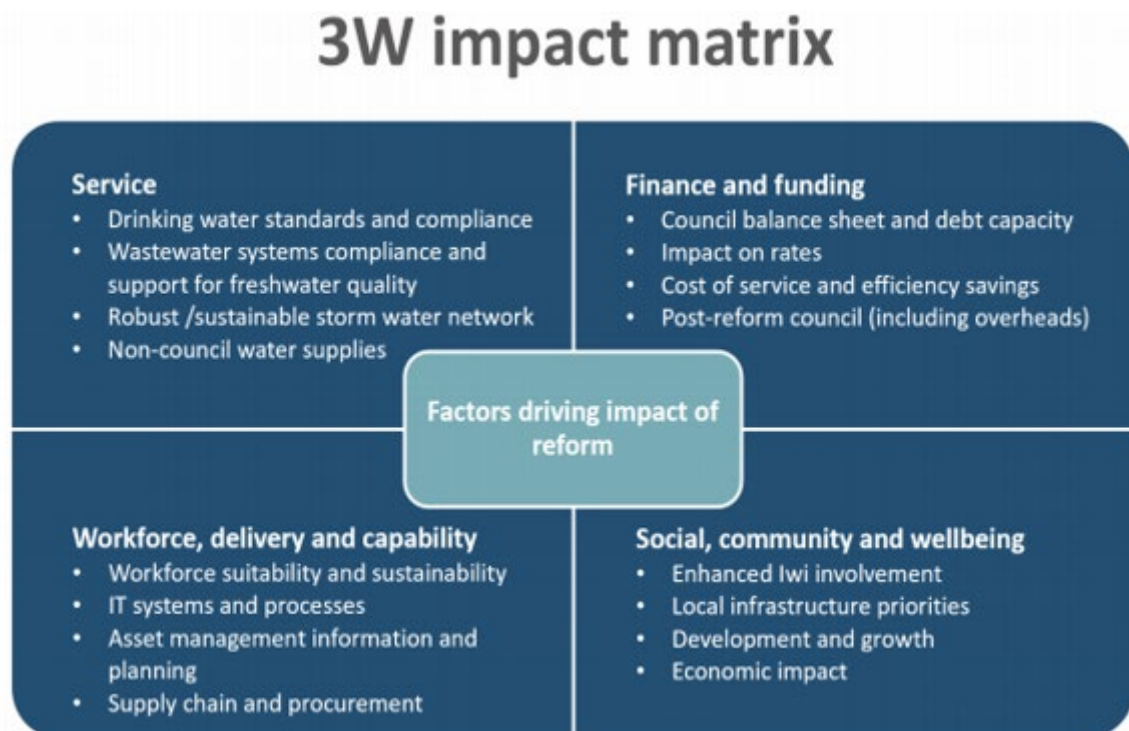
not greater than that. The reason being that although staff endeavoured to predict the likely regulatory regime in 2020 when forecasting costs for the Infrastructure Strategy 2021-2051, what has transpired since has been a much tighter regime requiring additional cost and effort. However, it is difficult to justify how the costs will increase to the levels predicted by WICS, i.e. \$5,382 per household.

- 11.9 This suggests that from a financial perspective there could be a case for change but probably not as compelling as what WICS has predicted. It should also be noted that the financial aspects, although very important, are not the only impacts of the three waters reform.

12 Three Waters Reform Impacts in a Wider Context

- 12.1 Up until now the report has outlined the financial analysis recently provided in the Council dashboards. It is important to highlight that this is only one part of the wider suite of information that councils need to consider when looking at the proposed reforms. The impacts, benefits, issues, and risks of reform are far wider ranging than just the financial impacts.
- 12.2 Local Government New Zealand (LGNZ) has developed an impact matrix shown in **Figure 7** below. This highlights the broad considerations that the Council should consider and represents a good starting point for discussion. This helps ensure that benefits, issues, and risks around levels of service, capability and capacity, prioritisation of investment and impacts on communities and councils are also considered alongside the financial aspects.

Figure 7 – The Three Waters Impact Matrix



- 12.3 Morrison Low also note that because of the three waters work that it has undertaken across New Zealand over the last 18 months, it is likely that the future household costs for three waters will increase significantly for all councils because of meeting increased standards, regulations and satisfying a more rigorous compliance regime. It is Morrison Low's view that the future costs may not be as high as modelled by WICS, but the direction is the same. The sensitivity analysis outlined in **Figure 6** confirms this.
- 12.4 For the Council to decide it needs to review whether the value associated with each of the items in the matrix justifies a case to go alone and not opt into the reforms.
- 12.5 A **two-page summary** of the three water reforms has been prepared by LGNZ and is attached (**Attachment 7**). This summary includes the following 'What's the problem?', 'Government's proposed Solution' and the 'Impact on Councils'. It then summarises 'what's important for the sector' and 'what the sector needs from central government'.

13 Options

- 13.1 This section provides an overview of the options available to the Council. A detailed analysis of each option would need to be completed before Council makes any decision on three waters reform.
- 13.2 Additional analysis would provide more certainty and enable Council to undertake informed and meaningful consultation before deliberating and making a final decision. This timing of this will depend on where the Government gets to with the reform process and the decisions it makes after 30 September 2021.
- 13.3 Doing nothing is not an option, as increased regulation will result in increased expectations and cost of delivery of the three water activities.
- 13.4 The following options have been identified. Each option includes a description plus some commentary around the respective advantages and disadvantages of that option.

Option A - Government Proposal

- 13.5 Under this option, we are in Water Service Entity 'C', a publicly owned water services entity that owns and operates three waters infrastructure on behalf of councils, mana whenua and communities.
- 13.6 The ownership and governance model are a bespoke model, with councils listed in legislation as owners, without shareholdings or financial interests, but an advocacy role on behalf of their communities. Iwi/Māori rights and interests are also recognised and representatives of local government and mana whenua will sit on the Regional Representative Group, issue a Statement of Strategic and Performance Expectations and receive a Statement of Intent from the Water Services Entity. Entities must also consult on their strategic direction, investment plans and prices/charges.
- 13.7 The law currently prohibits the Council deciding to opt-in to the current proposal (given section 130 of the LGA 2002, which prevents council from divesting its

ownership or interest in a water service except to another local government organisation such as a Council Controlled Organisation) and what we know about this option at present.

- 13.8 Also, under section 97 of the LGA2002 a decision to transfer the ownership and control of a strategic asset (like the three waters assets or councils interest in the Waimea Community dam) can only be taken by the Council if it is provided for in the LTP 2021/2031. Although the LTP 2021/2031 mentions the three waters reform programme and potential impacts but it did not commit the Council to a specific option. Therefore, a LTP 2021/2031 amendment will be required as part of any decision-making process to transfer the ownership or control of the assets to the new water entities.
- 13.9 The greater financial capability, efficiency, affordability, and community/water benefits (as published by the Government) of delivering three waters to the community by the proposed new water services entities are forecast to be of significant value if they can be realised. According to the WICS assessment, the Council's 2051 cost per household for Entity C will provide a \$1,030 per connection saving per annum (reducing from current cost of \$2,290 to \$1,260 in 2051).
- 13.10 Our analysis suggests there should be reduced risks to the Council as they would be transferred to the new entity. WSE 'C' would be responsible for:
- a) non-compliance with required standards and processes;
 - b) achieving lower costs for delivery and procurement; and
 - c) catering for the impacts of climate change, residential growth demands and resilient upgrades.
- 13.11 Under this option there is likely to be a transfer of Council interest in and debt related to the Waimea Community Dam.
- 13.12 Under this option the Council would not be responsible if a non-Council supplier couldn't meet standards.
- 13.13 This option does create additional risks for the Council. These risks would need to be mitigated by ensuring the new entity works with the Council in the following aspects:
- a) integration with growth, spatial and local planning;
 - b) transparent prioritisation between contributing council areas; and
 - c) households' ability to pay as the new entities address the upgrade challenges prior to full benefits from efficiencies being realised.
- 13.14 The Council's ongoing financial sustainability with this reform also needs further assessment and mitigation.
- 13.15 There are several risks associated with transition to this model, many of which are outside of the Council's control and are noted in the transition **Section 14** of the report.

Option B – Continued delivery of three water services by the Council (Status quo)

- 13.16 This option is the status quo option in which the Council continues to deliver the three waters activities in accordance with its LTP 2021/2031
- 13.17 The Council currently delivers three waters services itself/through an alliance model, which utilises in-house staff and a contractor.
- 13.18 The potential benefits of this option include greater Council control and more certainty over local infrastructure integration (planning and delivery) with land use plans and Council objectives.
- 13.19 However, the Council faces significant risks over the medium and longer term, including potentially high costs in meeting the new water standards, resilience demands, climate change impacts, faster growth than planned, environmental requirements and competition in recruiting specialist three waters staff.
- 13.20 The ability of non-Council water supplies to meet standards and requirements from Taumata Arowai and so to default to the Council for delivery also poses a risk to the Council and the community.
- 13.21 While the RFI information, dashboard and supporting information provided to the Council suggests that this might not be a sustainable future model for the Council, the sensitivity analysis undertaken suggests that this option would result in greater costs to consumers, however whether this offsets the value of retaining control in the service delivery aspects is something that could be debated.
- 13.22 The causes of most of these risks are outside the Council's control. This makes mitigation difficult, and many potential mitigation options (such as greater investment, larger costs than currently planned, lower levels of service and compliance risk) may not be palatable to the Council or the community.

Option C – Delivery of three waters services by the Council at higher levels of service and increased investment

- 13.23 This is a modified version of Option B. The Council continues to deliver the three waters activities but modifies its budgets, resourcing and service delivery aspects to reflect the anticipated regulatory environment.
- 13.24 This is a realistic option but difficult to assess by the end of September 2021. The issues and opportunities associated with this option are much greater than the Council delivering three waters at the service levels forecast in the LTP 2021-2031.
- 13.25 This option would retain the opportunity of better integration with the Council's outcomes, objectives and plans. However, even if the Council could predict the investment required to meet the new standards, environmental and/or compliance requirements in the short term, the costs of service provision and levels of service may change significantly over the next 30 years. This would cause affordability issues for households, lower levels of service and increase compliance risks.
- 13.26 The future regulatory requirements will be more stringent. This would be more onerous for the Council if the assumptions underpinning the WICS modelling and the Government's proposal and draft/emerging standards and compliance regimes from Taumata Arowai are realised.

- 13.27 The ability of non-Council water supplies to meet standards and requirements from Taumata Arowai and so to default to the Council for delivery also poses a risk to the Council and the community.
- 13.28 Council staff have assessed our ability to do this work in the current operating environment (delivering business as usual, stimulus projects, other Government reform workloads, consultant availability etc) and concluded that only a very high level of analysis of this option would need to be undertaken to assess the viability of this option compared with the other options.
- 13.29 It should also be noted that any changes to levels of service or material changes to the cost of service would require consultation and an LTP amendment (or consultation on those changes as part of the next LTP 2024-2034 and potentially later ones). To avoid special consultative procedures outside the normal LTP processes would limit the flexibility to modifying levels of service to comply with changing regulatory requirements to every three years.
- 13.30 The risks of this option and the associated costs would need to be compared to the value of retaining more direct control of the service delivery aspects of the three waters.

Option D – Regional Aggregation of Three Waters Services into a Council Controlled Organisation

- 13.31 This option comprises the establishment of a council-controlled organisation (CCO) as provided for in the LGA. The CCO would be given governance, management and operational oversight. This option enables asset ownership to be transferred from local authorities into the CCO.
- 13.32 This option is highly unlikely to include any transfer of Councils interest in the Waimea Community dam. That is given the agreement required from the other CCO councils to the transfer of both the investment and the debt.
- 13.33 The geographic region that could be assessed as part of the group delivering three water services under this option is the Nelson/Tasman region or maybe the three councils in the Top of the South.
- 13.34 While it is possible that a group could be set up as a shared service, its small scale is likely to be sub-optimal for the CCO option. This proved to be the case in the July 2020 Hawkes Bay study, which concluded that the shared services would be sub-optimal to a CCO.
- 13.35 The Council would still need to be satisfied that the changing regulatory environment was adequately provided for, including ensuring there was sufficient funding to meet legal and regulatory obligations. Due to the smaller scale, this option would increase the likelihood that the size of investment required to meet new standards and community expectations would probably be achieved better by the Council on its own.
- 13.36 Although both a management CCO and an asset owning CCO may have benefits, the detailed analysis in the July 2020 Hawkes Bay report demonstrates that a regional asset owning CCO is a more effective service delivery model than the

management CCO. It also best meets the investment objectives and principles set by the participants in that review.

- 13.37 There are existing examples of CCOs; WaterCare in Auckland (water and wastewater services) and Wellington Water (who don't own but do manage all three waters on behalf of their owners). It should be noted that both the Auckland Council and the owners of Wellington Water are affected by the Government's proposal and are assessing their options, e.g. for Wellington Water to become an asset owning company.
- 13.38 Some of the advantages of a CCO model are:
- a) it could focus on the group's three water challenges and prioritise investment decisions across the region, which should lead to better environmental and community outcomes.
 - b) it could also provide for greater strategic, management and operational capacity and capability, workforce development and planning.
 - c) it would enable efficiencies in planning, programming, procurement and delivery, resulting in reduced household costs and increase affordability.
- 13.39 There are however integration risks with growth, spatial and local planning, and uncertainties around the future costs to households. The CCO model would require separate Council board representatives to agree on governance decisions.
- 13.40 The Government's WICS assessments and economic work considered that between 600,000 and 800,000 connections provided optimal efficiency. Depending on which councils "opt in" to the new entities, groups of that scale might be difficult to find.
- 13.41 Under section 97 of the LGA2002 a decision to transfer the ownership and control of a strategic asset (like the three waters assets) into a CCO can only be taken by the Council if it is provided for in the LTP. Therefore, a LTP amendment will be required as part of any decision-making process to transfer the ownership or control of the assets to the new water entities.

Option E – Delivery of Three Waters services by a Council Controlled Organisation (non-asset owning) under contract:

- 13.42 Effectively, this is the Wellington Water model.
- 13.43 This option includes efficiencies in planning, procurement and service delivery, greater strategic management and operational capacity and capability, workforce development and planning.
- 13.44 However, this model will not greatly assist the funding challenges as a result of Taumata Arowai and the potential Water Services Act requirements. The infrastructure deficit WICS has identified, climate change and faster growth would add to the funding challenges.
- 13.45 Under this model, the contributing councils would still be responsible for the funding and the prioritisation of investment. This could be viewed by some as a positive, but the messaging from the Government is that more efficiencies and investment

headroom can be gained through aggregation and single management and service delivery.

- 13.46 This model may be hard to develop depending on the number and location of councils which decide to 'opt in' to the new water supply entities.
- 13.47 Under section 97 of the LGA 2002 a decision to transfer the ownership and control of a strategic asset (like the three waters assets) into a CCO can only be taken by the Council if it is provided for in the LTP. Therefore, a LTP amendment will be required as part of any decision-making process to transfer the control of the assets to the new water entities.

Commentary on the Options

- 13.48 Under all these options except the Government proposal (Option A), the Council would carry the risk of meeting the new water standards, environmental requirements and achieving compliance. There are also implications and challenges for non-Council supplies to meet water quality requirements, with the risk that these supplies might default to the Council in the future.
- 13.49 Other Government reforms including the review of the Resource Management Act and Future of Local Government, pose opportunities and challenges for each option.
- 13.50 If the Council opts in, managing transition risks may pose a greater challenge for the Council (and others in its grouping). If the Government's proposal were to proceed, effective management of the transition by the Council, Government and partners will be critical.
- 13.51 The LGA 2002 as it stands prohibits councils deciding to opt-in to the current proposal (given section 130 of the Local Government Act 2002 and what we know about this option at present). The current Tasman District Council decision-making requirements, including the need to take account of community views and the strategic nature of the assets involved, would also preclude the Council deciding to opt-in at this time, without undertaking consultation.
- 13.52 Similar requirements apply if the Council wishes to consider alternative arrangements. Arrangements that involve asset transfers, divestment, change in ownership and/or the setting up of a Council Controlled Organisation (CCO) with asset ownership to deliver water services in the future. Contracting with a Council Controlled Organisation (such as Wellington Water) could be achieved with appropriate consultation and decision-making processes.
- 13.53 There are several issues, concerns and uncertainties for the Government and councils to work through before a robust Council decision can be made. This includes the Council's obligation to consult with its community. Therefore, there is no expectation that the Council would decide to opt-in or opt out or commence community engagement or consultation at this time. More detailed information on the merits of the Government's proposal is needed before meaningful and informed consultation can occur.
- 13.54 Councils have been specifically asked by the Government to provide feedback on three issues which are of concern to local government:

- a) Ensuring all communities have both a voice in the system and influence over local decisions
 - b) Effective representation on the new water service entities' oversight boards, including preventing future privatisation
 - c) Ensuring integration between growth planning and water services planning
- 13.55 Government decisions on entity boundaries, governance, transition and implementation arrangements will occur after 30 September 2021.
- 13.56 There are many other details about the reform which the Government needs to confirm before the Council will be able to make a fully informed decision.
- 13.57 On the assumption that the reform goes ahead, it is anticipated that councils will continue to deliver water services until at least early 2024 and council involvement in transition will be required throughout.

14 Transition to New Water Service Entities

14.1 Managing transition risks to the Government's proposed model are likely to pose a challenge for the Council and others in its grouping. If the Government's proposal were to proceed, effective management of the transition by the Council, Government and partners will be critical.

14.2 Some of the risks that would need to be quantified and managed are:

- Staff/Contractor Retention
- Transfer of Contracted Services
- Maintaining Good Quality Assets
- Stranded Overheads
- Loss of Customer Experience
- Resistance to Change
- Speed of Change - an increase in mistakes
- Lack of Business Confidence
- Transition Team – would help but will require resourcing. Utilising staff from Council would add to workloads or require additional resourcing.
- Limited Transfer of Water Debt – reserve funds collected for water related services affecting Council's financial position.
- Development / Financial Contribution Refunds - may affect Council's charges linked to debt (including the possibility of refunds).
- Current System Unable to Cope
- Scope of Agency Service - continuing / picking up for e.g. stormwater [and / or wastewater]
- Addressing water supply operators outside of the WSE control
- Impacts on Council's public health responsibility under the Health and Building Acts.
- Different Local Approaches - to regional neighbours may reduce the economies of scale making regional water solutions more expensive.

- Asset Valuation - returning a much different value than expected affecting Council's financial position
- Deferred Decision Making - development projects to stall.
- Community Uncertainty - owners continue to call Council in resolving faults.
- Poor Transition Management - cause delays and confusion over responsibility exposing Council to liabilities and affecting continuity of service delivery.
- Existing Contract Liabilities – additional compensation costs if contracts modified/terminated prematurely.
- Liability for Environmental Damage - Lack of clarity for monitoring environmental impacts may expose Council to liabilities
- Loss of Asset Management Systems & Data - unclear responsibilities - loss of data or failure of systems affecting continuity of service delivery.
- Impact on Council Bylaws and other regulatory processes.

14.3 The transition away from the status quo to any other option, carries inherent risks. Mitigation measures to reduce both their impact and likelihood could, if not implemented well, result in additional inefficiency and additional cost over the short to medium term.

15 Strategy and Risks

15.1 The Government has maintained its messaging that councils will have the opportunity to opt-in or opt-out. The Minister has stated that her preference is that all councils participate in the national discussion and eventually opt-in. Despite this messaging the Government still has the prerogative to mandate the implementation of the water reforms.

15.2 In deciding on whether to opt-in or opt-out, the Council will need to consider the following risks associated with opting-out of the three waters reform:

- a) The ability to meet the new service level and Taumata Arowai regulatory requirements;
- b) The ability to resource infrastructure service delivery requirements – staff and external support;
- c) The ability to engage effectively with iwi, within the new statutory requirements;
- d) To assess and pragmatically implement the impacts of the new regulations on the rural water supplies;
- e) The Economic Regulator will price set water charges; The Council may lose flexibility in this – see Lines Companies as an example;
- f) The Environmental Protection Agency may introduce a range of higher environmental related service levels.

15.3 There are also risks with opting into the reform programme. These risks may arise from centralised management and service delivery versus local management and service delivery. Often, smaller local communities do not attract the same attention as the larger towns and cities. This is subjective and can often only be perception, however centralising services at the expense of local influence is a risk that we must be aware of.

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- 15.4 While it may be argued that some assumptions may overstate the future costs without reform, it is evident that there is still likely to be a significant increase in investment and the consequential impact on the required revenue.
- 15.5 It should also be noted that the Government has launched a wider review of local government. This is a wide-ranging review that is being undertaken over the next 2-3 years. Although not directly related to the three waters reform, it will likely address the consequences or impacts of the reform.

16 Policy / Legal Requirements / Plan

The Long Term Plan 2021-2031 does refer to the pending three waters reform and that it could impact on the Council's involvement in owning and delivery the three water services. The budgets are based on the three waters remaining with the Council for the next 10 years.

- 16.2 Any legal aspects associated with the three waters are likely to be dealt with in new or amendments to existing Government legislation. At this stage there are no legal requirements that need to be considered by the Council, other than those outlined in the section 13 (Options) and section 18 (Significance and Engagement) of this report.

17 Consideration of Financial or Budgetary Implications

- 17.1 Although the three waters reform will eventually have significant financial and budgetary implications, the Government is clear in its latest announcements that councils will not be financially disadvantaged with the three waters reform.
- 17.2 As stated previously the budgets in the Council's LTP 2021-2031 are based on the three waters remaining in the Council's ownership.
- 17.3 At this stage we are not fully aware of how the transition is expected to take place in July 2024. We assume that under the proposed programme, the Council would transfer assets to the water entity and be repaid our associated loans. It will be important to ensure that amount of debt linked to the water assets are accurate and can be substantiated. Councils are likely to have to also transfer any water activity reserves that are in credit along with any three water development charges collected but not spent, to the new water entities.
- 17.4 The Council could repay our loans including loans from LGFA in 2024 and we could unwind our associated derivative (Interest rate swap) position. Due to the amount of debt and hedges involved, a carefully managed transition would be important to minimise the Council's transaction costs.
- 17.5 Other income currently used to reduce the rates along with fees and charges for the three waters activities would not transfer to the new water entity. That would comprise the Enterprise Activity Income supporting the Waimea Community Dam funding and the Port Nelson and Nelson Airport dividends.
- 17.6 The three water reforms potentially create headroom for the Council to complete capital expenditure that currently does not fit within our financial headroom.

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17.7 The water entities would be new entrants in New Zealand's capital markets providing alternative debt instruments for investors. The Council will need to monitor developments but is it likely they will not have an unfavorable impact on LGFA shareholders or guarantors. We do, however, expect a possible increase in borrowing costs for councils due to the additional competition in capital markets.

18 Significance and Engagement

The three waters activities are listed as a strategic asset in the Council's Significance and Engagement Policy. Therefore, under current legislation, any decision transferring ownership or control of the three waters activities will require statutory processes to be followed including formal public consultation with the community and an amendment to the LTP 2021/2031.

- 18.2 Part 6 of the Local Government Act 2020 (LGA), sections 76 to 90, provide the requirements for decision making and consultation, including the principles of consultation and information that needs to be provided including the reasons for the proposal and the reasonably practicable options.
- 18.3 In particular, section 76 requires that in making a significant decision, which is a decision on what the future management and or ownership of three waters assets will be, councils must comply with the decision-making provisions. This is a 'higher bar' than the "promote compliance with" that applies for ordinary decisions.
- 18.4 Section 77 states that councils must seek to identify all reasonably practicable options and then assess the advantages and disadvantages of each option.
- 18.5 Section 78 requires that in the course of making a decision a council must consider community views but section 78(3) explicitly says that consideration of community views does not require consultation, which is reinforced by case law.
- 18.6 Section 79 gives councils discretion to decide how the above Part 6 requirements are met including the extent of analysis done etc. Therefore, while a decision could be challenged, a judicial review is unlikely to be successful unless the decision made by a council was manifestly unreasonable, the process was flawed or the decision was beyond its powers (as given in law, ie the council did not act within the law).
- 18.7 However, despite section 79 of the LGA, a decision to transfer the ownership or control of a strategic asset from the council (or to it) must be explicitly provided for in council's LTP (and have been consulted on specifically in its consultation document).
- 18.8 The Council's existing LTP and the consultation information and process used to develop it will not suffice to meet this test, as the Council did not itself have adequate information on the options and the implications earlier this year when it consulted on the LTP. An LTP amendment and commensurate consultation process on the ownership and governance arrangements and asset transfers proposed, would be necessary.
- 18.9 There are also provisions in the LGA that relate to unlawful decisions to sell or dispose of assets.
- 18.10 A decision to opt-out would also be affected by the consultation and decision-making requirements set out in this report, including the need to follow a robust process that could

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survive a judicial review, as well as make a final decision that was not manifestly unreasonable in the circumstances.

- 18.11 Given the uncertainty around some of the detail within the Government's proposals, it would be premature for Council to decide to opt out of the reform process at this stage. This may expose Council to litigation risk as any decision it makes needs to be made in the context of fully informed sound evidence and after completing its statutory obligations in consulting its community. That detail includes:
- Government undertaking further engagement with mana whenua and the Council, and;
 - commitment to explore issues such as Council and community influence of service outcomes, integration with other reform proposals, spatial and local planning, and;
 - providing some detail/solution around the transition challenges and risks; and
 - providing more certainty around next steps and the timing.
- 18.12 A Government Bill to progress the reforms could address the issues raised above. For example, removing the section 130 requirements has explicitly been raised.
- 18.13 At this stage no decision is required on future delivery arrangements. Based on the analysis in this report, the Council should wait until it has further information before consulting on and/or making a decision on the Government's proposal.
- 18.14 It is recommended that the Council therefore notes the options canvassed in this report, the high-level analysis of them and the information and decisions that are yet to be made.
- 18.15 If reform is not made mandatory, to ensure sufficient information is available to meet the moral and legal requirements of the Council's decision-making, staff will further develop the analysis of options (based on further information from the Government, advice on next steps, and regional discussions) prior to the Council decision making and consultation on future water services delivery. Whether this is ultimately required will be dependent on where the Government gets to with the reform process and the decisions it makes after 30 September 2021.
- 18.16 This report focuses on the likely impacts of the three waters reform on the district. The Council has until end of September 2021 to provide its feedback to the Government. The Council is not required to consult with its communities prior to providing feedback to the Government. Essentially, the Council is being asked to fact-check data that is very technical. It is also providing feedback which will not in itself determine the outcome of the three waters process for the Council. We understand these are not matters that would normally trigger a consultation requirement.
- 18.17 The reform will be implemented by legislation. The Government has indicated that this process will involve some form of public consultation.
- 18.18 Given the context of the imminent reform, we understand that any Council decision to 'opt in' or 'opt out', would be a significant decision both in terms of the Local Government Act (LGA) and in the Council's Significance and Engagement Policy. Such a decision would require consultation according to s77 and s78 of the LGA.

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| | Issue | Level of Significance | Explanation of Assessment |
|----|--|------------------------------|--|
| 1. | Is there a high level of public interest, or is decision likely to be controversial? | Low | The Council is only considering the detail and providing feedback to the Government |
| 2. | Are there impacts on the social, economic, environmental or cultural aspects of well-being of the community in the present or future? | Low | Providing feedback to the Government has no impacts on the well-being of the community. |
| 3. | Is there a significant impact arising from duration of the effects from the decision? | Low | The decision is only to provide feedback to the Government. The decision to opt-in or opt out will be the subject of a separate decision. |
| 4. | Does this activity contribute or detract from one of the goals in the Tasman Climate Action Plan 2019 ? | No | |
| 5. | Does the decision relate to a strategic asset? (refer Significance and Engagement Policy for list of strategic assets) | Yes | Although it relates to strategic assets, the decisions being sought in this report do not of themselves affect the ownership of delivery of services related to that strategic assets. |
| 6. | Does the decision create a substantial change in the level of service provided by Council? | No | |
| 7. | Does the proposal, activity or decision substantially affect debt, rates or Council finances in any one year or more of the LTP? | No | |
| 8. | Does the decision involve the sale of a substantial proportion or controlling interest in a CCO or CCTO? | No | |
| 9. | Does the proposal or decision involve entry into a private sector partnership or contract to carry out the deliver on any Council group of activities? | No | |
| 10 | Does the proposal or decision involve Council exiting from or entering into a group of activities? | No | |

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| | Issue | Level of Significance | Explanation of Assessment |
|----|---|-----------------------|---------------------------|
| 11 | Does the proposal require inclusion of Māori in the decision making process (consistent with s81 of the LGA)? | No | |

18.19 Every council within the local government sector is affected by the three water reforms. There have been ongoing webinars, forums, presentations by DIA and LGNZ and Council workshops on this subject. LGNZ has collated some of the feedback and this has been included in **Attachment 8** for information.

19 Conclusion

- 19.1 The Government is progressing with the three waters reform and is encouraging councils to be engaged in the discussion. It wants councils to 'opt in' to the reforms.
- 19.2 The WICS modelling and assessment has been reviewed by staff who have concluded, based on the various factors outlined in this report, that the modelling is unlikely to be accurate for Tasman. However, the analysis undertaken by staff and external consultants using actual data still indicates a marked increase in the cost per household if Council retains the Three Waters compared to the cost per household if the reforms as proposed are implemented. This conclusion is only based on the financial factors but it is important that all non-financial factors, are examined before drawing any overall conclusion.
- 19.3 The inclusion of the Council's interest and debt in the Waimea Community Dam will be an important component in the financial evaluation.
- 19.4 Under all the options except **Option A: The Government proposal**, the Council bears the risk of meeting the new water standards, environmental requirements and achieving compliance. There are also implications and challenges for non-Council supplies to meet water quality requirements, with the risk that these supplies might default to the Council in the future.
- 19.5 Other Government reforms (Resource Management Act, Future of Local Government) pose opportunities and challenges for each option.
- 19.6 Managing transition risks are likely to pose a greater challenge for the Council (and others in its grouping) than the risks associated with the Government proposal. If the Government's proposal were to proceed, effective management of the transition by the Council, Government and partners will be critical.
- 19.7 The law currently prohibits councils deciding to opt-in to the current proposal (given section 130 of the Local Government Act 2002 and what we know about this option at present). Current decision-making requirements, including the need to take account of community views and strategic nature of the assets involved, would also preclude the Council deciding to opt-in at this time without consultation.

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- 19.8 Similar requirements apply if the Council wishes to consider alternative arrangements that involve asset transfers, divestment, change in ownership and or the setting up of a Council Controlled Organisation (CCO) to deliver water services in the future.
- 19.9 There are several issues, concerns and uncertainties for the Government and councils to work through before a robust Council decision (and decision-making process) can be produced, including whether legislative change will enable or require the Water Services Entity or CCO approach to be adopted. Therefore, there is no expectation that councils will decide to opt-in (or out) or commence community engagement or consultation over the eight-week period.
- 19.10 Government decisions on entity boundaries, governance and transition and implementation arrangements will occur after the eight week-process ends (30 September 2021).
- 19.11 If the reforms go ahead, it is anticipated that the Council will continue to deliver water services until at least early 2024 and that the Council's involvement in transition will be required throughout.

20 Next Steps / Timeline

- 20.1 The next steps are to provide feedback to the Government and to LGNZ by 30 September 2021.
- 20.2 The Government is then scheduled to make decisions on the next phases of the reform process after 30 September 2021.
- 20.3 Staff to report back to the Council once the Government has confirmed the next phases of the reform process.

Attachments

1. Full Council Report 12 August 2021
2. DIA 2020 Background Information
3. The Government's Case for Change
4. DIA Summary of Three Waters Reform
5. Composition and Roles of Regional Representative Group
6. Government Funding to Invest in the Future of Council and Community Wellbeing
7. LGNZ Two-Page Summary
8. LGNZ collated Local Government Sector Feedback