



Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: Three Waters Review: Māori rights and interests

Date: 26 February 2021

Key issues

This briefing provides an update on the current thinking on the recognition of Māori rights and interests in Three Waters Reform Programme. It is work in progress as iwi/Māori engagement is ongoing, but is designed to test early thinking on some of the critical features, and to gain your feedback on the options we are considering (**Appendix B** and **Appendix C**).

In particular, we are seeking your agreement to use the material at **Appendix C** during the March 2021 engagement workshops with iwi/Māori and local government. We are due to meet with you on 1 March 2021 for a conversation about entity numbers and boundaries, and will also discuss your comfort with **Appendix C** at that meeting.

Action sought

Discuss this briefing with officials at a meeting on 1 March 2021.
Agree the objectives for the Crown/Māori relationship within the three waters service delivery reforms.
Agree the material at **Appendix C** can be used to gather feedback during the March engagement with local government and iwi/Māori.

Timeframe

By 3pm 1 March 2021

Contact for telephone discussions (if required)

Name	Position	Direct phone line	After hours phone	Suggested 1 st contact
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Cohesion reference	https://dia.cohesion.net.nz/Sites/LGV/TWRP/POLD/_layouts/15/DocIdRedir.aspx?ID=3W2DU3RAJ5R2-1651355117-107
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Purpose

1. This briefing provides an update on the current thinking on the recognition of Māori rights and interests in Three Waters Reform Programme (Reform Programme). It is work in progress as iwi/Māori engagement is ongoing, but is designed to test early thinking on some of the critical features, and to gain your feedback on the options we are considering (**Appendix B** and **Appendix C**).
2. In particular, we are seeking your agreement to use the material at **Appendix C** during the March 2021 engagement workshops with iwi/Māori and local government. We are due to meet with you on 1 March 2021 for a conversation about entity numbers and boundaries, and will also discuss your comfort with **Appendix C** at that meeting.

Executive summary

3. Introduction of new legislative, governance and management arrangements within the Reform Programme will give rise to interests related to Article Two of the Treaty of Waitangi. These reforms sit within the broader context of reform of the resource management system and issues associated with water allocation. This briefing sets out some objectives for the Crown/Māori relationship that we seek to test with you to guide our advice on the service delivery reforms, within a broader Treaty partnership context.
4. Given the nature of the proposed statutory water services entities, traditional ownership and governance tools are likely to be less influential compared to other mechanisms. A range of options have been identified (**Appendix B**) that may support an increase in strategic influence consistent with the interests raised by iwi/Māori during our engagement to date.
5. Opportunities will exist to materially improve the connection between rights and interests as they relate to Mana Whakahaere, Kaitiakitanga and Manaakitanga within Te Mana o te Wai in the delivery of three waters services. Current legislative instruments are unable to fulfil this, it is likely that a new instrument will be required to achieve this. Officials identify a 'Te Mana o Te Wai Statement and Response Mechanism' to be investigated further.
6. Water services entities will be operating within a legislative environment containing several Treaty-related statutory references, such as those in the Taumata Arowai—the Water Services Regulator Act. A new statutory Treaty reference will be required to ensure consistency and alignment with the broader legislative environment. We will need to ensure it reflects the appropriate legislative hierarchy, particularly in relation to the Water Services Bill and proposed amendments to resource management legislation.
7. Finally, the rights and interests of Māori as consumers of water services need to be considered predominantly under Article Three of the Treaty. There are good reasons for general mechanisms of consumer protection and advocacy to specifically address interests of Māori as they relate to historic inequity and the specific interests of Māori who are not mana whenua within the boundary of a specific entity, including urban Māori.
8. This briefing outlines our current thinking about the above matters, for your feedback. **Appendix C** provides the material we are seeking to test with local government and iwi/Māori in the planned March engagement.

Background

Engagement with iwi/Māori to date

9. From a te ao Māori consideration of water issues, the proposed reform of three waters service delivery arrangements is narrowly focused, given it is a targeted initiative to address immediate concerns about drinking water safety, and the performance of wastewater and stormwater systems.
10. The approach to the recognition of rights and interests in service delivery reform have followed a similar pattern to that of the regulatory reform with iterative engagement with iwi/Māori. In September and October 2020, officials completed 17 hui-ā-motu with iwi, hapū and Māori, along with three zoom hui. Alongside this, officials have also held informal meetings with iwi/Māori about the Reform Programme. From this engagement, clear themes have emerged:
 - 10.1 Partnership – Iwi and Māori shared resounding support for a stronger partnership between tangata whenua and the Crown, with the need to have the Treaty of Waitangi embedded more explicitly throughout the reform process and beyond.
 - 10.2 Participation – Iwi and Māori shared concerns regarding their ability to participate and engage in this kaupapa. Currently, there is insufficient capacity and capability for many iwi, hapū and Māori to engage. Support needs to be given to develop Māori capacity and capability to participate.
 - 10.3 Protection – Iwi and Māori called for protection of their rights, roles and responsibilities as tangata whenua particularly for protection around their cultural assets. Iwi and Māori also want to see protections against privatisation of water services.
 - 10.4 Recognition of cultural values – Iwi want to see their mātauranga-ā-iwi incorporated within the three waters reform process and Taumata Arowai's regulatory regime. In relation to entity design, iwi and Māori do not want to see catchments broken and have a strong preference for the entity boundaries to adhere to the 'ki uta ki tai' concept. Additionally, iwi, hapū and Māori do not want their whakapapa/iwi/hapū boundaries to be separated by the new entities.
 - 10.5 Use mana enhancing processes – Iwi see the reform as an opportunity to work together to design something that works better than the status quo for iwi, hapū, whānau and small rural communities.
11. Iwi/Māori also told officials they want to be involved at all levels of the Reform Programme and the new entities, but specifically want to be involved in the 'nitty gritty' aspects where they can provide the greatest change.
12. To date, officials have focused on equitable outcomes in the proposed new water services entities as a mechanism for recognising rights and interests. Ensuring policy options for the new water services entities provide for equitable service to iwi/hapū/Māori has been paramount.
13. The Treaty of Waitangi analysis to date is presented in **Appendix A**. This table highlights how we have considered the rights and interests. It has been refreshed since we last provided it to you, informed by more recent engagement and the specific advice from our Te Ao Māori Technical Working Group (Technical Working Group)

supporting our analysis. Our intention is to use and maintain this framework as a living document informed by engagements, hui, and insights from the Technical Working Group that has been established to guide our work.

Objectives for the Crown/Māori relationship within the three waters service delivery reforms

14. The Government's ambition for progressing service delivery reform sits within a broader Treaty partnership context. To guide Government's consideration of these issues, we are seeking to confirm the following key objectives, to support our advice to you in the context of the wider Crown/Māori relationship:
 - 14.1 **Enable greater strategic influence:** Enable iwi/Māori to have greater strategic influence to exercise their rangatiratanga over water services delivery, including through enhanced capacity and capability.
 - 14.2 **Integrated within a wider system:** Ensure that the rights and interests of iwi/Māori are analysed within a wider system, including issues related to allocation and the future of the Resource Management Act, but specifically focussing on issues that relate to the establishment of water services entities and delivery of water services.
 - 14.3 **Reflective of a Te Ao Māori perspective:** Recognise the holistic manner (environmental, cultural, spiritual, economic) in which water is viewed using te ao Māori perspectives and Te Mana o te Wai including ki uta ki tai or a catchment-based approach, consistent with rohe/takiwā or whakapapa links.
 - 14.4 **Supporting clear accountabilities:** Ensure roles, responsibilities, and accountability for the relationship with the Treaty partner is clear throughout the wider system, and that capacity and capability is available to honour the Crown's Treaty obligations.
 - 14.5 **Improving outcomes at a local level:** Provide a step change improvement in delivery of water services for iwi/Māori at a local level, including through enhanced capacity and capability and improved wellbeing.
15. These Crown/Māori relationship objectives sit alongside the broader three waters reform objectives, proposed options to recognise rights and interests in the Reform Programme will be analysed against both objectives. Analysis also seeks to reconcile these objectives and highlight relevant tensions where they may exist.

Testing options with iwi/Māori and local government during the March engagement workshops

16. In partnership with the Joint Three Waters Steering Committee, we have planned workshops on the Reform Programme with local government and iwi/Māori for March 2021.
17. We are seeking your agreement to test our approach and possible mechanisms during this engagement. A range of options have been identified (**Appendix B**) that may support an increase in strategic influence consistent with the interests raised by iwi/Māori during our engagement to date. In the section below, we have identified options to test during our planned engagement in March. The specific material is provided in **Appendix C**.

Potential policy options to recognise rights and interests

18. Introduction of new legislative, governance and management arrangements to deliver water services will give rise to interests related to Article Two of the Treaty. These sit within the broader context of reform of the resource management system and issues associated with water allocation.

The broader statutory framework

19. The broader system within which water services will be delivered in the future is being reformed. The guiding principle is that Government will want to ensure Te Mana o Te Wai is appropriately referenced within the broader legislative framework. This is reflected in the establishment of Taumata Arowai and the Water Services Bill.
20. For the water services entity legislation, we see a need to prepare advice for you in two distinct areas:
 - 20.1 A statutory reference to the principles of the Treaty of Waitangi, which should focus on the conduct of the entities and other system participants, including their capacity to be a good Treaty partner.
 - 20.2 A statutory reference to Te Mana o Te Wai should be sufficiently and practically applied to ensure mana is able to be exercised at an iwi/hapū and even whānau level. Design of mechanisms to give effect to Te Mana o Te Wai need to carefully balance iwi/hapū/whānau input with the need for the water services entity to undertake investment activities to address the significant infrastructure deficit. If designed well, we think these objectives need not be mutually exclusive.
21. Design of these statutory references sit within a moving system that recognises giving effect to Te Mana o Te Wai is a requirement in the Water Services Bill and the National Policy Statement for Freshwater Management. This will likely be reinforced through Te Mana o Te Taiao statutory obligations under the proposed reform to the Resource Management Act 1991.

Governance and the opportunity for greater strategic influence

22. Introduction of new legislative, governance and management arrangements will give rise to renewed interests in ownership and co-governance opportunities to provide an ability for iwi/Māori to have greater strategic influence on water outcomes.
23. The proposed water services entities will not have standard commercial ownership arrangements. For example, under our current proposals, the entities would not have shares or shareholders, so shares will not be able to be traded and will therefore have no value. With a small number of entities across the country, multiple local authorities will have represented interests on a Governors representative group. You will receive further advice on entity design on this shortly.
24. Cabinet has already made it clear it wants to put in place a range of statutory protections against privatisation. While many iwi/Māori do not consider iwi ownership as 'private ownership', we have not considered policy options that would enable transfer of ownership of the proposed water services entities to iwi. We wish to confirm this approach with you.

25. Some iwi/Māori have raised the question of whether there is an opportunity to invest in water services entities. As a general proposition, the entities will have flexibility in relation to how and where they source debt finance, subject to delivering efficient outcomes (amongst other objectives).
26. Iwi/Māori are a potential source of finance. It is recognised that iwi/Māori bring a different perspective, including considerations of intergenerational benefits and outcomes that may be aligned to wider Reform Programme objectives. Separate to issues of ownership, there is no reason why iwi/Māori should not be a source of debt finance to the proposed entities or in relation to specific projects that the entities will deliver. Ultimately, this will be a decision for each entity's board.
27. Iwi/Māori have raised a desire for the new water services entities to be co-governed. This has also been raised by some local government sector representatives.
28. It is expected that the governance framework for water services entities will include relevant governance instruments such as a Government Policy Statement, Letter of Expectation, and Statement of Intent. The intention is that this framework will include prohibitions on share transfer, divesting ownership, sale of assets and dividend payments in respect of the water services entities.
29. Our current thinking is that local government interests will be expressed through a representative 'Governors Group' that will have limited decision-making powers, with the majority of decision-making rights being exercised by an independently-appointed, competency-based, professional board. This 'low control' structure is considered to better enable the structural separation required to create independent balance sheet capacity in the water services entities and is currently being tested through credit rating agency engagement.
30. We are considering several options for iwi/Māori to influence the strategic framework within which the water services entities operate. Options are outlined in **Appendix B** and include:
 - 30.1 no role in co-governance, as issues raised by iwi/Māori are addressed in other parts of the regulatory and provision system;
 - 30.2 co-governance within a single joint Governors Group for each entity;
 - 30.3 co-governance in separate Governors Groups, where each group has additional responsibilities, but key governance instruments are jointly agreed; or
 - 30.4 creation of a Mana Whenua Forum (or similar) to directly influence the board of the water entities outside of a traditional governance arrangement (**option for use in engagement**).
31. We have tested these concepts with our Technical Working Group. They acknowledged that the constraints on ownership controls required to achieve operational and financial independence are weak, but believe iwi/Māori will likely still have an expectation of ownership and co-governance. On balance, officials currently favour a mechanism that enable iwi/Māori to directly influence the strategic priorities of the board via a Mana Whenua Forum. We consider this would best address the issues related to a step change in a Treaty partnership approach, and the Treaty and cultural responsiveness of water services entities. It will also be a critical mechanism to support the board to give effect to Te Mana o Te Wai.

32. If you support this option for use in engagement, we would like to focus further advice on the design of a relationship between the Mana Whenua Forum (or some other name you may suggest) and the water services entities board, with a specific focus on clear roles, responsibilities and accountabilities.

Governance and establishing representative rights

33. The proposed water services entities will need to be of a significantly larger scale than current service delivery arrangements, to provide scale benefits in service provision and infrastructure investment. Our analysis is focussing on between two and six entities across the country, noting Ministers have previously expressed a preference for three to five entities. Within the boundaries of each of these entities there will be multiple rohe/takiwā.
34. Consistent with the conclusions of the *New directions for resource management in New Zealand* (Randerson Review), engagement with iwi/Māori has highlighted the reality of kaitiakitanga, as it relates to the provision of water services, often operates at a hapū or whānau level. It is also important to ensure the proposed water services entities are not in a position to determine who represents mana whenua interests.
35. Officials from the Ministry for the Environment (MfE) are actively considering options to improve resource management tools related to mana whenua involvement into a single, integrated, partnership process at a regional level. This will assist in improving issues as they relate to the powers and functions that will result from resource management reform. The proposed water services entities will operate within the environmental regulatory system; however, it will also be important they have a direct relationship with mana whenua given the significance of water from a te ao Māori perspective.
36. A range of options have been considered with the objective of providing the most effective representative interest for mana whenua. These are set out in **Appendix B** and include:
- 36.1 mana whenua self-declare in a manner similar to the current Te Kahui Māngai approach;
 - 36.2 mana whenua are identified through a kaupapa Māori process once entities are established;
 - 36.3 Post Settlement Governance Entities are utilised; or
 - 36.4 Post Settlement Governance Entities provide a transition to representation via a Kaupapa Māori process (**option for use in engagement**).
37. The Technical Working Group agree this is a complex area, but have urged us not to be prescriptive to ensure a process of self-determination occurs. They were particularly interested in an option, or transition to an option, that enables early influence of iwi/Māori on the board through the formative establishment period. This is important to ensure that the culture and capacity of the water services entities is prioritised early in the process.
38. If you support our option for use in engagement, our focus in future advice to you will be on how this process could be designed. We would test this further with the Technical Working Group and other smaller expert groups. We also intend to look closely at other statutory mechanisms, including the process of representation for Auckland's Independent Māori Statutory Board, and Te Maruata as part of Local

Government New Zealand. We will also work with MfE colleagues on how this relates to the proposed partnership arrangements under the resource management reform work programme.

Board arrangements

39. A central way for Te Mana o Te Wai to be embedded as an operating principle of the entity is to ensure the board is adequately competent, as a Treaty partner, and with expertise in accessing mātauranga Māori, tikanga Māori and te ao Māori to inform the water entities activities. It is currently proposed that the board will be appointed via an Independent Appointment/Selection Panel rather than directly through owners' representatives.
40. Options we have considered in ensuring the board is competent to improve outcomes for iwi/Māori are set out in **Appendix B**, and include the following competencies for board directors:
 - 40.1 no specific competency required;
 - 40.2 general Treaty of Waitangi competency;
 - 40.3 mātauranga Māori, tikanga Māori and te ao Māori competency; or
 - 40.4 collective competency in the Treaty of Waitangi, with specific competency in mātauranga Māori, tikanga Māori and te ao Māori (**option for use in engagement**).
41. If you support this option for use in engagement, the focus of further advice to you will be on how this competency is specified and the balance of other competencies required for the board. We also expect that iwi/Māori will raise the ability to directly appoint the board through the engagement process.

Kaitiakitanga

42. Consistent with feedback we have received from the engagement to date, Te Mana o Te Wai is exercised in place, where as kaitiakitanga is more likely to be exercised at a hapū/whānau level. The ability to connect governance with delivery on the ground will require the proposed water services entities to make a difference in place at a hapū/whānau level. This will primarily be achieved through the preparation of asset management plans and the process that guides investment decision making.
43. Options for expression of kaitiakitanga considered included:
 - 43.1 rely on existing mechanisms, including input into spatial plans, district plans, resource management mechanisms, and the proposals included in the resource management reforms;
 - 43.2 a new statutory mechanism requiring water entities to each prepare a statutory plan that addresses Te Mana o Te Wai; or
 - 43.3 a new statutory mechanism that enables mana whenua to prepare a 'Statement of Te Mana o Te Wai' (or similarly titled document), and requires each water services entity to provide a formal response within a prescribed timeframe (**option for use in engagement**).
44. Rather than statutorily prescribe the requirements of an expression of kaitiakitanga, our preference is to enable mana whenua to prioritise their capacity and capability to this kaupapa through a flexible mechanism where the onus of response shifts to the

water services entity. We need to undertake further analysis, but our preliminary view is that any response from the entity should include comment and analysis of any environmental, social, cultural and economic issues raised by mana whenua. This would include a mechanism by which mana whenua may influence outcomes relating to service level and coverage.

45. If you support the option for use in engagement, our advice to you will focus on the design of this mechanism to ensure it appropriately balances an ability for mana whenua to exercise kaitiakitanga with the ability of the water services entities to progress what will likely be an ambitious programme of investment and service enhancement. The mechanics of how such a mechanism would work, including appropriate statutory weighting, will also depend on the final form of the Water Services Bill and the reform of the resource management system.

Community and consumer input

46. Māori have interests as consumers and community members within the water services system. There is evidence of historical inequities in investment for remote and rural communities, as well as interests raised by urban Māori that are separate to the interests raised by mana whenua. Māori are also more likely to be over-represented in vulnerable community groups. For that reason, the consumer interests of Māori are likely to require specific attention across the regulatory system. We have considered two main options that are summarised in **Appendix B**:
 - 46.1 consider Māori consumers on the same basis as other consumers in the design of consumer advocacy mechanisms; or
 - 46.2 provide for Māori to be represented as specific consumers with the consumer mechanisms (**option for use in engagement**).
47. If you support our option for use in engagement, our advice will focus on how to design such mechanisms in a manner that does not perpetuate historic inequities.
48. **Appendix B** pulls out the most critical or first order features that will require a Crown response to the issues raised by iwi/Māori. It presents the initial options analysis that have been examined by officials on key areas identified above.

Technical Working Group

49. Officials have tested our preliminary thinking with the Technical Working Group, during their most recent meeting on 24 February 2021. This was an opportunity to receive external te ao Māori feedback on our thinking and proposals.
50. The Technical Working Group were encouraging of the direction of policy advice, particularly the design of a Te Mana o Te Wai Kaitiaki mechanism as described within the diagrams at **Appendix C**. They cautioned against options that did not involve ownership and/or co-governance (despite acknowledging these were not strong levers). They also consistently highlighted the need to ensure support for mana whenua to lift capacity and capability. This must be matched by a strong partnership culture reciprocated within the new entity to provide the step change in relationships.

Next steps

51. We are seeking your feedback on this briefing and have scheduled a meeting on 1 March to accommodate this. Dependent on your feedback, material will be altered or added for the March engagement.
52. We also suggest an updated version of this briefing (incorporating any feedback you provide) is circulated to other Three Waters Ministers, and used as a basis of discussion at the next meeting of that group.

Recommendations

53. We recommend that you:

- a) **Discuss** this briefing with officials at a meeting at 3pm on 1 March 2021.
- b) **Agree** the objectives for the Crown/Māori relationship within the three waters service delivery reforms, as set out on page 4 of this briefing. **Yes/No**
- c) **Agree** the material in **Appendix C** can be used to gather feedback during the March engagement with local government and iwi/Māori. **Yes/No**



Allan Prangnell
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Hon Nanaia Mahuta
Minister of Local Government

_____/_____/_____



Appendix A: Summary rights and interests analysis (subject to further engagement)

Right	Considerations	Interest analysis	Commentary
<p>Article two – Rangatiratanga Māori will have the right to make decisions over resources and taonga which they wish to retain</p>	<ul style="list-style-type: none"> Are there options for Māori to exercise rangatiratanga while recognising the right of the Crown (including through local government) to govern? What role is there for Māori in design and implementation? Does the reform offer an opportunity to enhance Māori wellbeing or build Māori capability and capacity? 	<ul style="list-style-type: none"> Iwi/Māori have expressed dissatisfaction with the Treaty partnership approach and cultural responsiveness of current territorial authority delivery. This includes understanding and application of mātauranga Māori frameworks as they apply in place (hapū/whānau level) Introduction of new, legislative, governance and management arrangements will give rise to interests in co-governance opportunities. Iwi/Māori have expressed interest in ownership (including investment), governance, board appointments and board composition 	<ul style="list-style-type: none"> Iwi/Māori interests related to issues related to Article Two sit within the broader context of reform of the resource management system and issues associated with water allocation. Given the nature of the proposed statutory entities, traditional ownership and governance tools are likely to be less influential compared to other reforms. For example – there are unlikely to be shares that can be traded and valued. Opportunities will exist to materially improve the connection between Iwi/Māori rights and interests as they relate Mana Whakahaere, Kaitiakitanga, Manaakitanga on the delivery of services. It is likely that a new instrument is required. Water services entities will be operating within a legislative environment containing several Treaty related statutory references. A new statutory Treaty reference will be required and will need to ensure it reflects the appropriate hierarchy particularly in relation to the Water Services Bill and proposed amendments to the RMA.
<p>Article three – Rights as Citizens Implicit assurance that rights will be enjoyed equally by Māori with all New Zealanders. This may warrant special measures to attain that equal enjoyment of benefits.</p>	<ul style="list-style-type: none"> What are the implications for equitable outcomes? What considerations should support legal values including natural justice, due process, fairness, and equity including through regulatory processes? What does a tikanga lens bring to consideration of the issues? 	<ul style="list-style-type: none"> Iwi/Māori raised the importance of ensuring that water services are affordable for all. Iwi organisations have raised the potential for Māori to benefit from alternative delivery mechanisms more directly (e.g. jobs, social enterprise) Iwi organisations have also expressed a desire to invest in the water infrastructure sector. 	<ul style="list-style-type: none"> Consumer protections will need to ensure issues of equity, particularly as it applies to rural and remote communities (particularly marae or papakāinga supplies), are adequately addressed. Some iwi/Māori have raised the opportunity to encourage maximum local job creation and be supported such as social procurement and skills matching services. Issues related to how water services entities are able access funding including equity partners/investment sources.

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Appendix B: Options analysis

ASSESSMENT KEY:

Does not meet objectives

Partially meet objectives

Meets objectives

Design Feature	Option 1	Option 2	Option 3	Option 4	Comments
GOVERNANCE <i>What is the of mana whenua role in Governance</i>	NO CO-GOVERNANCE ROLE FOR MANA WHENUA Iwi/Māori have no direct role influencing governance of water services entities	SINGLE CO-GOVERNANCE WITH LOCAL AUTHORITIES Iwi/Māori interests are represented alongside local government in a single Governors Group with equal rights	JOINT CO-GOVERNANCE Iwi/Māori interests are represented alongside local government in a separate Forum that comes together with a Local Council Forum on significant strategic issues like the SOI/LOE. Representation on the Governors Group would be equal. Both the Mana Whenua Forum and the Local Government Forum could also have other functions.	MANA WHENUA FORUM DIRECTLY INPUTS TO BOARD Iwi/Māori are not represented within the Governors Group, and instead have a statutorily prescribed direct relationship with the Board.	It is likely that the governance framework for water services entities will include instruments such as a Government Policy Statement (GPS), Letter of Expectation (LOE) and Statement of Intent (SOI). This statutory framework will include prohibitions on share transfer, divesting ownership, sale of assets and dividend payments for a given entity. For that reason, options of direct ownership of the water services entities by iwi/Māori have not been explored. Our current thinking is that local government interests will be addressed through a representative Governors Group that will have limited decision-making powers, with the majority of decision-making rights being exercised by the Board. This structure will better enable the structural separation required to create independent balance sheet capacity in the water services entities. Iwi/Māori have raised opportunity for co-governance as a mechanism to achieve strategic influence. However, in the proposed entities traditional governance levers are more limited than other governance structures. We have therefore analysed a broader range of options for iwi/Māori to influence the strategic framework within which the entities operate. Any option also needs to be considered from a regulatory system perspective including connections to Government decisions on water allocation as well as they review of the Resource Management Act 1991

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Design Feature	Option 1	Option 2	Option 3	Option 4	Comments
BOARD ARRANGEMENTS <i>What are the Board competency requirements?</i>	NO SPECIFIC COMPETENCY No specific Treaty or Te Ao Māori competency required of Directors.	GENERAL TREATY OF WAITANGI COMPETENCY A specific requirement for Treaty of Waitangi competency	MĀTAURANGA MĀORI, TIKANGA MĀORI AND TE AO MĀORI COMPETENCY A specific competency requirement related to prescribed areas of Te Ao Māori competency.	COLLECTIVE COMPETENCY A collective Treaty of Waitangi Board competency with a specific competency related to Mātauranga Māori knowledge	It is proposed that the competency based professional Board for each water services entity be appointed by an Independent Selection Panel. A central way for Te Mana o Te Wai to be embedded as an operating principal of the entity is to ensure that the Board is adequately competent both as a Treaty partner, and with expertise in accessing mātauranga Māori, tikanga Māori and Te Ao Māori knowledge to inform the water entities activities.

Released under the Official Information Act 1982

Design Feature	Option 1	Option 2	Option 3	Option 4	Comments
<p>ESTABLISHING MANA WHENUA INTERESTS</p> <p><i>How would a multi-regional entity identify which mana-whenua have interest within their boundary?</i></p>	<p>MANA WHENUA - SELF DECLARED</p> <p>Mana-whenua groups are identified consistent with current RMA processes via mechanisms like Te Kahui Wai Māngai.</p>	<p>MANA WHENUA – WITH SUPPORT FOR A KAUPAPA MĀORI APPROACH</p> <p>Mana whenua groups are identified through kaupapa Māori process once entities are established</p>	<p>POST SETTLEMENT GOVERNANCE ENTITIES</p> <p>Mana whenua interests are represented by post-settlement iwi authorities</p>	<p>TRANSITION: PSGES UNTIL A KAUPAPA MĀORI PROCESS CONFIRMS INTEREST</p> <p>A combined option whereby PSGEs operate as a mana-whenua forum for a transitional period until a kaupapa Maori process for mana-whenua can occur</p>	<p>The proposed water services entities will need to be significantly larger scale than current service delivery arrangements to provide scale benefits in service provision and infrastructure investment. Our analysis is focussing on between 2-6 entities across the country. Within the boundaries of each of these entities there will therefore be multiple rohe/takiwā.</p> <p>Consistent with the conclusions of the Randerson Review, engagement with iwi/Māori has highlighted that kaitiakitanga as it relates to the provision of water services often operates at a hapū or whānau level. It is also important to ensure that the proposed entities are not in a position of determining who represents mana-whenua interests. Officials from MFE are actively considering options to improve RMA tools related to mana whenua involvement into a single integrated partnership process. The proposed entities will operate within the environmental regulatory system, however it will also be important that they have a direct relationship with mana whenua given the significance of water from a Te Ao Māori perspective.</p>

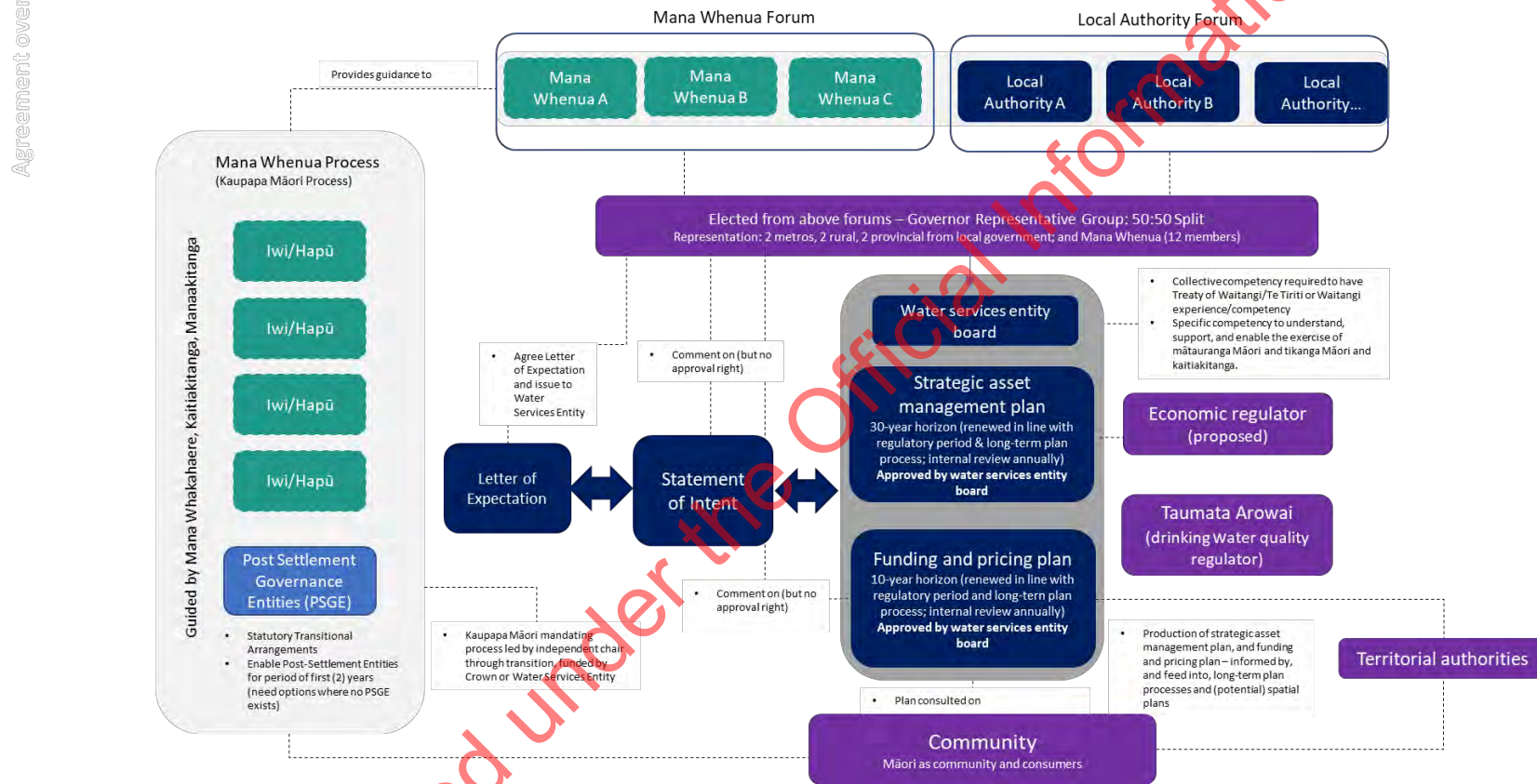
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Design Feature	Option 1	Option 2	Option 3	Option 4	Comments
<p>KAITIAKITANGA MECHANISM</p> <p><i>How will hapū/whānau level be able to influence the water services entities outcomes</i></p>	<p>EXISTING MECHANISMS</p> <p>Article I. Rely on existing mechanisms such as input into spatial plans and mechanisms the Resource Management Act (and its replacement) to adequately address environmental effects .</p>	<p>NEW STATUTORY REQUIRED PLANS</p> <p>Article II. Require water services entities to prepare statutory plans that addressed Te Mana o Te Wai.</p>	<p>TE MANA O TE WAI STATEMENTS AND RESPONCE</p> <p>Article III. Enable mana whenua to provide a statement of mana whenua (with flexibility to determine form) and require water entitites to respond to that statement</p>	<p>Article IV.</p>	<p>Consistent with feedback, Te Mana o Te Wai is richly experienced in place and kaitiakitanga is more likely to be exercised at a hapū/whānau level. The ability to connect governance with delivery on the ground will require the proposed water services entities to make a difference in place at a hapū/whānau level. This will primarily be achieved through the preparation of asset management plans and investment decision making tools.</p> <p>Rather than statutorily prescribe the requirements of the plan, our preference to enable mana-whenua to prioritise their capacity and capability to this Kaupapa through a flexible mechanism where the onus of response shifts to the entity.</p>
<p>COMMUNITY AND CONSUMER INPUT</p> <p><i>How will Māori input as consumers</i></p>	<p>MĀORI AS CONSUMERS</p> <p>Article V. Māori consumers have access to the same consumer advocacy and inputs as other consumers</p>	<p>REPRESENTATIVE CONSUMER INTERESTS</p> <p>ARTICLE VI. The needs of Māori are particularly highlighted in the design of consumer advocacy instruments to recognise, and not perpetuate, historic inequities</p>			<p>Māori have interests as consumers and community members within the water service system. There is evidence of historical inequities in investment for remote and rural communities. Māori are also more likely to be over-represented in vulnerable community groups. For that reason, the consumer interests of Māori are likely to require specific attention across the regulatory system.</p>

Appendix C: Draft material for March 2021 engagement with local government and iwi/Māori

Appendix C: Option One: Co-Governance (independent of other reforms)

DRAFT OPTION FOR DISCUSSION

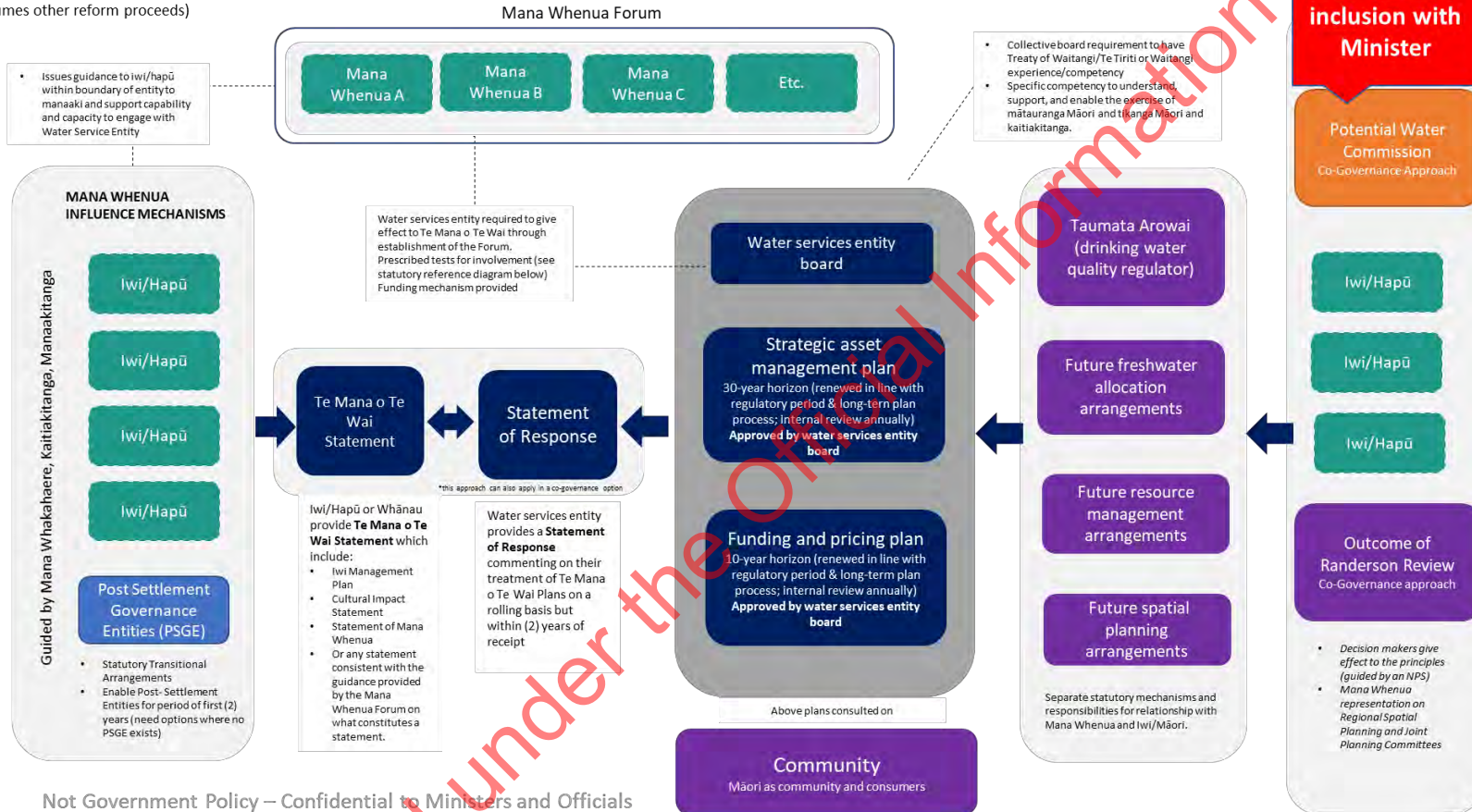


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Agreement overview

Option Two: Strategic influence (assumes other reform proceeds)



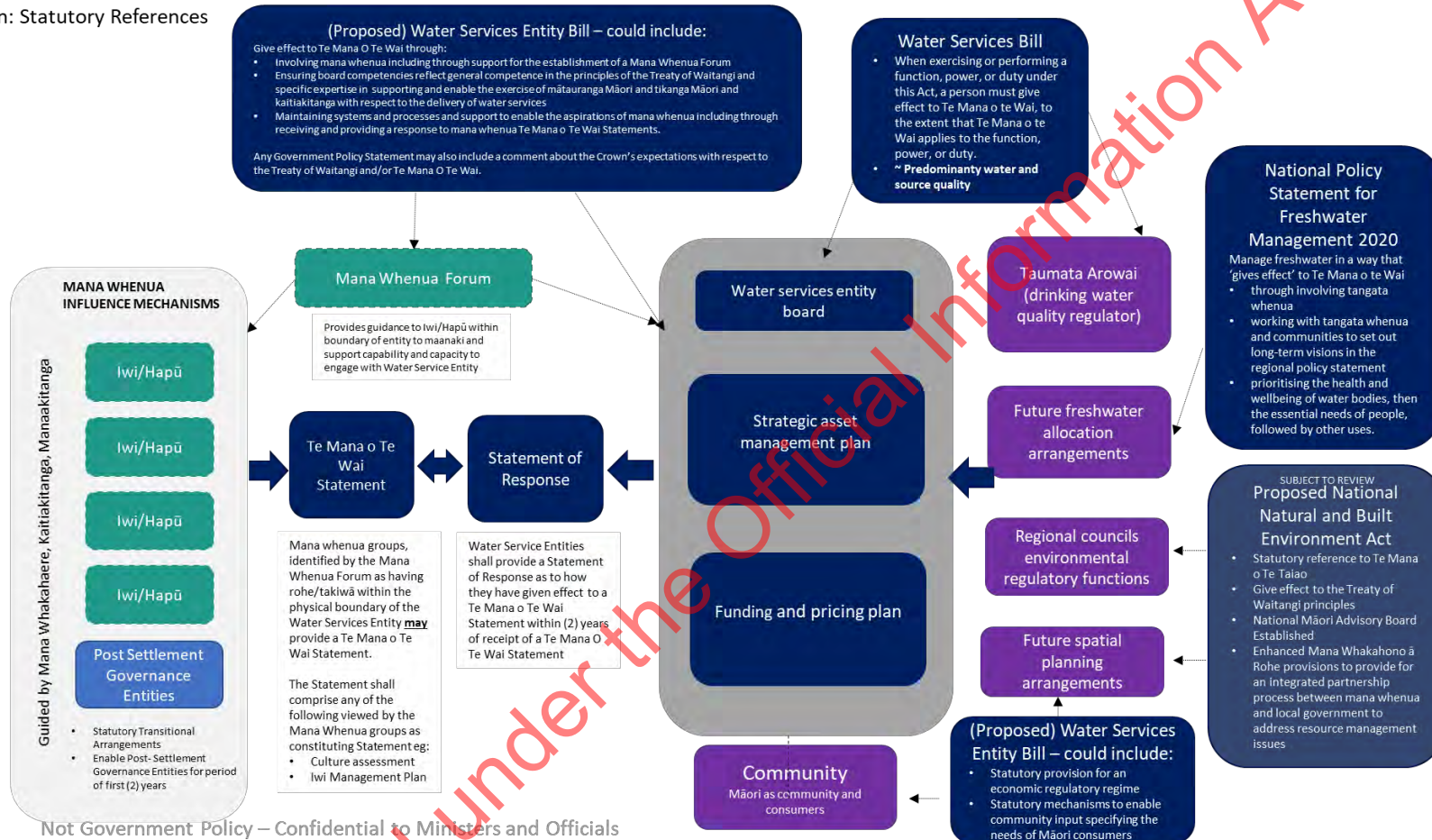
Not Government Policy – Confidential to Ministers and Officials

IN CONFIDENCE

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Option: Statutory References

Agreement overview



Not Government Policy – Confidential to Ministers and Officials

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Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: Three Waters Reform – update on water service entity design

Date: 26 March 2021

Key issues

This briefing provides you with an overview of the key features of officials' preferred water service entity design scenario and outlines emerging charging and pricing principles.

It seeks your agreement to include the preferred approaches to entity design and charging and pricing in the forthcoming Cabinet paper proposals in May 2021.

Action sought

Agree that the proposed entity design and charging and pricing approaches be included in the suite of draft papers due to be considered by Cabinet in May 2021, subject to any feedback you have.

Note that as part of the Cabinet paper drafting process, officials will provide further advice in relation to outstanding entity design and charging and pricing matters.

Agree that a copy of this briefing is provided to Three Waters Ministers, as part of the package of material that will be circulated for the meeting on 8 April 2021 (subject to addressing any feedback you provide).

Timeframe

31 March 2021

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 st contact
Allan Prangnell	Executive Director, Three Waters	021 865 809	✓
Michael Chatterley	Commercial & Financial Lead, Three Waters	§ 9(2)(a)	

Return electronic document to:	Michael.Chatterley@dia.govt.nz
Cohesion reference	3W2DU3RAJ5R2-1009474250-188
Ministerial database reference	LG202100342

Pages 2 - 12 and 15 - 28 have been removed as they are out of scope of the request

Information on pages 13 and 14 has also been redacted as it is out of scope of the request

Role and membership of Governor Representative Group

58. A Governor Representative Group enables efficient governance and decision making on behalf of a potentially large group of representative local authorities and iwi/Māori within the multi-regional jurisdiction of the entity. Importantly, it serves as a reflection and proxy for collective public and community ownership of water infrastructure.
59. It is proposed that **local authorities and mana whenua** will be co-Governors and will appoint and remove representatives to the Governor Representative Group. It is also assumed that iwi/Māori (through mana whenua) will appoint representatives to the Governor Representative Group with legislation setting minimum requirements relevant to appointment of Governor Representatives.

Appointment of Governor Representatives

60. The number of Governor Representatives for each entity is yet to be determined as it will depend on the number of entities and boundaries (that is, number of member local authorities). It needs to be a workable number to ensure effective ability to arrive at decisions. We anticipate there being 10 or fewer members.
61. If an entity comprises more member local authorities and mana whenua representatives than can be accommodated on the Governor Representative Group, then Governor Representatives:
- 61.1 must comprise a distribution of metro, provincial and rural local authorities (noting co-governance with mana whenua); and
 - 61.2 represent a geographic spread across the jurisdiction of the entity.
62. Members of the Governor Representative Group will be subject to minimum requirements in legislation. In respect of local authority representatives, we expect Governor Representatives to be limited to elected members, chief executives or other appropriately qualified senior managers of a local authority. However, only elected members will be able to appoint a representative, which retains a level of democratic accountability.
63. We also expect a requirement for an annual rotation of Governor Representatives, where a certain number of nominating local authorities are required to retire their Governor Representatives to avoid lengthy periods where a local authority may not be a nominating local authority.
64. Legislation will provide for the appointment of Governor Representatives as above, but would also include:
- 64.1 term of appointment of Governor Representatives;

- 64.2 a requirement to agree and present to the entity Board (on an information basis only) a charter outlining functions and operations of the Governor Representative Group;
- 64.3 the process and procedures of meetings of the Governors Representative Group for example, regularity of meetings, quorum, chairperson, voting;
- 64.4 reporting to Governor Representatives; that is, Board performance, and how renewal versus continuity of members is being managed.

Functions and powers of Governor Representatives

- 65. The functions and powers of Governor Representatives in the Governor Representative Group include:
 - 65.1 establishing and monitoring the Independent Selection Panel (described below) that appoints members to the entity Board; and
 - 65.2 developing and agreeing a Statement of Performance Expectations that will guide the entity in its formation of key strategic and planning documents such as Asset Management Plans.



*Delivering the three waters
reform programme*

*Preparing for Cabinet
decisions in May 2021 –
discussion about entity and
system design*

Three Waters Review

Meeting of Three Waters Ministers
8 April 2021

IN CONFIDENCE
NOT GOVERNMENT POLICY

New Zealand Government

Scope of this meeting and slide pack

- **Three Waters Ministers are meeting twice in early April to agree the key features and reform proposals to take to Cabinet in May 2021**
- **The agenda on the next slide outlines the focus of today's meeting (8 April)**
- **The next meeting – on 12 April – will focus on:**
 - numbers and boundaries of the new entities
 - associated reform strategy and incentives

Agenda

1. Entity design – overview of key points of interest
2. Community voice and consumer protection
3. Iwi/Māori rights and interests
4. Stewardship – overview of proposed approach
5. Establishment and transition – overview of proposed approach
6. Next steps
 - a) Update on public information campaign
 - b) Reminder of future meetings and decision points

Pages 4, 5, 7 - 9, 11 - 13 and 16 - 26 have been removed as they are out of scope of the request.

Likely structure

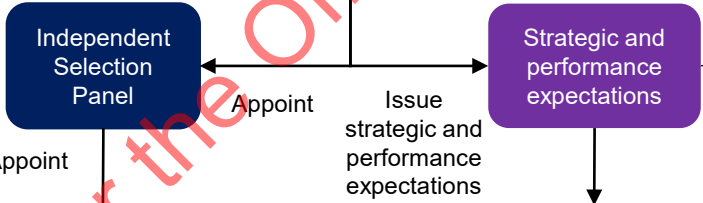
This structure was tested in the March 2021 engagement workshops with local government and iwi/Māori

Officials will provide Ministers with an update on the key points of feedback during the meeting

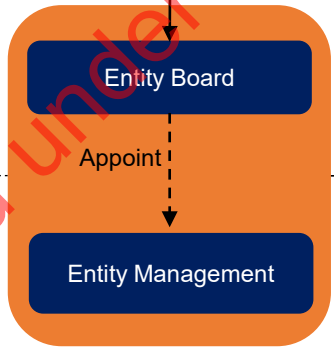
Enabling legislation
 Outlines purpose, objectives, powers and functions of the new entities.
 Also provides further detail on establishment and minimum requirements of key governance features.



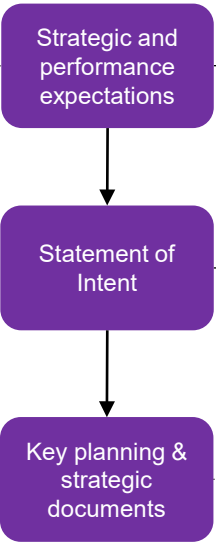
Owners Appoint



Appoint Issue strategic and performance expectations



Appoint



Entity Produces

Guides formulation

Discussed later in this slide pack

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Proposed roles for local authorities, communities, and mana whenua in the new system

Individual role to ensure new water entities will be responsive to community needs

- **Local authorities and mana whenua play an important role in representing the interests of their communities**
- Local authorities and mana whenua will individually continue to influence decisions through:
 - Urban development and land use planning processes (noting current resource management reform proposals)
 - Long-term planning (through transition phase)
 - Input into consultation on national/regional standard setting
 - Advocacy

Collective role to hold new water entities to account for delivering objectives

- **Local authorities and mana whenua collectively are best placed to hold new water services entities (and their independent competency-based boards) to account, and act as guardians**
- **Proposed mechanisms include:**
 - Roles of the 'Governor Representative Group'
 - Issuing strategic and performance expectations
 - Entities publicly and formally report against statement of corporate intent
 - Audited annual reporting (statutory requirements)

There would also be a direct relationship between water services entities and consumers/communities

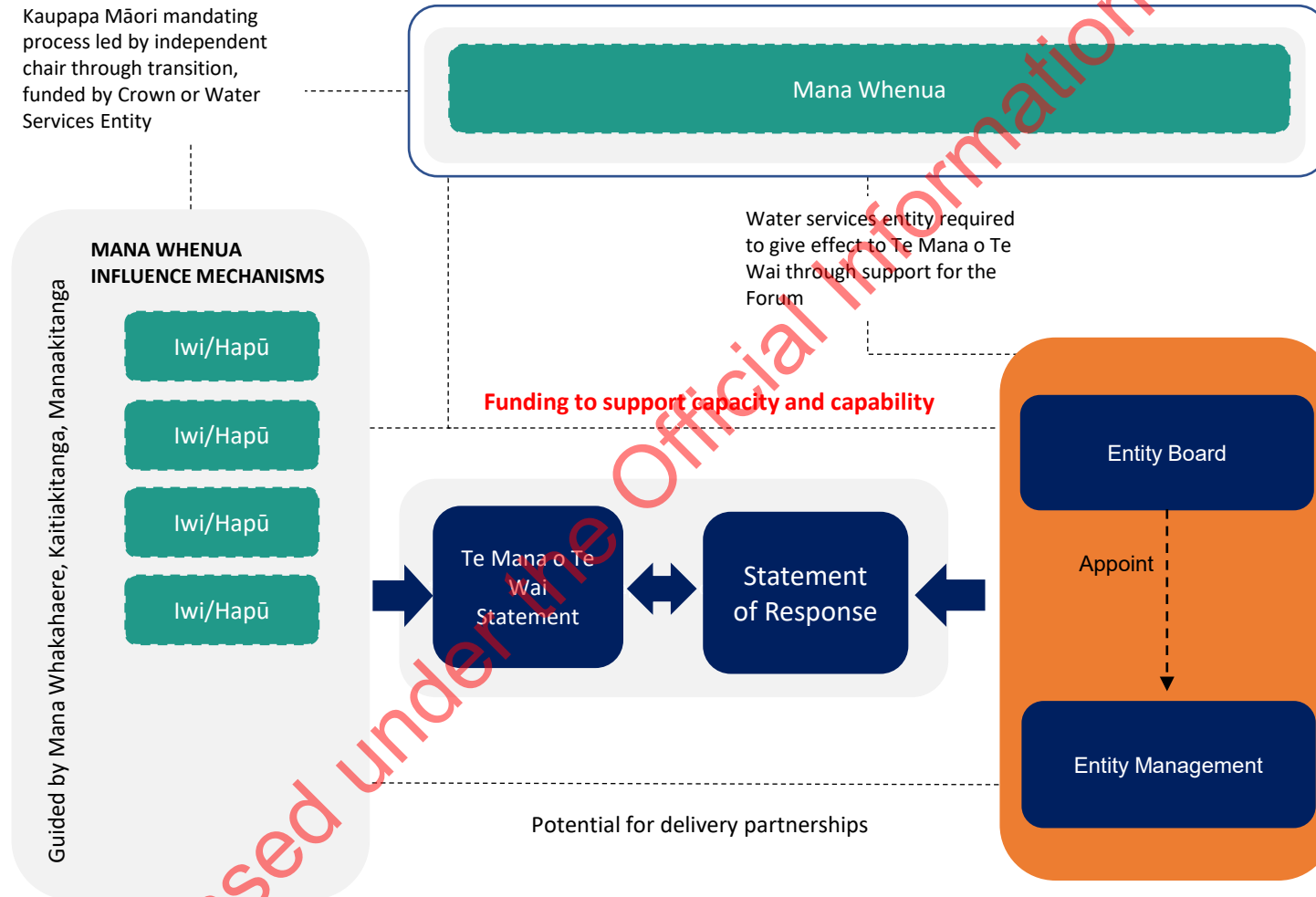
We are proposing the entities be required to:

- **act in the best interests of their consumers and communities when achieving objectives and delivering functions**
- **engage with consumers and communities in relation to key planning and accountability documents**
- **establish a consumer forum as a core mechanism for engagement**

Iwi/Māori rights and interests relating to the new service delivery system

- **We tested three models with iwi/Māori (and local government) during the March engagement**
 - Statutory reference to Te Mana o te Wai
 - Oversight and monitoring of statutory reference
 - Iwi/Māori consumer voice recognition mechanisms
- **Key feedback (so far) includes:**
 - **Most participants felt the models were a good start**, they also wanted more time to consider how best to recognise rights and interests in the water services entities
 - There was a **consensus that a hybrid of the first two models** (outlined above) would best allow for recognition of rights and interests in the three waters infrastructure and services (this is shown on the next slide)
 - Concerns were raised about **who would represent iwi/hapū in the Governor Representative Group** and the possible **process to determine this**
 - There were queries about how **changes to the resource management system and freshwater allocation** would affect the proposals

Iwi/Māori rights and interests relating to the new service delivery system





Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Copy to: Hon Grant Robertson
Minister of Finance

Title: **Three Waters Reform: Auckland Council alternative reform proposals**

Date: 16 August 2021

Key issues

Auckland Council has raised several issues with the governance and oversight arrangements of the three waters reform proposals, citing a “one size fits all” approach. In light of this, the Council has proposed a series of alternative entity design scenarios they wish to test with Standard & Poor’s that depart from the Government’s reform proposals.

Officials continue to engage with Auckland Council on aspects of the reforms, including on variations to the governance arrangements to respond to the council’s influence and accountability concerns while remaining consistent with the Government’s reform proposals.

However, issues remain around a perceived loss of accountability and influence of water services outcomes and a lack of recognition of Auckland’s scale in Entity A. These issues have become sticking points for the Mayor.

Action sought

Agree to the recommendations

Timeframe

18 August 2021

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 st contact
Mike Chatterley	Commercial & Financial Lead, Three Waters	s 9(2)(a)	✓
Allan Prangnell	Executive Director, Three Waters	021 865 809	

Return electronic document to:	Mike Chatterley (Michael.Chatterley@dia.govt.nz)
Cohesion document reference	3W2DU3RAJ5R2-1009474250-437
Ministerial database reference	LG202100979

Pages 3 - 7 and 9 - 12 have been removed as they are out of scope of the request

Information redacted on pages 2 and 8 is also out of scope of the request



5. Instead, the Council is seeking to test several alternative reform structures including:



5.5 alternatives to the proposed shared oversight with iwi/Māori such as using the existing the Independent Māori Statutory Board or enabling iwi/Māori to appoint direct representation to the water service entity board.

6. These proposals represent a significant departure from Cabinet mandate and the Government's objectives relating to professional competency-based governance of Water Service Entities (WSEs). They are unlikely to achieve sufficient balance sheet separation.

7. The alternative iwi/Māori mechanisms proposed by Auckland Council are also difficult to reconcile with the principles-based approach that have informed Government's decisions on three waters reform to date.

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Scenario 3: Alternative iwi/Māori representation and oversight

47. Auckland Council have raised concerns about the proposed joint oversight with iwi/Māori as an additional source of dilution of Auckland Council's influence over Entity A.
48. The Council have raised alternatives such as using the existing Independent Māori Statutory Board or enabling iwi/Māori to appoint direct representation to the water service entity.
49. More recent communication from the Council has indicated that the Council is balancing its representative responsibility to all ethnicities in Auckland - not just Māori.
50. The Government's proposals take a Treaty-based approach recognising the rights and interests of iwi/Māori. These include a partnership approach to oversight of the entities, with mana whenua sharing half of the representative positions with councils.
51. The proposal for joint oversight is one of a range of mechanisms that will provide a step change ability for iwi/Māori rights and interests to be protected and promoted as part of the reforms.
52. While iwi/Māori themselves are still engaging with the reform material it is noteworthy that one prominent Auckland iwi, Ngāti Whātua Ōrākei, has written to the Council indicating support for the reform as an improvement over the current CCO arrangements.
53. The alternative mechanisms proposed by Auckland Council are difficult to reconcile with the principles-based approach that has informed Government's decisions on three waters reform to date.
54. Using the existing Independent Māori Statutory Board mechanism would need to be tested with iwi/Māori, including those in Northland, but are unlikely to be preferred over the direct Kaupapa Māori approach proposed by Government.
55. Council have expressed concern that a Kaupapa Māori approach may take time and the Government's reform proposals have provided for transition arrangements to enable this time to be taken by iwi/Māori.
56. The ability for iwi/Māori to directly appoint to the water service entity boards may have some appeal for iwi/Māori. However, it would be a significant departure from Government's strong preference to have professional competency-based boards.
57. The Government has already provided for Treaty Rights/Te Ao Māori/Matauranga and Tikanga to be recognised as a statutorily required board competency for all water service entities.



Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: **Initial draft Cabinet paper for feedback – *Strengthening representation, governance and accountability of new water services entities***

Date: 4 March 2022

Key issues

We are seeking your feedback on an initial draft Cabinet paper, *Strengthening representation, governance and accountability of new water services entities*. This paper is intended to cover two main topics:

- information on, and a proposed response to, the report and recommendations of the Working Group on Representation, Governance and Accountability;
- a report back on “proposals for managing any risks to the reform programme associated with the delayed timetable, and for managing the timing and funding of reform-related policy, legislation and transition work, including potential alternative options for progressing the suite of legislation”, as requested by the Cabinet Economic Development Committee (DEV) on 8 December 2021 [DEV-21-MIN-0268].

As noted in the briefing, this is an initial draft paper, which contains a number of placeholders and gaps. In particular, it is subject to further discussions with you about the Working Group report, and decisions by you and the Minister of Finance about proposals for addressing cost pressures.

We will have an initial discussion with you about these matters at the meeting with local government officials on Monday 7 March 2022. The intent is to provide you with an updated version of the draft Cabinet paper for Ministerial consultation, by 11 March 2022. The final paper is due to be considered by DEV on 30 March 2022.

Action sought

Provide feedback on the attached draft Cabinet paper, *Strengthening representation, governance and accountability of new water services entities* (Appendix A)

Timeframe

Tuesday 8 March 2022

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 st contact
Michael Mills	Acting Director	021 533 086	✓
Jane Fleetwood	Lead Strategic Advisor	s 9(2)(a)	

Return electronic document to:	Jane Fleetwood
Ministerial database reference	LG202200192

Purpose

1. We are seeking your feedback on an initial draft Cabinet paper: *Strengthening representation, governance and accountability of new water services entities* (**Appendix A**).
2. The final paper is due to be considered by the Cabinet Economic Development Committee (DEV) on 30 March 2022.

Context for, and overview of, draft Cabinet paper

3. In October 2021, a Working Group on Representation, Governance and Accountability (Working Group), was established to report to you with recommendations for a preferred strengthened approach to the governance framework for the new water services entities. You are due to receive the Working Group's final report on 7 March 2022.
4. It is intended that you will provide information on the Working Group report, and your proposed response, in a Cabinet paper in March 2022. In particular, you will need to seek decisions to make changes to the draft Water Services Entities Bill to address many of the Group's recommendations – if you wish to give effect to those recommendations.
5. The Department has received a draft of the Working Group's report, and has started preparing a draft Cabinet paper on this basis. This is attached at **Appendix A**, for your feedback. We note that this is an initial draft only, and it contains a number of 'placeholders' and areas for further work. In particular, we will be seeking to discuss the Working Group's recommendations with you before inserting details about the proposed response.
6. The draft Cabinet paper also reports back on "proposals for managing any risks to the reform programme associated with the delayed timetable, and for managing the timing and funding of reform-related policy, legislation and transition work, including potential alternative options for progressing the suite of legislation" [DEV-21-MIN-0268].
7. You were invited to report back in March 2022 on these matters, when DEV made decisions to issue an exposure draft of the Water Services Entities Bill to the Working Group (on 8 December 2021).
8. The draft Cabinet paper sets out a suggested revised approach to the policy and legislation timetable. This reflects the delay to the introduction of the Bill, but will still enable delivery of the reforms within the intended timeframe. The approach aligns with discussions with you, a briefing provided on 15 February 2022 [LG202200107], and your stated preference to have the Bill ready for introduction in May 2022.
9. The paper also seeks decisions that will enable certain funding issues and cost pressures relating to the policy, legislation and transition work to be managed. Initial advice on this matter was provided to you and the Minister of Finance on 24 February 2022 [LG202200170]. Further advice is due to be provided on 11 March 2022. Once decisions, relevant details would be included in the draft Cabinet paper.

10. You are also due to receive a briefing on 10 March 2022, providing further information on transition-related risks and implications. In that briefing, we will be seeking your direction about what might be included in the draft Cabinet paper. In particular, we are likely to suggest this includes a summary of the National Transition Unit's proposed approach to ICT implementation, to give visibility to your Cabinet colleagues of upcoming decisions required around June 2022.

Next steps

11. The proposed next steps for progressing the draft Cabinet paper are set out in the table below:

Key activities – March 2022 Cabinet paper	Timing
Initial draft of Cabinet paper sent to Minister for review/feedback	Friday 4 March
Deadline for Working Group report	Monday 7 March
Consideration of Working Group recommendations, discussion with Minister(s), and updating the Cabinet paper content to reflect the final report and Minister's preferred approach to addressing recommendations	Tuesday 8 March to Thursday 10 March
Revised draft Cabinet paper circulated for Ministerial and agency consultation	Friday 11 March to Monday 21 March
Discussion with Three Waters Ministers	Monday 21 March
Briefing seeking Minister's agreement to lodge Cabinet paper	Tuesday 22 March
Cabinet paper lodged with Cabinet Office	By 10am on Thursday 24 March
Cabinet paper considered by DEV	Wednesday 30 March
Cabinet consideration / confirmation	Monday 4 April

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Recommendations

12. We recommend that you **provide feedback** on the attached draft Cabinet paper, *Strengthening representation, governance and accountability of new water services entities (Appendix A)*, by Tuesday 8 March 2022. **Yes/No**



Michael Mills
Acting Director – Policy and Stewardship

Hon Nanaia Mahuta
Minister of Local Government

_____/_____/_____

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Appendix A – Initial draft Cabinet paper, *Strengthening representation, governance and accountability of new water services entities*

Section 18(d) - Cabinet Paper: Strengthening representation, governance and accountability of the new water services entities - 19 April 2022 - [https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/\\$file/Cabinet-Paper-Strengthening-representation-governance-and-accountability-19-April-2022.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/$file/Cabinet-Paper-Strengthening-representation-governance-and-accountability-19-April-2022.pdf)

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Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: Revised draft Cabinet paper for review and Ministerial consultation:
Strengthening representation, governance and accountability of the new water services entities

Date: 10 March 2022

Key issues

We are asking you to review the attached draft Cabinet paper, *Strengthening representation, governance and accountability of the new water services entities* (**Appendix A**), and circulate it for Ministerial consultation.

You received the final report of the Working Group on Representation, Governance and Accountability on 7 March 2022. The attached draft Cabinet paper has been updated to reflect further work to develop proposed responses to the report's recommendations.

The final paper is due to be considered by the Cabinet Economic Development Committee (DEV) on 30 March 2022, and will need to be lodged with Cabinet Office on 24 March 2022. To meet this deadline, we suggest you circulate the paper to other Ministers on Friday 11 March 2022, and seek feedback by 21 March 2022. The deadline for feedback aligns with the date of the next meeting of Three Waters Ministers, which will discuss aspects of this paper.

There are still some elements of the draft Cabinet paper and Working Group response that are being developed, and may require conversations with you. We propose that an updated version of the paper is provided to Three Waters Ministers as part of the pack of material for the meeting.

Action sought

Review the draft Cabinet paper (**Appendix A**), and **agree** to circulate it for Ministerial consultation.

Agree that the draft Cabinet paper can be shared – in confidence – with the Joint Central/Local Government Three Waters Steering Committee, for its meeting on Monday 14 March 2022.

Timeframe

Friday 11 March 2022

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 st contact
Michael Mills	Acting Director – Policy and Stewardship	021 533 086	✓
Jane Fleetwood	Lead Strategic Advisor	04 494 0564	

Return electronic document to: Jane Fleetwood

Ministerial database reference: LG202200212

Purpose

1. We are seeking your agreement to review the attached draft Cabinet paper, *Strengthening representation, governance and accountability of the new water services entities (Appendix A)*, and circulate it for Ministerial consultation.
2. The final paper is due to be considered by the Cabinet Economic Development Committee (DEV) on 30 March 2022, and will need to be lodged with Cabinet Office on 24 March 2022.
3. To meet this deadline – and provide the required amount of time for consultation – we suggest you circulate the paper to other Ministers on Friday 11 March 2022, and seek feedback by 21 March 2022. The deadline for feedback aligns with the date of the next meeting of Three Waters Ministers, which will discuss aspects of this paper.
4. There are still some elements of the draft Cabinet paper that are being developed, and may require conversations with you. We propose that an updated version of the paper is provided to Three Waters Ministers as part of the pack of material for the meeting.

Background and context

5. In October 2021, a Working Group on Representation, Governance and Accountability (Working Group), was established to report to you with recommendations for a preferred strengthened approach to the governance framework for the new water services entities. You received the Working Group's final report on 7 March 2022.
6. It is intended that you will provide information on the Working Group report, and your proposed response, in a Cabinet paper in March 2022. In particular, you will need to seek decisions to make changes to the draft Water Services Entities Bill to address many of the Group's recommendations – if you wish to give effect to those recommendations.
7. The draft Cabinet paper will also include “proposals for managing any risks to the reform programme associated with the delayed timetable, and for managing the timing and funding of reform-related policy, legislation and transition work, including potential alternative options for progressing the suite of legislation” [DEV-21-MIN-0268]. You were invited to report back in March 2022 on these matters, when DEV made decisions to issue an exposure draft of the Water Services Entities Bill to the Working Group.
8. We provided you with an initial draft Cabinet paper on 4 March 2022, and had a discussion with you about this paper and the Working Group report on 7 March 2022. As indicated then, the paper still had a number of placeholders, pending receipt and consideration of the final report, and decisions on other briefings.
9. Since then, we have been doing further work to develop proposed responses to the Working Group's recommendations, and to add relevant information into the draft Cabinet paper. The main changes to the paper are in Part A, from pages 7 to 20. These sections include substantive commentary on, and responses to, the majority of the recommendations – covering the following areas:
 - 9.1 Ownership;
 - 9.2 Governance;

- 9.3 Strengthening accountability – strategic direction; and the entity board;
 - 9.4 Regional Representative Group, and sub-regional groups;
 - 9.5 Entity constitution;
 - 9.6 Strengthening community and local voice;
 - 9.7 Balance sheet separation;
 - 9.8 Te Mana o te Wai;
 - 9.9 Strengthening Te Tiriti o Waitangi;
 - 9.10 Preserving iwi, hapū and Māori rights and interests in water;
 - 9.11 Definition of mana whenua
 - 9.12 Resourcing to ensure iwi, hapū and Māori can participate in the new arrangements;
 - 9.13 The ongoing role of the Crown to support the new system, and recommendation for a five-year review;
 - 9.14 Recommendations for a Water Services Ombudsman;
 - 9.15 Public communications.
10. We have also provided briefings on the other matters that will be covered in the paper, relating to:
- Out of scope



Comment

11. We are providing a revised version of the draft Cabinet paper, for your review and comment (**Appendix A**). Given the short timeframes for progressing this paper, we are asking you to circulate it for Ministerial consultation on 11 March 2022. We will address any further feedback you may have on the paper, and undertake agency consultation, in parallel with the Ministerial consultation process.
 12. We suggest you also provide a copy of the Working Group's report to other Ministers, for information.
 13. There are still some areas of the paper and Working Group response that require further work before these can be finalised. One particular area that we will seek to discuss with you is the Working Group recommendation relating to ongoing Crown funding support.
- Out of scope

14. A large grey rectangular redaction box covering several lines of text.

15. You have convened a meeting with Three Waters Ministers on 21 March 2022, which will focus largely on the response to the Working Group and the draft Cabinet paper. Given the paper is continuing to be developed, we propose that an updated version is provided to Three Waters Ministers as part of the pack of material for the meeting. That pack is due to be circulated on Thursday 17 March 2022.
16. We note that the draft Cabinet paper deals with the Working Group's recommendations thematically. We are also preparing a more detailed table setting out suggested responses to each of the recommendations, which we will provide to you next week. Once completed, this may be shared with other Ministers and/or appended to the Cabinet paper for information.
17. We also note that the Treasury has raised a concern about seeking Cabinet agreement to proposals before the Department has tested whether they achieve balance sheet separation with Standard & Poor's (S&P), particularly given the earlier changes that were incorporated into the draft Bill in late 2021.
18. We are beginning to draft an Information Memorandum for S&P based on the attached draft Cabinet paper, and anticipate finalising our engagement with them in early May 2022. The Treasury will be consulted during this process.
19. It is the Department's opinion that the proposals can achieve balance sheet separation, but some nuancing or modifications may be required to achieve balance sheet separation. If modifications are required, we will advise you as we become aware of these issues, and will look to develop alternative options that preserve the intent of the Working Group's recommendations.

Next steps

20. The proposed next steps for progressing the draft Cabinet paper are set out in the table below:

Key activities – March 2022 Cabinet paper	Timing
Revised draft Cabinet paper circulated for Ministerial and agency consultation	Friday 11 March to Monday 21 March
Discussion with Three Waters Ministers	Monday 21 March
Briefing seeking Minister's agreement to lodge Cabinet paper	Tuesday 22 March
<i>Cabinet paper lodged with Cabinet Office</i>	By 10am on Thursday 24 March
Cabinet paper considered by DEV	Wednesday 30 March
Cabinet consideration / confirmation	Monday 4 April

21. The Joint Central/Local Government Three Waters Steering Committee is holding its next meeting on Monday 14 March 2022, and the Working Group report is an agenda item for that meeting. We would like to share the attached version of the draft Cabinet paper with members of the Committee – in confidence – to provide visibility over the proposed response to the Working Group's recommendations (with appropriate caveats around the 'draft' nature of the response).

Recommendations

22. We recommend that you:

- a) **review** the draft Cabinet paper, *Strengthening representation, governance and accountability of the new water services entities (Appendix A)*, and **agree** to circulate this paper for Ministerial consultation on 11 March 2022 (with a deadline for feedback of 21 March 2022) – along with a copy of the Working Group report, for information; **Yes/No**
- b) **note** that the Department is continuing to work on the draft Cabinet paper and suggested response to the Working Group report, and will provide an updated version of the paper as part of the pack of material for the meeting of Three Waters Ministers on 21 March 2022;
- c) **agree** that the attached version of the draft Cabinet paper can be shared – in confidence – with the Joint Central/Local Government Three Waters Steering Committee, for its meeting on Monday 14 March 2022. **Yes/No**



Michael Mills
Acting Director – Policy and Stewardship

Hon Nanaia Mahuta
Minister of Local Government

_____/_____/_____

Appendix A: Draft Cabinet paper – *Strengthening representation, governance and accountability of the new water services entities*

Section 18(d) - Cabinet Paper: Strengthening representation, governance and accountability of the new water services entities - 19 April 2022 - [https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/\\$file/Cabinet-Paper-Strengthening-representation-governance-and-accountability-19-April-2022.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/$file/Cabinet-Paper-Strengthening-representation-governance-and-accountability-19-April-2022.pdf)

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Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: **Draft material for 21 March 2022 meeting of Three Waters Ministers**

Date: 14 March 2022

Key issues

We have prepared a draft slide pack to support the meeting of Three Waters Ministers on 21 March 2022 (Appendix A). We are seeking your feedback on these slides by 16 March 2022, so they can be updated and circulated to Ministers the following day.

The focus of discussions will be on the first of the proposed agenda items – the response to the Working Group report. This item is supported by a draft of the Cabinet paper, which was circulated for Ministerial consultation on 11 March 2022. As previously advised, we are continuing to work on this paper and anticipate providing the latest version for distribution with the final package of material.

We will also provide you with talking points and an annotated agenda ahead of the meeting.

Action sought

Review and provide feedback on the attached draft slide pack for the meeting of Three Waters Ministers on 21 March 2022 (Appendix A). Note that the information in the slide pack is supplemented by a draft Cabinet paper – the next version of which is intended to be distributed to Three Waters Ministers with the final package of material.

Timeframe

By midday on
Wednesday 16 March
2022

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 st contact
Michael Mills	Acting Director	021 533 086	✓
Jane Fleetwood	Lead Strategic Advisor	s 9(2)(a)	
Return electronic document to:	Jane Fleetwood: jane.fleetwood@dia.govt.nz		
Ministerial database reference	LG202200245		

Purpose

1. We have prepared a draft slide pack to support the meeting of Three Waters Ministers on 21 March 2022 (**Appendix A**).
2. We are seeking your feedback on these slides by midday on 16 March 2022. We will then make any revisions and return the final pack to your office, for circulation to other Three Waters Ministers on 17 March 2022.

Overview of the draft slide pack for the 21 March 2022 meeting

3. As outlined in the attached draft slide pack (**Appendix A**), the proposed agenda for this meeting covers:
 - 3.1 Item 1: Draft Cabinet paper – proposed response to Working Group report.
 - 3.2 Item 2: Overview of policy and legislative timetable.
 - 3.3 Item 3: Overview of transition and establishment timetable.
 - 3.4 Item 4: Communications and next steps.
4. As discussed with you at the meeting with Local Government officials earlier today, the focus of the meeting will be the first item – particularly key aspects of the response to the Working Group report. Slides 4 to 10 summarise the main recommendations and proposed responses in relation to:
 - 4.1 ownership;
 - 4.2 governance and accountability;
 - 4.3 Te Mana o te Wai;
 - 4.4 strengthening the application of Te Tiriti o Waitangi;
 - 4.5 other matters relating to iwi / Māori rights and interests.
5. We are continuing to work on the draft Cabinet paper, *Strengthening representation, governance and accountability of the new water services entities*. As indicated in our briefing on 11 March 2022 [LG202200212], it is envisaged that the latest version of that paper will be provided for distribution with the final package of material, for information.
6. The slide pack also includes two timeline diagrams – covering the policy and legislative timetable, and the timetable and critical decision points for Ministers relating to the transition.
7. We will provide you with an annotated agenda and talking points in advance of the meeting, including an update on operational transition matters.

Recommendations

8. We recommend that you:
 - a) **review** the attached draft slide pack for the meeting of Three Waters Ministers on 21 March 2022 (**Appendix A**), and provide any feedback by 16 March 2022; **Yes/No**

- b) **note** that the information in the slide pack is supplemented by a draft Cabinet paper – the next version of which will be provided for distribution to Three Waters Ministers with the final package of material.



Michael Mills
Acting Director – Policy and Stewardship

Hon Nanaia Mahuta
Minister of Local Government

_____/_____/_____

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Appendix A: Draft slide pack for 21 March 2022 meeting of Three Waters Ministers

Attached

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Three Waters Reforms

Meeting of Three Waters Ministers
21 March 2022

IN CONFIDENCE
NOT GOVERNMENT POLICY

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Agenda

1. Draft Cabinet paper – proposed response to Working Group report
2. Overview of policy and legislative timetable
3. Transition and establishment timetable
4. Communications and next steps

1: Draft Cabinet paper – proposed response to Working Group report

Key areas covered by Working Group report

- The Working Group developed a set of **47 recommendations** to enhance the reform proposals and deliver stronger representation, governance and accountability.
- These recommendations cover the following main areas:
 - **A public shareholding structure that makes community ownership clear, with shares held by councils on behalf of their communities** – to provide a tangible expression of ownership that is recognisable by communities and territorial authorities, and to strengthen protections against privatisation
 - **Embedding co-governance principles across the water services framework** with the aim of ensuring the continued improvement of three waters service delivery and environmental protection through increased representation of communities, including iwi/hapū
 - **Recognising and embracing Te Mana o te Wai as an underlying principle**, and as the foundation for a more sophisticated and integrated approach to providing first class drinking water, wastewater and stormwater networks
 - **Tighter accountability from each water services entity board to the community** – including strengthening and clarifying the role of the Regional Representative Group (RRG), and seeing the RRG approve entity strategic direction, as set out in the Statement of Intent
 - **Strengthened connection to local communities so that they have a clear and guiding voice in drinking water, wastewater and stormwater network development** – including sub-committees feeding into the RRG, comprised of representatives of regional communities, to ensure local voice is considered as part of investment prioritisation. The number and geographic area of each sub-group would be set out in entity constitutions, rather than in primary legislation

Overview of proposed response

- The draft Cabinet paper proposes most of the recommendations would be taken forward in some form and seeks agreement to include changes in the Water Services Entities Bill
- Key changes / decisions relate to:
 - Ownership
 - Governance and accountability
 - Te Mana o te Wai
 - Strengthening the application of Te Tiriti o Waitangi
 - Other matters relating to iwi/Māori rights and interests
- For each of these key areas, the following slides set out:
 - A summary of the Working Group recommendations
 - The existing arrangements provided for in the exposure draft of the Water Services Entities Bill
 - The proposed response, and changes to the Bill (if required)

Ownership

Summary of Working Group recommendations

- Introduce a shareholding model with one share per 50,000 of population, rebased every five years to provide communities with a tangible expression of ownership
- Shareholdings only carry voting rights in relation to merger or sale proposals and must carry a unanimous vote – to preserve balance sheet separation, there is no financial interest attached

Existing arrangement in exposure draft

- The Bill establishes a new form of statutory entity that provides for collective ownership by territorial authorities in the entity service area

Proposed response / changes to the Bill

- Amend the Bill to give effect to the Working Group's recommendations such that ownership will be reflected through a shareholding, and shares are issued for each entity to the respective councils based on population
- Add a further level of protection against privatisation by requiring a 75 per cent Parliamentary majority to make any legislative changes necessary to enable privatisation ('entrenchment')

Governance and accountability

Summary of Working Group recommendations

- There are several recommendations to strengthen the governance and accountability. In particular, the Group recommends:
 - strengthening co-governance arrangements through the introduction of co-chairs to the Regional Representative Group (RRG) and consensus voting
 - introducing 'sub' regional representative groups to provide regional/catchment level input into the RRG, while maintaining co-governance
 - clarifying the role of the RRG and the range of inputs it may consider to strengthen accountability (example inputs include: the Government Policy Statement, direction from regulators, local community priorities within the region as outlined in council strategic documents, Te Mana o te Wai statements, and alignment with the Resource Management Act (or its replacement))
 - that each entity will be required to fund the support to its RRG to properly exercise its functions and powers, including any remuneration arrangements for territorial authority or iwi/hapū representatives.
 - the RRG issues the statement of strategic and performance expectations and has approval rights over strategic matters in the statement of intent

Existing arrangement in exposure draft of the Bill

- The Bill currently provides explicitly for a number of accountability arrangements, but also implicitly enables flexibility for RRGs to self organise by not requiring particular measures (for example, sub RRGs are not expressly prohibited and were expected to be a feature of RRGs as provided for in entity constitutions)

Proposed response / changes to the Bill

- **Amend the Bill to give effect to the Group's recommendations – as set out above – in a way that provides for flexibility (likely via entity constitutions), such that the unique characteristics of each entity can be provided for over time**

Note that approval rights over the Statement of Intent are being considered further to ensure the balance of control by the RRG and operational independence of the board to achieve balance sheet separation

Te Mana o te Wai

Te Mana o te Wai to apply to all functions and powers

- **Summary of Working Group recommendations** – Te Mana o te Wai is a korowai, or overarching requirement, that applies to everything in the Bill
- **Existing arrangement in exposure draft of the Bill** – The duty to give effect to Te Mana o te Wai is one of several objectives of an entity, which would be able to “trade it off” or give Te Mana o te Wai a lesser priority. This was never the intention of the legislation, and is not consistent with the approach taken elsewhere

Proposed response / changes to the Bill

- **Amend the Bill so all those who have functions, powers and duties (under the Bill) must give effect to Te Mana o te Wai in the discharge of those functions, powers and duties.** This is consistent with the Water Services Act 2021, and is also consistent with the approach taken in the National Policy Statement for Freshwater Management (NPS), which applies Te Mana o te Wai to all aspects of water management
- **Accountability for Te Mana o te Wai statements should become explicit through the strategic planning and accountability documents that relate to a water services entity, based on existing requirements relating to the annual report**

Te Mana o te Wai should apply to all water

- **Summary of Working Group recommendation** – Te Mana o te Wai applies to all water for the purpose of the three waters system.
- **Existing arrangement in exposure draft** – Te Mana o te Wai is defined as having the same meaning as under the NPS. However, the NPS only relates to specific parts of freshwater bodies. Three waters services, in contrast, relate with other waters (including marine, estuarine and harbours, and rivermouths). This creates an obvious gap in the application of this concept to three waters services, as many iwi and hapū have Te Mana o te Wai aspirations for water that are not fully covered by the NPS.

Proposed response / changes to the Bill –

Agree to this recommendation in principle, and propose to incorporate any changes in legislation through the second bill that will implement water services reform. This recommendation requires a whole of system view. Before it can be incorporated in legislation, it will be necessary to ensure that concepts are properly aligned across a range of areas, including the resource management system and proposals for its reform.

Strengthening the application of Te Tiriti o Waitangi

Principles of Te Tiriti to apply to all functions and powers

- **Summary of Working Group recommendation** – The requirement to give effect to Te Tiriti should apply equally to the Crown, including when it makes a Government Policy Statement, where engagement with Te Tiriti partners should be elevated above any consultation processes.
- **Existing arrangement in exposure draft of the Bill** – Te Tiriti does not apply to any functions exercised by Minister. In addition, while there is a duty on the board to ensure that an entity has “capacity and capability” to give effect to the principles of Te Tiriti, entities are explicitly not part of the Crown. This creates ambiguity, as it is not clear how Te Tiriti o Waitangi applies to the entities.

Proposed response / changes to the Bill

- **Amend the Bill to require all persons who exercise functions, duties and powers under the Act to give effect to the principles of Te Tiriti o Waitangi, to the extent that it applies to their duties, functions and powers. This will ensure there is consistent application of Te Tiriti across the new regime and will give effect to these recommendations.**

Note: This approach is consistent with clause 6 of the exposure draft of the Natural and Built Environments Bill, which requires that “all persons exercising powers and performing functions and duties under this Act must give effect to the principles of Te Tiriti o Waitangi”. This includes functions and powers exercised by both the Minister (such as making national planning frameworks) and regional councils in their planning and environmental regulation role.

Preserving iwi, hapū and Māori rights and interests in water

- **Summary of Working Group recommendation** – The Bill should state that nothing in the Act creates or transfers ownership in water, or limits, extinguishes or adversely affects iwi or hapū authority over, or rights in, water. This recommendation is based on the same ongoing concerns that have been articulated over a long period by iwi / Māori about the implications of the three waters reform for ownership of water. The intention of the Working Group is to ensure that the status quo is preserved while the Crown and Te Tiriti partners continue their ongoing discussion about allocation of freshwater in the context of resource management reform
- **Existing arrangement in exposure draft of the Bill** – There is no provision to this effect in the legislation.

Proposed response / changes to the Bill

- **Include a clause of this nature in the Bill**
- *Note that this clause will require work between agencies to ensure it is legally certain and does not have unintended consequences. I am therefore seeking agreement that the Minister of Local Government, Attorney General, and Minister for Māori – Crown Relations should have delegated authority to draft this clause, and report back to the Cabinet Legislation Committee when the Bill is proposed for introduction.*

Other matters relating to iwi/Māori rights and interests

Ensure Treaty settlements are enduring

- **Summary of Working Group recommendation** – legislation includes provisions to ensure that Treaty settlements are enduring and carried forward under the new regime.
- **Existing arrangement in exposure draft of the Bill** – This recommendation will be implemented by provisions across the two bills. The exposure draft contains provisions stating that where there is inconsistency between a Treaty settlement and the Act, the Treaty settlement prevails. There is also an operating principle requiring entities to give effect to Treaty settlements. In the second bill, there would be provisions amending Treaty settlement legislation to ensure settlement obligations are carried forward from territorial authorities to the new water services entities, along with any other arrangements between councils and mana whenua.

Proposed response

- **Accept this recommendation, based on existing policy settings.**

Definition of mana whenua

- **Summary of Working Group recommendation** – Inclusion of a definition of “mana whenua” in the Bill.
- **Existing arrangement in exposure draft of the Bill** – Mana whenua is currently not defined. This could lead to future debate, and potentially legal challenge, about who has the right to elect representatives to the Regional Representative Group. It might also lead to disputes about who has the right to make a Te Mana o te Wai Statement

Proposed response

- **Amend the Bill so that mana whenua will be defined as the iwi or hapū holding and exercising customary rights, interests and authority in accordance with tikanga in an identified area.**

Resourcing to ensure iwi, hapū and Māori can participate in the new arrangements

- **Summary of Working Group recommendation** – That the Crown provides equitable resourcing to enable the full and effective participation of iwi and hapū in the three waters regime. The Working Group’s priority for this recommendation is to ensure there is proper resourcing

Proposed response

- **Implement a two-stage funding arrangement, where the Crown funds participation by iwi and hapū through the transition period, and entities fund following full establishment. Funding to support iwi/Māori to participate in transition is subject to decisions by Cabinet**

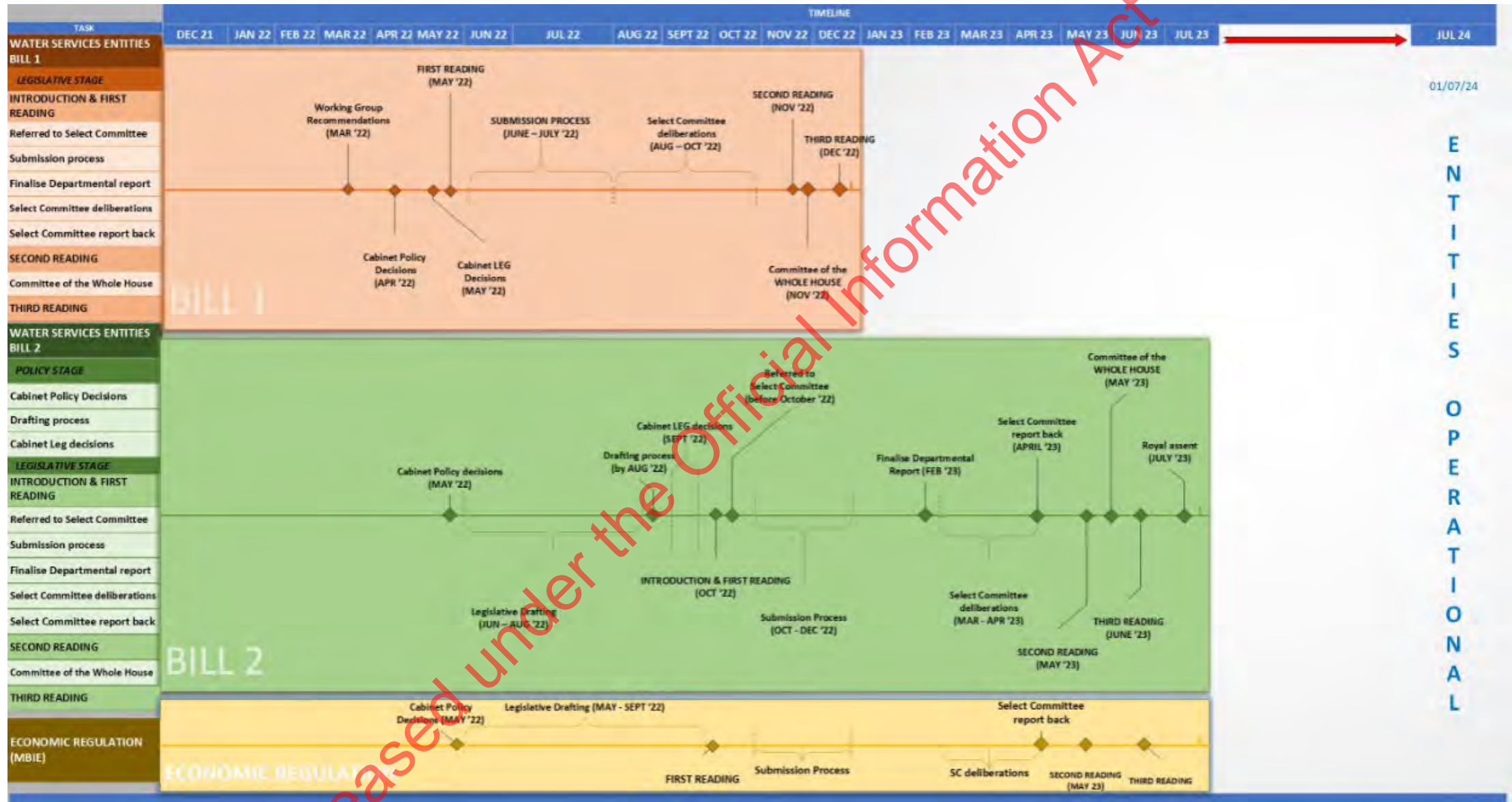
2: Overview of policy and legislative timetable

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The reforms involve three bills, and further policy decisions

- **The first Water Services Entities Bill (Bill 1) establishes the water services entities, and sets out their governance and accountability arrangements**
 - This Bill would include the provisions in the current exposure draft and the changes proposed in response to the Working Group report (subject to Cabinet agreement through the paper outlined earlier)
- **The second bill (Bill 2) will amend the first bill to provide the entities' detailed functions, duties, and powers**
- **For Bill 2, policy decisions will be sought (in May 2022) in relation to:**
 - pricing and charging for drinking water, wastewater and stormwater services
 - financing arrangements for the entities
 - provisions for upholding Treaty settlement arrangements
 - the entities' involvement in the existing resource management and planning system (noting that consequential amendments are likely to be required to give effect to the entities' involvement in any reformed resource management system)
 - land access provisions for utility infrastructure
 - obligations on the new entities as service providers
 - stormwater management responsibilities
 - the legislative mechanism for the transfer arrangements
 - transitioning out of bylaws, customer agreements, and trade waste management
 - enforcement, offences, and penalties
- **The water services entities will not be able to commence operations until both bills have been enacted**
- **There will also be economic regulation and consumer protection legislation, led by the Minister of Commerce and Consumer Affairs, and MBIE – this will be discussed further at a future meeting of Three Waters Ministers**

Indicative legislative timetable*



*Timetable is indicative only, and subject to Ministerial and Cabinet decisions and House time

Technical advisory groups and Taumata Arowai

- Resource management and planning alignment, and regulatory compliance costs for rural water schemes, are important issues for councils
- The Department of Internal Affairs has established two technical working groups to inform the development of policy:
 - **Planning Technical Working Group** – to support the development of policy proposals to ensure there is an effective interface between the proposed water services entities and the planning and regulatory system
 - **Rural Supplies Technical Working Group** – to bring a rural perspective to the development of policy to implement the water services reforms, including the obligations water services entities will have to support rural water schemes and the communities they serve
- The **Rural Supplies Technical Working Group** is also considering issues for rural water schemes relating to the regulation of drinking water, which **Taumata Arowai** will take into account in its implementation of the Water Services Act 2021 – including proposals for how to simplify compliance

This out of scope information has been redacted



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4: Communications strategy and next steps

Communications about the reforms

- **The Working Group recommended the Crown undertake a positive communications campaign to explain the ‘need for change’, expectations of how we best ensure the health of our wai, and the opportunities provided by the reforms**
 - This aligns with the existing communications strategy and there are opportunities to amplify this work
- **The focus is building public understanding of the case for change and benefits of reform, and working alongside key stakeholders to shift public knowledge**
- **Ministers have a leadership role to play in communicating the benefits of three waters reform – for example, I intend to run a range of community meetings throughout New Zealand to inform and educate communities on this**
- **The overarching communications and engagement activities from the Department of Internal Affairs will focus on:**
 - continuing to increase awareness of the reforms and the case for change with those that are yet to engage with the reforms on a basic level
 - engaging and informing those who are undecided, unconvinced, or have remaining concerns about the reforms
- **Ongoing activities include:**
 - upgrading the ThreeWaters.govt.nz website – shifting from a campaign-focused website to a fact-based hub of accessible information
 - traditional paid and organic print and digital media, and social media – focusing on amplifying the case for change and countering misinformation, with a public call to action to find out more about the reforms
 - proactive media briefings, reactive statements, and work with a broader range of media outlets, including Māori media
 - developing a range of evidence-based collateral, such as factsheets, presentation templates and Q&As
 - continuing to work with local government leadership in Taituarā and Local Government New Zealand

Next steps – policy and legislation

Bill 1:

- **30 March 2022** – DEV considers Cabinet paper, including proposed response to Working Group recommendations
 - *Public announcement / communications about decisions – prior to Easter*
- If agreed, officials will work with Parliamentary Counsel Office during **April 2022** to make drafting changes to the Bill
- **In early May 2022** – LEG considers request to introduce the Bill (subject to the completion of further testing with Standard and Poor's of the amended structure proposed in the Bill)
- The Bill will be ready for its first reading and referral to select committee **later in May 2022** – with a view to it being reported back to the House in November 2022 and enacted by the end of 2022

Bill 2:

- **April 2022** – Further meeting(s) of Three Waters Ministers
- **May 2022** – DEV considers suite of papers seeking decisions on remaining policy matters
- **September 2022** – LEG considers request to introduce the Bill



Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: Annotated agenda for 21 March 2022 meeting of Three Waters Ministers

Date: 17 March 2022

Key issues

You are chairing a meeting of Three Waters Ministers on 21 March 2022. We have prepared an annotated agenda, including talking points, to guide you through the meeting (**Appendix A**). This is based on the agenda and slide pack that were circulated in advance of the meeting.

The focus of discussions will be on the first of the agenda items – the response to the Working Group recommendations. This item is supported by a draft of the Cabinet paper, *Strengthening representation, governance and accountability of the new water services entities*.

You have also indicated that you would like to discuss select committee arrangements for the three waters legislative programme. We have added some points on this to the annotated agenda, under item 2 (overview of policy and legislative timetable).

Action sought

Note the information in this briefing, and refer to the annotated agenda (**Appendix A**) during the meeting with Three Waters Ministers.

Timeframe

By 4pm on Monday
21 March 2022

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 st contact
Nick Davis	Executive Director, Three Waters Reform	021 508 183	✓
Jane Fleetwood	Lead Strategic Advisor	s 9(2)(a)	

Return electronic document to: Jane Fleetwood: jane.fleetwood@dia.govt.nz

Ministerial database reference: LG202200264

Purpose

1. You are chairing a meeting of Three Waters Ministers on 21 March 2022. We have prepared an annotated agenda, including talking points, to guide you through the meeting (**Appendix A**). This is based on the agenda and slide pack that were circulated in advance of the meeting.

Overview of agenda and matters to be covered in the meeting

2. The agenda for this meeting covers:
 - 2.1 Item 1: Draft Cabinet paper – proposed response to Working Group report.
 - 2.2 Item 2: Overview of policy and legislative timetable.
 - 2.3 Item 3: Overview of transition and establishment timetable.
 - 2.4 Item 4: Communications and next steps.
3. We anticipate the focus of discussions will be on the first item – the response to the Working Group recommendations. There may be an overlap between this discussion, and in the approach to communication of the next steps of the reforms (item 4).
4. There are many components to the Working Group response, as detailed in the draft Cabinet paper. The slides and annotated agenda cover some of the key points.
5. Ministerial consultation on the draft Cabinet paper is currently underway, and the deadline for feedback is the day of this meeting. An updated version of this paper was provided to Ministers with the pack of material for the meeting.
6. You have also indicated that you would like to discuss select committee arrangements for the three waters legislative programme. We have added some points on this to the annotated agenda, under item 2.
7. Officials will be available to provide further information on any of the agenda items. Please refer to Nick Davis in the first instance.

Recommendations

8. We recommend that you **note** the information in this briefing, and refer to the annotated agenda (**Appendix A**) during the meeting with Three Waters Ministers on 21 March 2022.



Nick Davis
Executive Director, Three Waters Reforms

Hon Nanaia Mahuta
Minister of Local Government

_____/_____/_____

**Appendix A: Annotated agenda for 21 March 2022 meeting of Three Waters
Ministers – below**

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Annotated agenda for meeting of Three Waters Ministers on 21 March 2022

Item	Notes / talking points for Minister of Local Government	Actions for Ministers
1. Draft Cabinet paper – proposed response to Working Group report	<u>(A) Ownership (Slide 6)</u> <ul style="list-style-type: none">• The shareholding model provides a tangible form of ownership that communities and councils are familiar with• The voting rights attached to shares provide an additional level of protection against privatisation and also help to preserve balance sheet separation• The entities remain statutory entities, and are not council-controlled organisations	<ul style="list-style-type: none">• Indicate levels of comfort with the proposed response• Ask questions / raise concerns about any aspects of the response

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Item	Notes / talking points for Minister of Local Government	Actions for Ministers
	<p><u>(B) Governance and accountability (Slide 7)</u></p> <ul style="list-style-type: none"> • A number of recommendations relate to governance and accountability • Many of these align with our policy intent, or look to legislate for behaviour that would be considered best practice • I am proposing that we adopt the majority of the Group’s recommendations, either in full or with some minor modifications to ensure ongoing flexibility • The key changes are set out in the slides – of particular note are proposals to: <ul style="list-style-type: none"> ○ clarify and strengthen the role of the regional representative group in bringing together community interests and translating those to strategic direction for the entities ○ introduce co-chairs to the regional representative group, and consensus voting to re-enforce the co-governance model ○ introduce ‘sub’ regional representative groups • Regional representative group approval rights over the statement of intent is an area where further work is needed • This may have practical implications for the degree of operational autonomy of the board, and could potentially risk balance sheet separation – I propose this is tested with Standard & Poor’s prior to the introduction of the Bill • I note that the Working Group has proposed a bespoke arrangement for the composition of the regional representative group for Entity A (Auckland/Northland) • I am proposing to proceed with this approach – which would comprise four Auckland Council representatives, four Tāmaki Makaurau mana whenua representatives, one council representative for each of the other councils, and three mana whenua representatives from Te Tai Tokerau 	<ul style="list-style-type: none"> • Indicate levels of comfort with the proposed response • Ask questions / raise concerns about any aspects of the response • Note that the arrangements in the Bill will be assessed by Standards & Poor’s before it is introduced into Parliament to confirm balance sheet separation between water services entities and territorial authorities • In respect of regional representative group approval rights over the statement of intent approval – test Ministers’ comfort with possible variations • Variations could include: <ul style="list-style-type: none"> ○ providing that the final statement of intent must include the board’s response to the regional representative group’s comments; OR ○ provisions that set out a process for resolving disagreements between the regional representative group and water services entities in relation to the statement of intent

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Item	Notes / talking points for Minister of Local Government	Actions for Ministers
	<p><u>(C) Te Mana o te Wai (Slide 8)</u></p> <ul style="list-style-type: none"> • I am proposing to adopt the Working Group’s recommendation that Te Mana o te Wai is elevated to apply to all functions and powers in the Bill – a korowai <ul style="list-style-type: none"> ○ If agreed, this change will be implemented in the first bill • I am proposing to adopt, <u>in principle</u>, the recommendation that Te Mana o te Wai applies to all water for the purpose of the three waters system, and not just freshwater <ul style="list-style-type: none"> ○ If agreed, this change would be implemented in the second bill, following further cross-agency work to ensure concepts are properly aligned with broader environmental regulation • If this does not occur, entities will not have the same responsibilities where wastewater or stormwater discharges to a rivermouth, an estuary, a harbour, or the coast, and mana whenua will not be able to use Te Mana o te Wai statements to convey their aspirations for these waterbodies • There are numerous examples where this happens – Wairoa rivermouth is a coastal wastewater discharge; Moa Point in Wellington is a coastal wastewater discharge 	<ul style="list-style-type: none"> • Indicate levels of comfort with the proposed response • Ask questions / raise concerns about any aspects of the response

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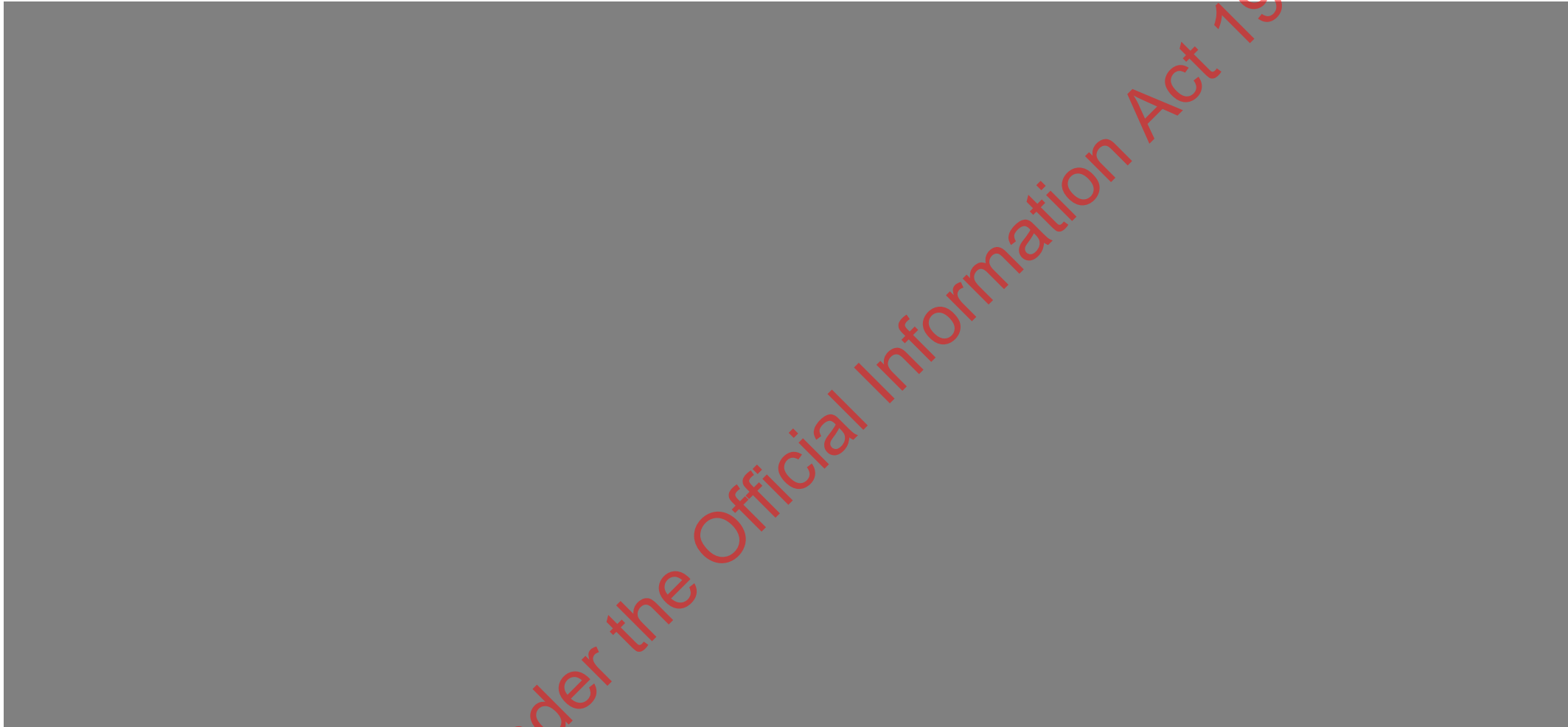
Item	Notes / talking points for Minister of Local Government	Actions for Ministers
	<p><u>(D) Te Tiriti o Waitangi (Slide 9)</u></p> <ul style="list-style-type: none"> • The Working Group recommended enhancements to the way Te Tiriti applies across the three waters services system • I am proposing to amend the Bill to require all persons who exercise functions, duties and powers under the Act to give effect to the principles of Te Tiriti o Waitangi • This approach is consistent with clause 6 of the exposure draft of the Natural and Built Environments Bill, and will ensure there is consistent application of Te Tiriti across the water services delivery system • The Working Group also recommended the Bill should include a clause preserving the status quo for iwi and Māori rights and interests in water. (A similar clause has been proposed by Te Tai Kaha Māori Collective for resource management reform.) • I am proposing to include a clause of this nature in the Bill • I will work with the Attorney General and Minister for Māori–Crown Relations to ensure the clause is legally certain and does not have unintended consequences, and will report back when the Bill is proposed for introduction 	<ul style="list-style-type: none"> • Indicate levels of comfort with the proposed response • Ask questions / raise concerns about any aspects of the response

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Item	Notes / talking points for Minister of Local Government	Actions for Ministers
	<p><u>(E) Other matters relating to iwi/Māori rights and interests (Slide 10)</u></p> <ul style="list-style-type: none"> • The Working Group proposed a definition of mana whenua, which is the iwi or hapū holding and exercising customary rights, interests, and authority in accordance with tikanga in an identified area • I am proposing to adopt this recommendation. This will minimise the future risk of legal challenge and dispute about who has rights as mana whenua under the Bill • The Working Group recommended the Crown provides equitable resourcing to enable the full and effective participation of iwi and hapū in the three waters regime • I propose a two-stage funding arrangement, where the Crown provides support to iwi and hapū through the transition period, with entities providing funding following full establishment 	<ul style="list-style-type: none"> • Indicate levels of comfort with the proposed response • Ask questions / raise concerns about any aspects of the response

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Item	Notes / talking points for Minister of Local Government	Actions for Ministers
<p>4. Communications and next steps (Slides 18-19)</p>	<p>(A) Communications</p> <ul style="list-style-type: none"> The Working Group recommended the Crown undertake a ‘positive communications campaign’ to explain the case for change and benefits of reform This aligns with the existing communications strategy and there are opportunities to amplify this work – as outlined in slide 18 It is proposed that public announcements about the Government response to the Working Group report would be made prior to Easter – following decisions on the Cabinet paper The local government sector and iwi are keenly anticipating the Government’s announcements, and there is a general desire for certainty as to the next steps in the reforms <p>(B) Next steps</p> <ul style="list-style-type: none"> Subject to Cabinet decisions, the intent is to have the first bill ready for introduction in May 2022 Decisions relating to the second bill – and the economic regulation and consumer protection framework – will be sought in May 2022 	<ul style="list-style-type: none"> Note the communications strategy – including that Ministers have a leadership role to play in communicating the benefits of three waters reform

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Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: Agreement to lodge Cabinet paper – Strengthening representation, governance and accountability of the new water services entities

Date: 22 March 2022

Key issues

We seek your agreement to lodge the attached Cabinet paper, *Strengthening representation, governance and accountability of the new water services entities (Appendix A)*, for consideration by the Cabinet Economic Development Committee on 30 March 2022. If you agree, the paper will need to be lodged with Cabinet Office by 10am on Thursday 24 March 2022.

We are still undertaking final review and proofreading processes, which may result in minor drafting changes before the paper is lodged.

Action sought

Authorise the Department of Internal Affairs to upload the Cabinet paper, *Strengthening representation, governance and accountability of the new water services entities (Appendix A)*, and attachment, onto CabNet, subject to final drafting amendments, and addressing any final comments you may provide on the paper.

Timeframe

By 8:30am on Thursday 24 March 2022

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 st contact
Michael Mills	Acting Director	021 533 086	✓
Jane Fleetwood	Lead Strategic Advisor	s 9(2)(a)	

Return electronic document to: Jane Fleetwood

Ministerial database reference: LG202200270

Purpose

1. We are seeking your agreement to lodge the Cabinet paper, *Strengthening representation, governance and accountability of the new water services entities (Appendix A)*, with Cabinet Office, through the CabNet system.
2. If you agree, the paper will need to be lodged by 10am on Thursday 24 March 2022, for consideration by the Cabinet Economic Development Committee on 30 March 2022.

Context

3. On 7 March 2022, you received the report from the Working Group on Representation, Governance and Accountability (Working Group), with recommendations for a preferred strengthened approach to the governance framework for the new water services entities.
4. It is intended that your proposed response to the Working Group report will be provided in a Cabinet paper in March 2022. In particular, this paper will seek decisions to make changes to the draft Water Services Entities Bill to address most of the Group's recommendations.
5. We provided you with an initial draft Cabinet paper on 4 March 2022, and had a discussion with you about this paper and the Working Group report on 7 March 2022.
6. You received a further draft on 10 March 2022, which was circulated for Ministerial consultation. Agency consultation occurred in parallel.
7. An updated version of the draft paper was provided to your office on 15 March 2022, for circulation to Three Waters Ministers with other material for the meeting on 21 March 2022.
8. We note that Hon James Shaw's office provided a couple of minor comments on the paper. These suggest that the National Adaptation Plan and Emissions Reduction Plan should be considered in relation to future work on the definition of Te Mana o te Wai, and in relation to the 'accountability' arrangements for the water services entities (particularly strategic direction setting).
9. We will discuss this further with the Ministry of the Environment. Our initial view is that these Plans could be considered in relation to the work on Te Mana o te Wai for the second bill, as part of ensuring a 'whole of system' view. We suggest that the relationship between these Plans and the accountability framework is best dealt with through the Government Policy Statement. The draft Water Services Entities Bill already includes provisions that enable expectations in relation to "climate change mitigation and adaptation" to be set in that Statement.

Recent changes to the paper

10. The attached version of the draft Cabinet paper now has all the remaining sections completed, including the substantial 'financial implications' section and associated recommendations. The details in that section correspond with the decisions you and the Minister of Finance made in relation to recent advice on funding pressures.

11. We have also prepared a new attachment to the draft paper, which is a table listing all of the Working Group recommendations (in numerical order) and the corresponding Cabinet paper recommendations. We consider this could be a helpful way for Ministers to easily navigate through the proposed response to all of the recommendations. A draft of this table is attached for reference.
12. The paper's references to shareholding have been updated to clarify that there would be a one share minimum for all territorial authorities, following comments on this matter from the Minister for Rural Communities. This is the intent of the Working Group, when it refers to "one share for each 50,000 people, rounded up" in the report.
13. The paper has also been updated to include references to the statement of support provided by the iwi representatives on the Working Group. The statement of support proposed three additional measures which, while consensus could not be reached, the iwi representatives on the Group believed would result in better outcomes for communities.
14. These measures are discussed on pages 19 to 22 of the draft Cabinet paper, particularly in the section on 'Strengthening Te Tiriti o Waitangi'. There are recommendations seeking agreement to two of the proposed measures, relating to consensus decision making, and the application of Te Tiriti o Waitangi to all persons who exercise functions and powers under the Bill.
15. We have also made a few changes to the aspects of the paper that deal with the Working Group recommendation that the regional representative group should have power to approve the strategic direction of the water services entity in its statement of intent. This is dealt with on page 13 and in recommendations 32 to 35.
16. This was an area of particular interest – and potential concern – to the National Transition Unit Board. Ministers are also interested in any matters that may compromise balance sheet separation – as highlighted by the Minister of Housing, for example, in the recent meeting with Three Waters Ministers.
17. The Cabinet paper seeks agreement to amend the Bill so that the regional representative group will have power to approve the strategic direction of the entity in its statement of intent. However, the paper also notes that it will be necessary to consider how best to give effect to the Working Group's recommendation, while preserving balance sheet separation, through testing the proposal with Standard & Poor's.
18. The paper further notes that, if the Working Group's recommendation is found to compromise balance sheet separation, officials will engage on alternative ways to give effect to this recommendation to preserve balance sheet separation. This includes consideration of the Working Group's alternative (fall back) suggestion that the constitution sets out a process for resolving any differences in opinion regarding content with the board.
19. The paper seeks delegated authority for you to make further decisions relating to these matters, during the legislative drafting process – following further advice.
20. Finally, there has been a minor change to the part of the paper that deals with the Working Group recommendation for a clause that preserves iwi/Māori rights and interests in water.

21. s 9(2)(h) [REDACTED]
22. Given there is common understanding about the clause, and on discussion with the Ministry for the Environment, we have removed the requirement in an earlier draft of the Cabinet paper that delegated authority to draft the clause be given to a group of Ministers (the Attorney General, Minister for Māori – Crown Relations, and Minister of Local Government). Instead, officials will work directly with the agencies concerned, and ensure there is a clause in the Bill that is acceptable to all parties.

Next steps

23. Subject to your agreement, we will lodge the paper with Cabinet Office by 10am on Thursday 24 March 2022.
24. We are still undertaking final review and proofreading processes, which may result in minor drafting changes before the paper is lodged. This includes checking and refining the wording in the table proposed to be attached to the paper, to ensure alignment with the wording in the paper itself.
25. We are also preparing material to support discussions at DEV and Cabinet, and will provide this to your office on 24 March 2022.

Recommendations

26. We recommend that you **authorise** the Department of Internal Affairs to upload the Cabinet paper, *Strengthening representation, governance and accountability of the new water services entities*, and attachment, onto CabNet (**Appendix A**), subject to any final drafting amendments, and addressing any final comments you may provide on the paper. **Yes/No**



Michael Mills
Acting Director – Policy and Stewardship

Hon Nanaia Mahuta
Minister of Local Government

_____/_____/_____

Appendices

- 'Final' draft Cabinet paper – *Strengthening representation, governance and accountability of the new water services entities* (**Appendix A**)
- Attachment to Cabinet paper: *Summary of Working Group recommendations and [DRAFT] recommendations in Cabinet paper*

Section 18(d) - Cabinet Paper: Strengthening representation, governance and accountability of the new water services entities - 19 April 2022 - [https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/\\$file/Cabinet-Paper-Strengthening-representation-governance-and-accountability-19-April-2022.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/$file/Cabinet-Paper-Strengthening-representation-governance-and-accountability-19-April-2022.pdf)

Section 18(d) - Recommendations from the Working Group on Representation, Governance and Accountability of New Water Services Entities – 7 March 2022 - [https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/\\$file/Governance-Working-Group-Report-7-March-2022.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/$file/Governance-Working-Group-Report-7-March-2022.pdf)

Section 18(d) - Recommendations from the Working Group on Representation, Governance and Accountability of New Water Services Entities – Executive Summary - 7 March 2022 - [https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/\\$file/Governance-Working-Group-Report-Executive-Summary-7-March-2022.PDF](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/$file/Governance-Working-Group-Report-Executive-Summary-7-March-2022.PDF)

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Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: Agreement to lodge three waters Cabinet paper – *Strengthening representation, governance and accountability of the new water services entities*

Date: 5 April 2022

Key issues

We seek your agreement to lodge the attached Cabinet paper, *Strengthening representation, governance and accountability of the new water services entities (Appendix A)*, for consideration by the Cabinet Economic Development Committee on 13 April 2022. If you agree, the paper will need to be lodged with Cabinet Office by 10am on Thursday 7 April 2022.

Recent changes to the draft paper are noted in this briefing.

Action sought

Authorise the Department of Internal Affairs to upload the Cabinet paper, *Strengthening representation, governance and accountability of the new water services entities (Appendix A)*, and attachment, onto CabNet, subject to minor drafting amendments, and addressing any final comments you may provide on the paper.

Timeframe

By 8:30am on
Thursday 7 April 2022

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 st contact
Nick Davis	Chief Advisor	021 508 183	✓
Jane Fleetwood	Lead Strategic Advisor	§ 9(2)(a)	
Return electronic document to:	Jane Fleetwood		
Ministerial database reference	LG202200336		

Purpose

1. We are seeking your agreement to lodge the Cabinet paper, *Strengthening representation, governance and accountability of the new water services entities (Appendix A)*, with Cabinet Office, through the CabNet system.
2. If you agree, the paper will need to be lodged by 10am on Thursday 7 April 2022, for consideration by the Cabinet Economic Development Committee (DEV) on 13 April 2022.

Background

3. On 7 March 2022, you received the report from the Working Group on Representation, Governance and Accountability (Working Group), with recommendations for a preferred strengthened approach to the governance framework for the new water services entities.
4. It is intended that your proposed response to the Working Group report will be provided in a Cabinet paper. In particular, this paper will seek decisions to make changes to the draft Water Services Entities Bill to address most of the Group's recommendations.
5. We provided you with an initial draft Cabinet paper on 4 March 2022, and had a discussion with you about this paper and the Working Group report on 7 March 2022.
6. You received a further draft on 10 March 2022, which was circulated for Ministerial consultation. Agency consultation occurred in parallel.
7. An updated version of the draft paper was provided to your office on 15 March 2022, for circulation to Three Waters Ministers with other material for the meeting on 21 March 2022.
8. Earlier drafts of the paper sought decisions relating to the management of funding issues and cost pressures associated with implementing the three waters reform programme.
9. Following discussions with the Prime Minister's Office, those components were removed and became a separate paper – *Managing cost pressures associated with implementing the three waters reform programme* – which is due to be considered at DEV on 6 April 2022.
10. The other recent changes to the paper are summarised below. Where relevant, we have also updated the attachment to the paper – the table listing all of the Working Group recommendations and the corresponding Cabinet paper recommendations.
11. We understand you have received a letter about this paper from the Minister of Climate Change, Hon James Shaw. That letter is being responded to separately.
12. We note the paper had already been amended to address earlier comments from Hon Shaw's office, particularly regarding a request that the National Adaptation Plan and Emissions Reduction Plan should be considered in relation to future work on the definition of Te Mana o te Wai. This is dealt with in paragraph 147.5 and recommendation 88.4 of the attached version of the paper.

Recent changes to the paper

13. Two sections of the draft Cabinet paper have been amended recently:
 - 13.1 Preserving iwi, hapū and Māori rights and interests in water – amendments to paragraphs 166-167 and recommendations 94-95.
 - 13.2 Update on approach to ICT implementation – amendments to paragraphs 232-237 and recommendations 130-135.

Preserving iwi, hapū and Māori rights and interests in water – amendments to paragraphs 166-167 and recommendations 94-95

14. This section of the paper relates to the Working Group's proposal for a clause in the Bill preserving ownership of, and the customary rights and interests of iwi and hapū in, water.
15. A similar clause has been proposed for in the Natural and Built Environments Bill by Te Tai Kaha Māori Collective, which is a group advising the Ministry for the Environment.
16. Paragraph 166 of the paper has been amended at the request of the office of the Minister for the Environment (John Blincoe) to note the connection to resource management reform, and that the final wording of the clauses should be compatible across both pieces of legislation.
17. s 9(2)(h)
[Redacted text]
18. The recommendations have been reworded so Ministers are able to consider drafting options for this clause. There were concerns the wording in the previous version of the paper required the clause to replicate the Working Group recommendation exactly. This is not the intent.

Update on approach to ICT implementation – amendments to paragraphs 232-237 and recommendations 130-135

19. This section of the paper has been amended to address recent discussions with the Treasury. We have agreed the proposed wording with Treasury officials.
20. The paper explains that the National Transition Unit is working closely with the Treasury to explore appropriate mechanisms for funding the necessary ICT investment. The intention is that the funding options will be fiscally neutral under the current fiscal management approach, in line with the expectations outlined to Cabinet in July 2021 [CAB-21-MIN-0269].
21. The paper notes that, to meet the 'go live' date of 1 July 2024, the Crown will need to bear certain costs prior to establishment of the entities. Given this, it will be important for the Crown to have legal certainty that any establishment costs it incurs during the transition period on behalf of the water services entities will be recoverable from the entities.

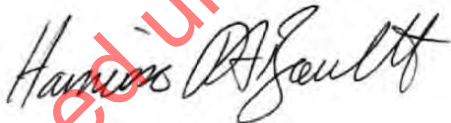
22. To provide this legal certainty, the paper seeks agreement to include a provision in the Water Services Entities Bill to clarify that certain costs incurred by the Crown on behalf of the water services entities will be recovered from the new entities, and therefore will constitute a debt due to the Crown by the relevant entity.
23. The paper seeks delegated authority for you and the Minister of Finance to approve this provision during the drafting process, including:
- 23.1 which costs will be recovered from the water services entities;
 - 23.2 how these costs will be allocated across the four water services entities; and
 - 23.3 the terms and conditions of any loan made by the Minister of Finance on behalf of the Crown to the water services entities.
24. With the agreement of the Minister of Finance, you will report back to the Cabinet Legislation Committee on this matter when seeking approval to introduce the Bill.

Next steps

25. Subject to your agreement, we will lodge the paper with Cabinet Office by 10am on Thursday 7 April 2022 – for consideration at DEV on Wednesday 13 April 2022.
26. We will also prepare material to support discussions at DEV and Cabinet, and provide this to your office separately.
27. Given the high level of sector and public interest in the Government's response to the Working Group report, it is anticipated announcements will be made shortly after Cabinet decisions are made. We will work with your office on a plan for these announcements, including public release of the Cabinet paper.

Recommendations

28. We recommend that you **authorise** the Department of Internal Affairs to upload the Cabinet paper, *Strengthening representation, governance and accountability of the new water services entities (Appendix A)*, and attachment, onto CabNet, subject to any minor drafting amendments, and addressing any final comments you may provide on the paper. **Yes/No**



Hamiora Bowkett
Executive Director – Three Waters Reforms

Hon Nanaia Mahuta
Minister of Local Government

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Appendices

- 'Final' draft Cabinet paper – *Strengthening representation, governance and accountability of the new water services entities* (**Appendix A**)
- Attachment to Cabinet paper: *Summary of Working Group recommendations and recommendations in Cabinet paper*

Section 18(d) - Cabinet Paper: Strengthening representation, governance and accountability of the new water services entities - 19 April 2022 - [https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/\\$file/Cabinet-Paper-Strengthening-representation-governance-and-accountability-19-April-2022.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/$file/Cabinet-Paper-Strengthening-representation-governance-and-accountability-19-April-2022.pdf)

Section 18(d) - Recommendations from the Working Group on Representation, Governance and Accountability of New Water Services Entities – 7 March 2022 - [https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/\\$file/Governance-Working-Group-Report-7-March-2022.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/$file/Governance-Working-Group-Report-7-March-2022.pdf)

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Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: Information on three waters Cabinet paper for SWC on 13 April 2022

Date: 12 April 2022

Key issues

The latest three waters Cabinet paper – *Strengthening representation, governance and accountability of the new water services entities* – is due to be considered at the Cabinet Social Wellbeing Committee (SWC) on 13 April 2022.

This briefing provides information to support discussions at the meeting. Talking points are attached at Appendix A.

Action sought

For reference during discussions about the three waters Cabinet paper at the Cabinet Social Wellbeing Committee meeting

Timeframe

By 10am on Wednesday
13 April 2022

Contact for telephone discussions (if required)

Name	Position	Direct phone line	Suggested 1 st contact
Nick Davis	Acting Executive Director, Three Waters Reform	021 508 183	✓
Jane Fleetwood	Lead Strategic Advisor	s 9(2)(a)	
Return to	Jane Fleetwood, level 7, 45 Pipitea Street		
Ministerial database reference	LG202200362		

Purpose

1. The latest three waters Cabinet paper – *Strengthening representation, governance and accountability of the new water services entities* – is due to be considered by the Cabinet Social Wellbeing Committee (SWC) on 13 April 2022.
2. This briefing provides information to support discussions at the meeting. Talking points are attached at **Appendix A**.

Background/context

3. During June and July 2021, Cabinet made a series of decisions to transform the three waters service delivery system, and create four new water services entities.
4. In October 2021, Cabinet decided to proceed with reform. However, a Working Group on Representation, Governance and Accountability (Working Group), was established to report with recommendations for a preferred strengthened approach to the governance framework for the new water services entities.
5. The Working Group approach responded to feedback received during engagement with the local government sector and iwi/Māori in the preceding two months. This raised concerns about the Government's reform proposals relating to the representation, governance and accountability arrangements for the new entities.
6. On 8 December 2021, DEV agreed that an exposure draft of the Water Services Entities Bill (the Bill) would be provided to the Working Group. This would enable Ministers to consider any recommendations arising from the Working Group process, and for the Bill to reflect any Cabinet decisions made as a result. As a consequence, the introduction of the Bill was delayed.
7. The Working Group provided its report on 7 March 2022, and a Cabinet paper was prepared – as discussed further below.
8. A related Cabinet paper – *Managing cost pressures associated with implementing the three waters reform programme* – was considered by the Cabinet Economic Development Committee on 6 April 2022, and agreed by Cabinet on 11 April 2022.

Key decisions sought in the Cabinet paper

Overview

9. This paper considers and responds to the 47 recommendations of the Working Group, and seeks agreement to make changes to the Bill and/or policy settings to give effect to the majority of those recommendations. Appended to the paper is a table listing all of the Working Group recommendations and the corresponding Cabinet paper recommendations.
10. The recommended changes are consistent with the Government's bottom lines: good governance; Treaty partnership; and public ownership. Consistency with balance sheet separation will be confirmed prior to the Bill's introduction.
11. The Cabinet paper also reports back on "proposals for managing any risks to the reform programme associated with the delayed timetable, and for managing the timing and funding of reform-related policy, legislation and transition work" [DEV-21-MIN-0268].

12. The paper notes that a revised approach to the policy and legislation timetable has been developed, which will still enable delivery of the reforms within the intended timeframe. This approach is designed to ensure the full suite of legislation is enacted prior to the 2023 general election, and well in advance of the 1 July 2024 operational go live date of the new water services entities.
13. In addition, the paper provides an update on a couple of matters relating to the transition programme, concerning the approach to ICT implementation, and managing the appointments of establishment chief executives.

Ownership and protection against privatisation

14. The proposal is to amend the Bill to provide that ownership of a water services entity is through shares assigned to each territorial authority in an entity's service area. Each share would be assigned to the relevant territorial authority per 50,000 people in its district – rounded up, with a one share minimum for every territorial authority.
15. The shareholding model provides a tangible form of ownership that councils and communities are familiar with. The entities remain statutory entities, and are not council-controlled organisations.
16. Shareholdings only carry voting rights in relation to merger or sale proposals and must be carried by a unanimous vote. To preserve balance sheet separation, there is no financial interest attached to shareholding. The voting rights attached to shares provide an additional level of protection against privatisation.
17. It is also proposed to add a further level of protection against privatisation by requiring a 75 per cent Parliamentary majority to make any legislative changes necessary to enable privatisation ('entrenchment'). You have written to all political parties seeking their support on entrenchment of these provisions.
18. Entrenchment would mean that amendment or repeal of the core privatisation provisions would require a 75 per cent Parliamentary majority. Entrenchment of a provision must be carried in a committee of the whole House by the majority that it would require for the amendment or repeal (Standing Order 270).
19. As the paper notes, entrenchment of these provisions would be unusual. Entrenchment is currently reserved for core constitutional arrangements. There are complex constitutional arguments about whether entrenchment of these provisions would be respected by future Parliaments and the courts.

Governance, accountability and local voice

20. A number of recommendations relate to governance and accountability. Many of these align with the policy intent, or look to legislate for behaviour that would be considered best practice.
21. The paper seeks agreement to adopt the majority of the Group's recommendations, either in full or with some minor modifications to ensure ongoing flexibility.
22. Of particular note are proposals to:
 - 22.1 clarify and strengthen the role of the regional representative group in bringing together community interests and translating those to strategic direction for the entity;

- 22.2 introduce co-chairs to the regional representative group, and consensus voting to re-enforce the co-governance model;
- 22.3 introduce 'sub' regional representative groups (sub-committees).
23. A bespoke arrangement is proposed for the composition of the regional representative group for Entity A (Auckland/Northland). This would comprise: four Auckland Council representatives, four Tāmaki Makaurau mana whenua representatives, one council representative for each of the other (Northland) territorial authorities, and three mana whenua representatives from Te Tai Tokerau.
24. Regional representative group approval rights over the statement of intent is an area where further work is needed.
- 24.1 Working Group recommendations for the regional representative group to approve an entity's statement of intent may have practical implications for the degree of operational autonomy of the board, and could potentially risk balance sheet separation.
- 24.2 This will be specifically tested with Standard & Poor's prior to the introduction of the Bill. Officials will provide further advice on consistency of the proposed governance and accountability arrangements with the Government's bottom lines of balance sheet separation, as well as the implications for the attractiveness of board positions and the ability to identify and appoint suitable candidates.

Ensuring balance sheet separation

25. An important bottom line is the achievement of balance sheet separation. Key to achieving the benefits of reform is that entities are able to borrow more to fund infrastructure investment without being constrained by local authority debt covenants.
26. The water services entities need to be structurally separate from both local authorities and the Crown, have financial and operational autonomy, be able to borrow in their own right, and have independent, competent governance.
27. An important step will be testing with Standard & Poor's that the Working Group's proposed governance and accountability model will achieve balance sheet separation.
28. As the paper notes, the Working Group process included testing this informally with Standard & Poor's. However, a formal Rating Engagement Service process will be conducted following Cabinet decisions and prior to the Bill's introduction.
29. The paper seeks delegated authority for the Prime Minister, Minister of Finance, and Minister of Local Government to consider the findings of Standard & Poor's assessment and confirm the final design of the model for inclusion in the Water Services Entities Bill.

Te Mana o te Wai

30. The proposal is to adopt the Working Group's recommendation that Te Mana o te Wai is elevated to apply to all functions and powers in the Bill – a korowai. If agreed, this change will be implemented in the first Water Services Entities Bill.
31. There is also a proposal to adopt, in principle, the recommendation that Te Mana o te Wai applies to all water for the purpose of the three waters system, and not just

freshwater. If agreed, this change would be implemented in the second Water Services Entities (Amendment) Bill, following further cross-agency work to ensure concepts are properly aligned with broader environmental regulation.

32. If this does not occur, entities will not have the same responsibilities where wastewater or stormwater discharges to a rivermouth, an estuary, a harbour, or the coast, and mana whenua will not be able to use Te Mana o te Wai statements to convey their aspirations for these waterbodies.

Te Tiriti o Waitangi

33. The Working Group recommended enhancements to the way Te Tiriti applies across the three waters services system.
34. The paper proposes to amend the Bill to require all persons who exercise functions, duties and powers under the Act to give effect to the principles of Te Tiriti o Waitangi.
35. This approach is consistent with clause 6 of the exposure draft of the Natural and Built Environments Bill, and will ensure there is consistent application of Te Tiriti across the water services delivery system.
36. The Working Group also recommended the Bill should include a clause preserving the status quo for iwi and Māori rights and interests in water. A similar clause has been proposed by Te Tai Kaha Māori Collective for resource management reform.
37. The paper proposes:
 - 37.1 to include a clause of this nature in the Bill; and
 - 37.2 that you will work with the Attorney General, Minister for the Environment and Minister for Māori–Crown Relations to ensure the clause is legally certain and does not have unintended consequences, and will report back when the Bill is proposed for introduction.

Other matters relating to iwi/Māori rights and interests – including resourcing

38. The Working Group proposed a definition of mana whenua, which is the iwi or hapū holding and exercising customary rights, interests, and authority in accordance with tikanga in an identified area.
39. The paper proposes to adopt this recommendation. This will minimise the future risk of legal challenge and dispute about who has rights as mana whenua under the Bill.
40. The working Group recommended the Crown provides equitable resourcing to enable the full and effective participation of iwi and hapū in the three waters regime.
41. The financial decisions obtained through the separate paper – *Managing cost pressures associated with implementing the three waters reform programme* – would provide Crown funding to support iwi, hapū and Māori participation through the transition period.
42. There will need to be further consideration of how to ensure ongoing support, after the transition period.
43. The preferred approach is that the water services entities would have some responsibilities for providing support, following full establishment. However, there are

also broader questions around Crown support in the implementation of reforms to the three waters and resource management systems, which need further examination.

44. Officials in relevant agencies will do further work on these matters, including considering the alignment across reform programmes, and provide advice to Ministers in due course. Crown support may also need to be considered further in Budget 2023.

Decisions sought regarding the approach to ICT implementation

45. Suitable technology capability is essential to every aspect of water services operation and the water services entities will not be able to operate without key systems. Technology will also be a critical enabler of the reform requirement for water service entities to have operational and financial independence from councils.
46. The paper explains that the National Transition Unit is working closely with the Treasury to explore appropriate mechanisms for funding the necessary ICT investment. The intention is that the funding options will be fiscally neutral under the current fiscal management approach, in line with the expectations outlined to Cabinet in July 2021 [CAB-21-MIN-0269].
47. The paper notes that, to meet the 'go live' date of 1 July 2024, the Crown will need to bear certain costs prior to establishment of the entities. Given this, it will be important for the Crown to have legal certainty that any establishment costs it incurs during the transition period on behalf of the water services entities will be recoverable from the entities.
48. To provide this legal certainty, the paper seeks agreement to include a provision in the Water Services Entities Bill to clarify that certain costs incurred by the Crown on behalf of the water services entities will be recovered from the new entities, and therefore will constitute a debt due to the Crown by the relevant entity.
49. The paper seeks delegated authority for you and the Minister of Finance to approve this provision during the drafting process. With the agreement of the Minister of Finance, you will report back to the Cabinet Legislation Committee on this matter when seeking approval to introduce the Bill.

Update regarding appointment of establishment chief executives

50. An important next step for the sector is the appointment of establishment chief executives. These appointments are made through the National Transition Unit by the Department's Chief Executive.
51. It was originally anticipated appointments would be made by December 2021, but they were delayed to provide time for sector engagement and the Working Group process.
52. As noted in the paper, the Department recommends proceeding with the process to appoint establishment chief executives immediately following the Government's response to the Working Group's report.
53. This will signal clearly to the sector and iwi/Māori that the transition is continuing to proceed, and provide a focus and structure for each of the four entities.

Next steps following consideration of the Cabinet paper

54. The Water Services Entities Bill will be redrafted on the basis of the decisions made through the Cabinet paper.
55. There will be further testing of the proposed structure with Standard & Poor's before the relevant proposals are confirmed and the Bill is considered for introduction.
56. Approval to introduce the Bill is expected to be sought in late May or early June 2022.
57. Given the high level of sector and public interest in the Government's response to the Working Group report, it is intended announcements will follow shortly after Cabinet decisions are made.
58. A comprehensive public information campaign will support the introduction of the Bill, and ensure the public is well informed of the case for change and Government policy ahead of the select committee submissions and hearing process.
59. As you recently noted, key points for public communications include the need to be clear about:
 - 59.1 what co-governance is and what it is not – including providing clarity about the role of the joint regional representative group, as distinct from the board;
 - 59.2 the fact that the board is independent, and its members are chosen for their competency and experience, not on a representative basis;
 - 59.3 the point that shareholding clarifies the ownership of the water services entities by territorial authorities, and iwi do not own the entities or the assets.

Recommendations

60. We recommend that you **note** the contents of this briefing during the discussions about the Cabinet paper, *Strengthening representation, governance and accountability of the new water services entities*, at the Cabinet Social Wellbeing Committee meeting on 13 April 2022.



Nick Davis
Acting Executive Director, Three Waters Reform

Hon Nanaia Mahuta
Minister of Local Government

/ /

Appendix A: Talking points for SWC on 13 April 2022

Strengthening representation, governance and accountability of the new water services entities

Overview

- This paper considers and responds to the 47 recommendations of the Working Group on Representation, Governance and Accountability.
- **I am suggesting we make a number of changes to the initial reform proposals**, and to include those changes in the draft Water Services Entities Bill.
- **These changes are designed to address the concerns raised by the local government sector, provide clarity about some of the core aspects of the new model, and achieve greater community buy-in for the reforms.**
- The recommended changes are consistent with the Government's bottom lines: good governance; Treaty partnership; and public ownership.
- There has been 'soft testing' of balance sheet separation with Standard & Poor's (S&P) through the Working Group process, but this will be formally tested through a rating engagement process with S&P prior to the Bill's introduction.
- As the Working Group's report strongly reflects, through this process we have heard that there is broad agreement with the case for change and the need for significant reform.
- We have considered a wide range of options, and have arrived at the best possible set of proposals. These proposals have been further tested and strengthened through the important contribution of the Working Group.
- We have spent a considerable amount of time discussing and debating alternatives to reform, and now need to proceed with implementation. The sooner we do that, the sooner we will start to see the benefits of reform and achieve the outcomes sought. The sector is also asking for certainty.

Ownership and protections against privatisation

- As recommended by the Working Group, **I am proposing to strengthen community ownership of the entities (and their assets) through a public shareholding structure.**
- The proposal is to amend the Bill to provide that ownership of a water services entity is through shares assigned to each territorial authority in an entity's service area.
- Each share would be assigned to the relevant territorial authority per 50,000 people in its district – rounded up, with a one share minimum for every territorial authority.
- The shareholding model provides a tangible form of ownership that councils and communities are familiar with.
- Shareholdings only carry voting rights in relation to merger or sale proposals, and must be carried by a unanimous vote. To preserve balance sheet separation, there is no financial interest attached to shareholding.
- The voting rights attached to shares provide an additional layer of protection against privatisation.

- **I note that the iwi representatives on the Working Group support the recommendation that public ownership of the water services entities should be reflected by councils being the shareholding owners on behalf of their communities.**
- In a separate Statement of Support provided to me, the iwi representatives also expressed disappointment that much of the public commentary regarding the reforms has focused on misunderstanding and misinformation regarding the issue of ownership. Those matters have sat outside of this reform work programme.
- As the iwi representatives recognise, **the proposed reforms do not involve the seizure of assets or disenfranchisement of communities in connection to those assets. These assets will remain in community ownership.**
- The proposed changes should help to reinforce this important message, and embed it in the legislation.
- It is also proposed to add a further level of protection against privatisation by requiring a 75 per cent Parliamentary majority to make any legislative changes necessary to enable privatisation – known as ‘entrenchment’.
- I have written to all political parties seeking their support on entrenchment of these provisions.

Clarifications about the governance structure

- Through my proposed changes and the provisions already in the Bill, the water services entities will have a two-tier governance structure, comprising a regional representative group and a corporate board.
- **The regional representative group will represent the views of councils and mana whenua in the service area of the entity, and will set expectations and approve the strategic direction of the entity, but will not be involved in making operational decisions.**
- **Appointments to the regional representative group will be based on a co-governance model**, where half of its members are drawn from territorial authorities, and half are from mana whenua in the service area of the entity.
- The regional representative group will also have co-chairs appointed by council and mana whenua representatives respectively.
- This approach will enable a strategic focus on the broad benefits of service delivery and infrastructure investment decisions across a catchment, with due consideration for the health, environmental and economic benefits for all communities in that region.
- **Importantly, the board is the governing body of the entity**, and fulfils the same role as the board of a company or Crown entity. The board remains primarily accountable for developing the strategy and associated accountability documents, including the statement of intent, and for delivering against that strategy once approved.
- The board will have responsibility for the day-to-day operations of the entity and appoint the chief executive.
- **Appointments to the board will be made on the basis of the skills of individual members**, or collective competencies across the board as a whole, and not whether a person is from a council or mana whenua.

- **I am proposing a bespoke arrangement for the composition of the regional representative group for Entity A (Auckland/Northland), comprising:**
 - four Auckland Council representatives
 - four Tāmaki Makaurau mana whenua representatives
 - one council representative for each of the other (Northland) territorial authorities
 - three mana whenua representatives from Te Tai Tokerau.
- **I am also taking forward the Working Group recommendation about providing for sub-regional advisory groups/committees.**
- This approach will respond to calls from local government and iwi/hapū to ensure local voice in decision making, and provide additional local strategic focus.
- It will assist the board by providing a community-based perspective on investment prioritisation and service standards, which is especially important for smaller communities who are fearful their interests will not be accommodated.
- The sub-regional groups would follow the same co-governance principles of the regional representative group, and would be aligned to sub-regions, takiwā or catchments (to be agreed by each regional representative group).

Iwi, hapū and Māori rights and interests in the water services entities

- The Working Group made a number of recommendations relating to iwi, hapū and Māori rights and interests in the water services entities
- **A key proposal is to adopt the Working Group's recommendation that Te Mana o te Wai is elevated to apply to all functions and powers in the Bill – a korowai.**
 - If agreed, this change will be implemented in the first Water Services Entities Bill.
- There is also a proposal to adopt, in principle, the recommendation that Te Mana o te Wai applies to all water for the purpose of the three waters system, and not just freshwater.
 - If agreed, this change would be implemented in the second Water Services Entities Amendment Bill, following further cross-agency work to ensure concepts are properly aligned with broader environmental regulation.
- **I am proposing to amend the Bill to require all persons who exercise functions, duties and powers under the Act to give effect to the principles of Te Tiriti o Waitangi.**
- This approach is consistent with clause 6 of the exposure draft of the Natural and Built Environments Bill, and will ensure there is consistent application of Te Tiriti across the water services delivery system.
- **I am proposing the Bill includes a clause preserving the status quo for iwi and Māori rights and interests in water.**
- I will work with the Attorney General, Minister for the Environment, and Minister for Māori–Crown Relations to ensure the clause is legally certain and does not have unintended consequences, and report back when the Bill is proposed for introduction.
- There are a range of agency views on the preservation clause, and several options are being developed for authorised Ministers to consider.

- **I am also proposing to adopt the Working Group's proposed a definition of mana whenua**, which is the iwi or hapū holding and exercising customary rights, interests, and authority in accordance with tikanga in an identified area.
- This will minimise the future risk of legal challenge and dispute about who has rights as mana whenua under the Bill.
- Finally, the Working Group recommended the Crown provides equitable resourcing to enable the full and effective participation of iwi and hapū in the three waters regime.
- Decisions made through my recent paper – *Managing cost pressures associated with implementing the three waters reform programme* – would provide Crown funding to support iwi, hapū and Māori participation through the transition period.
- Cabinet has previously noted that, once established, each water services entity would be expected to provide financial support to a 'mana whenua forum' in its area. Further consideration will be given to how to ensure ongoing support for iwi/Māori to perform the roles envisaged in the three waters service delivery system following the transition period.

Next steps – including communications

- The Water Services Entities Bill will be redrafted on the basis of the decisions made through this Cabinet paper.
- There will be further testing of the proposed structure with Standard & Poor's, and advice to authorised Ministers on balance sheet separation and accounting treatment, before the relevant proposals are confirmed and the Bill is considered for introduction.
- Approval to introduce the Bill is expected to be sought in late May or early June 2022.
- **Given the high level of sector and public interest in the Government's response to the Working Group report, it is intended that announcements will follow shortly after Cabinet decisions are made.**
- A comprehensive public information campaign will support the introduction of the Bill, and ensure the public is well informed of the case for change and Government policy ahead of the select committee submissions and hearing process.
- **My intention is to put out messages around co-governance and local voice that are clear and direct**, to avoid these matters being obscured by those opposing the reform programme.
- I anticipate **key points for public communications include the need to be clear about:**
 - **what co-governance is and what it is not** – including providing clarity about the role of the joint regional representative group, as distinct from the board
 - the fact that **the board is independent**, and its members are chosen for their competency and experience, not on a representative basis
 - the point that **shareholding clarifies the ownership of the water services entities by territorial authorities**, and iwi do not own the entities or the assets.



Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: **Information on three waters paper for Cabinet on 19 April 2022**

Date: 14 April 2022

Key issues

The latest three waters Cabinet paper – *Strengthening representation, governance and accountability of the new water services entities* – is due to be considered at Cabinet on 19 April 2022.

This briefing provides information to support discussions at the meeting – focusing on the changes that have been made to the paper following consideration by the Cabinet Social Wellbeing Committee. Talking points are attached at Appendix A.

Action sought

For reference during discussions about the three waters paper at Cabinet.

Timeframe

19 April 2022

Contact for telephone discussions (if required)

Name	Position	Direct phone line	Suggested 1 st contact
Nick Davis	Acting Executive Director, Three Waters Reform	021 508 183	✓
Jane Fleetwood	Lead Strategic Advisor	s 9(2)(a)	
Return to	Jane Fleetwood, level 7, 45 Pipitea Street		
Ministerial database reference	LG202200375		

Purpose

1. The latest three waters Cabinet paper – *Strengthening representation, governance and accountability of the new water services entities* – was considered by the Cabinet Social Wellbeing Committee (SWC) on 13 April 2022.
2. The paper is due to be considered at Cabinet on 19 April 2022.
3. This briefing provides information to support discussions at the meeting – focusing on the changes that were made to the paper following SWC. Talking points are attached at **Appendix A**.

Summary of the recent changes to the paper

Points raised by the Attorney-General / Minister for the Environment

4. You received a number of suggestions from Hon David Parker. The paper has been amended to address these suggestions, including using most of the wording provided by his office. These changes are set out below.

Preserving iwi, hapū and Māori rights and interests in water

5. Minister Parker asked that the following noting recommendation be added to the paper. This is recommendation 94 in the updated version, and says:
 - 5.1 “note that the Bill proposes reform of the service delivery arrangements for water services to communities, and that broader questions of freshwater allocation and consents for taking water and discharges to it, and the associated question of Māori rights and interests in freshwater, falls within the ambit of the resource management system and the proposed Natural and Built Environments Act;
6. Minister Parker also asked for changes to one of the existing recommendations, as follows: “agree to amend the Bill to include a clause that preserves the status quo for ~~ownership~~ Māori rights and interests in freshwater, and ~~iwi and hapū customary rights relating to water~~, with the nature of that clause to be agreed in accordance with paragraph 95 below”
7. We advised your office that wording the recommendation as proposed would raise some complexities and risks.
8. We suggested that it might be preferable if the clause makes it clear that nothing in the legislation creates or transfers ownership rights or interests in water, and is not an acknowledgement by the Crown that ownership rights or interests in water exist. This would be a much clearer way of ensuring that ownership of water is not up for negotiation in future.
9. We also noted that:
 - 9.1 Broadening the clause to “Māori rights and interests” is problematic as it raises the very difficult question about whether Māori communities have rights and interests in water when there is no mana whenua or whakapapa connection. The Working Group confined its recommendation to iwi and hapū customary rights and interests in water for a good reason – as we understand it this is a core area for discussion between the Crown and Treaty partners.

- 9.2 Broadening the recommendation in this way may not be well received by iwi leaders. Confining the clause to iwi and hapū customary rights also has the benefit of ensuring the clause is focussed on existing rights. It is not clear what broader rights Māori communities have in water – this significantly increases uncertainty around scope of the recommendation.
- 9.3 Limiting the clause to “freshwater” is problematic as, in the three waters service delivery context, the regime does impact on customary authority, rights and interests for non-freshwater bodies – an obvious example is discharge of wastewater or stormwater into a river mouth, estuary or the coast where mana whenua are kaitiaki, or have mahinga kai. The point here is that, in the specific three waters service delivery context, the discussion is broader than allocation of take and discharge rights to freshwater bodies.
10. As a result, a slightly different approach was taken to amend the recommendations in the Cabinet paper. The proposed wording was agreed with Minister Parker’s office.
11. **Recommendations 95 and 96** now say:
- 11.1 “note that nothing in the legislation is an acknowledgement by the Crown that ownership rights or interests in water exist;
- 11.2 agree to amend the Bill to include a clause that preserves the status quo iwi and hapū customary rights and interests in water, with the nature of that clause to be agreed in accordance with recommendation 97 below;”
12. In addition, **recommendation 97** now includes the Associate Minister for the Environment (Hon Kiritapu Allan) in the list of Ministers delegated to approve the clause referred to in recommendation 96.

Clarification regarding Te Mana o te Wai

13. **Paragraph 155** has been amended to say: “The Working Group has noted that Te Mana o te Wai is a purpose-made korowai for the three waters system. I propose that it be applied to the functions, powers, or duties of the new water service entities. This is consistent with the Water Services Act 2021”.

Connections with the resource management reforms

14. **Paragraph 209** has been amended to say: “ I note that officials in relevant agencies are already working together across the two reform programmes. This will continue as the Bills progress, to ensure the new water services entities are able to work appropriately within the reformed resource management system”.
15. There have also been some amendments to the recommendations relating to the intersections between the three waters and resource management reforms. These include changes we discussed with you yesterday, and changes requested by Minister Parker.
16. **Recommendations 126-128** now say:
- 16.1 note that there will be differences between the governance and decision-making bodies enabled by three waters reforms and the resource management reforms;

- 16.2 direct officials in relevant agencies to continue to work together across the two reform programmes, as appropriate, to ensure the new water services entities are able to work within the reformed resource management system;
- 16.3 note that consents for taking and discharging water will continue to be administered by local authorities under the Resource Management Act (which will be transferred into the Natural and Built Environments Act, if enacted);
17. As requested by Minister Parker, we have deleted what was recommendation 124 (in the earlier version). This had said “agree, in principle, that central government will ensure there is consistency across the reforms to the resource management system and three waters service delivery system, as appropriate”.

Proposal relating to co-chairs

18. As discussed with you yesterday, the paper has been amended so that the Bill would enable – but not require – regional representative groups to have co-chairs.
19. This is addressed through **recommendation 26**, which says “agree to amend the Bill to enable each regional representative group to appoint co-chairs, comprising one council and one mana whenua chair”.
20. The discussion about this matter in **paragraph 80** of the paper has been revised to align with this approach.
21. In addition, the following sentence was added to **paragraph 79**: “My expectation is that arrangements relating to co-chairs would be determined by each regional representative group and given effect through the entity constitution”.

Some points to note about entrenchment

22. The Cabinet paper proposes entrenchment of the core provisions in the Bill that protect against privatisation. You wrote to the leaders of the Parliamentary political parties requesting their support for this proposal.
23. Entrenchment is where the support of 75 per cent of the members of Parliament is required to amend or repeal a provision in an Act.
24. Entrenchment currently only applies to a very small number of core constitutional provisions (relating to elections and the term of Parliament).
25. At select committee there are likely to be submissions both in support of entrenchment (for example, from some councils) and in opposition (for example, from some constitutional experts).
26. The latter group will likely say that entrenchment is unusual in the three waters service delivery context.
27. Other constitutional settings (such as the New Zealand Bill of Rights Act 1990) and other very significant policy settings (such as the zero carbon goals in the Climate Change Response Act 2019) are not entrenched.
28. Submissions are also likely to canvas complex legal arguments around whether the courts would recognise entrenched provisions in the three waters context.

29. If these provisions are entrenched, all the remaining provisions in the Act will continue to be able to be amended or repealed by a simple Parliamentary majority. It may be suggested that this allows a future Parliament to make “wrecking amendments”; for example, repealing all provisions other than the entrenched provisions, or repealing the title clause of the Act to disable it.
30. While this is theoretically possible, there would of course be questions around the credibility of wrecking amendments of this nature that a future Parliament would need to address as part of the broader debate.

Recommendations

31. We recommend that you **note** the contents of this briefing during the discussions about the paper, *Strengthening representation, governance and accountability of the new water services entities*, at Cabinet on 19 April 2022.



Nick Davis
Acting Executive Director, Three Waters Reform

Hon Nanaia Mahuta
Minister of Local Government

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Appendix A: Talking points for Cabinet on 19 April 2022

Strengthening representation, governance and accountability of the new water services entities

Changes made to the Cabinet paper following SWC

- **I have made changes to the paper to reflect the discussions at SWC and written feedback I received subsequently from Minister Parker**
- **I have amended the recommendations relating to preserving iwi, hapū and Māori rights and interests in water, in discussion with Minister Parker's office**
- Recommendations 95 and 96:
 - note that nothing in the legislation is an acknowledgement by the Crown that ownership rights or interests in water exist;
 - agree to amend the Bill to include a clause that preserves the status quo iwi and hapū customary rights and interests in water, with the nature of that clause to be agreed in accordance with recommendation 97 [below]
- **I have provided additional clarifications regarding Te Mana o te Wai**
- Paragraph 155 has been amended to say: "The Working Group has noted that Te Mana o te Wai is a purpose-made korowai for the three waters system. I propose that it be applied to the functions, powers, or duties of the new water service entities. This is consistent with the Water Services Act 2021".
- **I have amended the proposal relating to co-chairs – so the Bill would enable, but not require, regional representative groups to have co-chairs**
- This is addressed through recommendation 26, which says "agree to amend the Bill to enable each regional representative group to appoint co-chairs, comprising one council and one mana whenua chair".
- The discussion about this matter in paragraphs 79 and 80 of the paper has been revised to align with this approach.
- My expectation is that arrangements relating to co-chairs would be determined by each regional representative group and given effect through the entity constitution.
- **I have amended the description of the connections between the three waters and resource management reforms – as suggested by Minister Parker**
- Recommendations 126-128 now:
 - note that there will be differences between the governance and decision-making bodies enabled by three waters reforms and the resource management reforms;
 - direct officials in relevant agencies to continue to work together across the two reform programmes, as appropriate, to ensure the new water services entities are able to work within the reformed resource management system;
 - note that consents for taking and discharging water will continue to be administered by local authorities under the Resource Management Act (which will be transferred into the Natural and Built Environments Act, if enacted);

Communications

- **My intention is to communicate messages around co-governance and local voice that are clear and direct**, to avoid these matters being obscured by those opposing the reform programme.
- I anticipate **key points for public communications include the need to be clear about:**
 - **what co-governance is and what it is not** – including providing clarity about the role of the joint regional representative group, as distinct from the board
 - the fact that **the board is independent**, and its members are chosen for their competency and experience, not on a representative basis
 - the point that **shareholding clarifies the ownership of the water services entities by territorial authorities**, and iwi do not own the entities or the assets
 - **the positive benefits offered by the public shareholding approach**
- **In addition, the communications material will include information about how many shares each territorial authority will have in the relevant entity.**

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