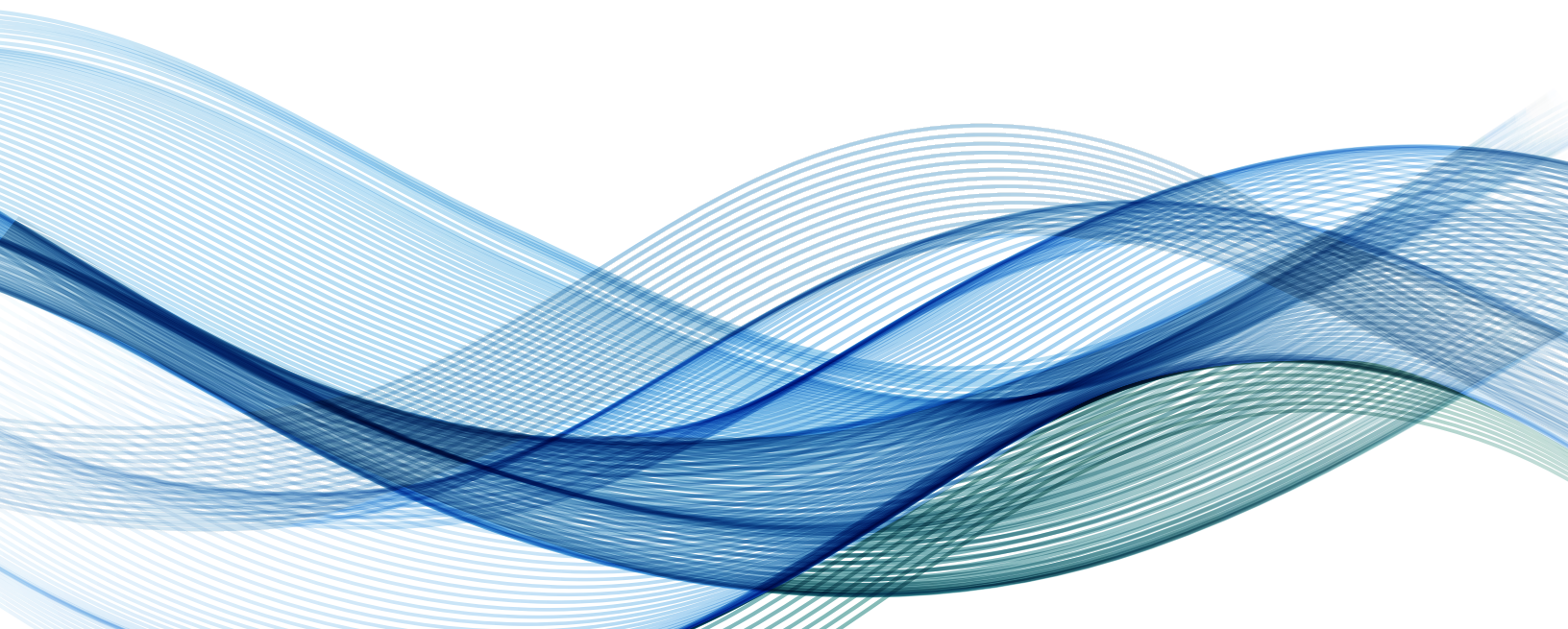


Recommendations from  
the Working Group on  
Representation, Governance  
and Accountability of New  
Water Services Entities



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# Executive Summary

## Purpose

### Bringing an independent perspective from councils and iwi

In October 2021, the Government announced it would introduce legislation to establish four new publicly owned Water Service Entities (**WSEs**) to manage the Three Waters infrastructure that has been operated by or for councils up to now.

Many in local government and the community raised concerns about public ownership, the risk of privatisation and loss of local voice.

Local Government New Zealand worked with the Government to broker the establishment of the Three Waters Working Group on Representation, Governance and Accountability (**Working Group**) to provide independent advice on how to improve the governance arrangements for the WSEs.

Headed by an Independent Chair, the Working Group comprises an equal number of local government and iwi leaders.

The Working Group heard a range of views from the local government sector about various governance models. We listened to people's frustrations. We engaged in energetic debate and argument and formed our recommendations by consensus.

We welcome the inclusion of Te Mana o te Wai and consider it should be at the heart of a new approach. The health and wellbeing of water is fundamental to the future health and wellbeing of people and communities. Te Mana o te Wai recognises this. It will help us to better respond to challenges and realise

opportunities in achieving related environmental and economic objectives shared by all communities in a way that also respects shared values.

Our recommendations fall into three broad groupings:

- Support for significant changes to the Bill
- Specific recommendations for material improvements to the new water entities and delivery of services, and
- Other considerations outside our terms of reference.

## Significant changes to the Bill

### Ownership

As set out below, we recommend strengthening community ownership of assets through a public shareholding structure, where councils hold shares on behalf of their communities.

### Protection against privatisation

Another significant concern expressed by the public is the risk of privatisation. As a response to that, our recommendations have an overarching focus on ensuring the continued and full public ownership of water services by communities.

### Local voice

We recognise the public has also been troubled by how the local voice would be heard in such large entities. This has been a particular concern to our smaller, rural communities. Recognising that, we are recommending new mechanisms to strengthen the role of the new Regional Representative groups (**RRGs**) through the establishment of advisory Groups (sub-RRGs) that will feed into the larger body.

# Recommendations

## Recommended changes to the Bill

We have considered our recommendations within the Government's bottom lines of good governance, Treaty partnership, balance sheet separation and public ownership and we recommend specific changes to the Bill to ensure:

- Community ownership of water services assets
- Protection from privatisation
- A stronger voice for local communities in drinking water, wastewater and stormwater network development
- Strengthening Te Mana o te Wai
- Co-governance embracing Te Ao Māori to improve Three Waters service delivery and environmental protection

## Opportunities for improvements

We have made more specific recommendations in the following areas.

### **Instituting a public shareholding structure that protects community ownership, with shares held by councils on behalf of their communities**

As shareholding owners of the WSEs, councils will have the right to vote on any proposal for the WSE to be sold or privatised. This will strengthen protections against privatisation as councils would have to agree unanimously for an asset to be sold.

No privatisation could occur unless every shareholder council agreed, and councils would be required to consult with their communities.

## **Establishing tighter accountability from each Water Services Entity Board to the community, through new and stronger mechanisms.**

We recommend strengthening and clarifying the role of the RRG, which has council and iwi/hapū representatives.

We want the RRG to approve the Statement of Intent, which guides the WSE's decision making. The WSE should give effect to a Statement of Strategic and Performance Expectations set by the RRG, and report regularly to the RRG on its performance, making it much more accountable to the RRG and communities.

## **Strengthening connection to local communities so they have a clear and guiding voice in drinking water, wastewater and stormwater network development.**

We recommend the inclusion of sub-RRG committees comprising representatives of the communities and iwi/hapū in each region that will feed into the RRG. This will ensure local voices are always considered in investment prioritisation.

We also recommend the establishment of a Water Services Ombudsman to safeguard consumers.

## **Recognising Te Mana o te Wai as an underlying principle**

Embracing Te Mana o te Wai as the foundation for a more sophisticated and integrated approach to providing first class drinking water, wastewater and stormwater networks will ensure that the health and wellbeing of water and the wider environment remain paramount.

We recommend extending Te Mana o te Wai into all aspects of the reforms to underpin the WSE framework. This will ensure that tikanga, mātauranga and in-depth knowledge of water, local conditions, history, and geology, and the importance of the wider environment and its communities, are all properly integrated into the governance and management approach to water services.

### **Ensuring co-governance principles across the water services framework**

Our recommendations aim to ensure the continued improvement of Three Waters service delivery and environmental protection through increased representation of our communities, including iwi/hapū, with co-governance as a central principle.

This includes representation across the councils and iwi/hapū within each WSE region, along with a greater level of input and accountability.

### **Deepening public understanding**

Our discussions have led to our having a deeper understanding of the opportunity the reforms present for transformational change in recognising the centrality of Te Mana o te Wai in the health and wellbeing of wai and in creating sound frameworks to support community needs around how the new WSEs will operate.

We would like the Crown to provide our communities with the same opportunity to learn. We recommend it gives fresh consideration to its ongoing communications and engagement with the public to build understanding of both the direct impact and the broader context of the Three Waters reforms.

# Membership

Three Waters Working Group on Representation, Governance and Accountability is comprised of:

Independent Chairperson Doug Martin.

Iwi/Māori representatives: Ngarimu Blair (Entity A), Huhana Lyndon (Entity A), Jamie Tuuta (Entity B), Karen Vercoe (Entity B), Ngahiwi Tomoana (Entity C), Olivia Hall (Entity C), Gabrielle Huria (Entity D), Barry Bragg (Entity D), Tukoroirangi Morgan (Entity B).

Elected members of local authorities: Mayor Phil Goff, Auckland (Entity A), Mayor Dr Jason Smith, Kaipara (Entity A), Mayor Garry Webber, Western Bay of Plenty (Entity B), Mayor Neil Holdom, New Plymouth (Entity B), Mayor Campbell Barry, Lower Hutt (Entity C), Mayor Rachel Reese, Nelson (Entity C), Mayor Lianne Dalziel, Christchurch (Entity D), Mayor Tim Cadogan, Central Otago (Entity D), Mayor Lyn Patterson, Masterton (Rural/Provincial sector representative).

Chair of the joint Central-Local Government Three Waters Steering Committee  
Brian Hanna.

# 1. Introduction

## 1.1 Purpose

This paper provides the Minister of Local Government (**Minister**) advice from the Working Group on representation, governance and accountability of the proposed new water services entities, in accordance with the Working Group's Terms of Reference.

## 1.2 Context

In October 2021 Cabinet agreed to progress the Three Waters reforms so that drinking water, wastewater, and stormwater services will be provided by four publicly-owned Water Service Entities (**WSEs**) from July 2024. These WSEs will take over the responsibilities for water service delivery from local authorities.

To support engagement on the reform, Government Ministers and Local Government New Zealand (LGNZ) entered into a Heads of Agreement to set out their respective partnering commitments to support achieving their shared objectives for three waters service delivery reforms and requested feedback from local authorities and iwi/Māori. Significant feedback was received on the governance and accountability of the proposed entities.

Following that feedback, the Working Group was established, made up of experienced local government and iwi/Māori members, able to represent the wide diversity of perspectives, interests and priorities across the local government sector, including the four proposed new WSE regions. The Working Group was tasked with identifying a strengthened approach to the governance framework for the WSEs, consistent with the shared reform objectives and within

the constraints of the Crown's published bottom lines and the Terms of Reference<sup>1</sup>.

As the Working Group, we have engaged constructively on the challenge and continue to believe strongly that transformational change in New Zealand's approach to management of the Three Waters is required. We have however made a number of recommendations that we believe will result in the new approach more successfully addressing many of the concerns raised by some councils, community groups and iwi/Māori. The approach recommended is inclusive and better ensures that water assets (and the entities that will own them) stay in public ownership, and that as their kaitiaki and stewards, iwi and council will be able to exert the necessary influence over them. It ensures that the communities we represent are at the forefront of our considerations, underpinned by the importance and health and wellbeing of water.

For absolute clarity, we want to emphasise that these reforms relate to the provision of Three Water services and infrastructure and their governance and management. No assets are being privatised and we are firm in our view that this should never occur. Similarly, these reforms do not relate to or affect the issues of ownership of water and we consider this should be made explicit too.<sup>2</sup>

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<sup>1</sup>[Terms of Reference of Working Group on Representation, Governance and Accountability of new Water Services Entities](#)

<sup>2</sup> Acknowledging that there remain unresolved issues unrelated to these reforms that need to be addressed between the Crown and iwi/hapū regarding rights and interests in water.

### **1.3 Proposed governance and accountability approach by the Crown**

Following the feedback received on the original governance and accountability approach included in the reform proposal released in July 2021, the Crown presented a revised draft Bill to the Working Group<sup>3</sup>. The revisions within the Bill included:

- Greater flexibility for each RRG to determine its own arrangements through a constitution, rather than the original proposal, which required a number of matters to be hard wired in primary legislation.
- Board appointments and removals being made by a committee of the RRG, rather than an arms-length 'independent selection panel' (as was described in the original proposal).
- Direct accountability of the WSE to the RRG for performance of the duties imposed on the WSE Board and permitting the RRG to remove WSE Board members for failing to carry out these duties.
- The WSE Board being required to give effect to the Statement of Strategic and Performance Expectations (SSPE) issued by the RRG which provides more direct influence for the RRG over the WSEs' strategic direction and priorities (but without dictating its day-to-day operations).

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<sup>3</sup> 17 December Working Group meeting

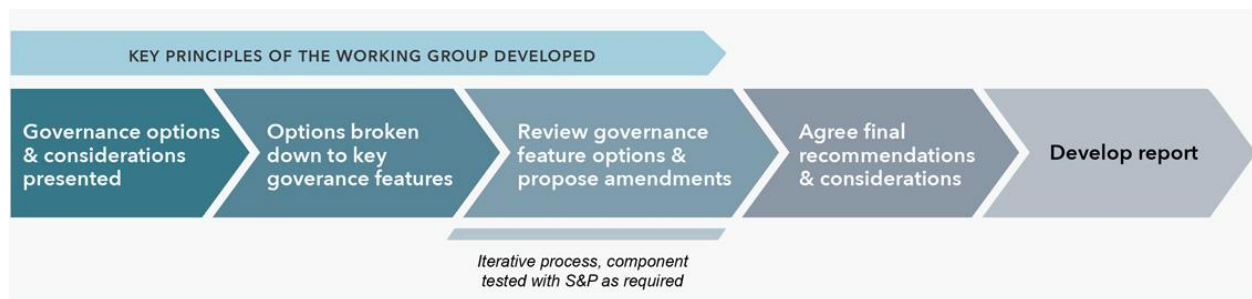
## 2. Approach taken by the Working Group

The Working Group first met on 26 November 2021, with the mandate for members to work collaboratively to ensure the best overall outcomes for Aotearoa, and the people of each WSE region. The council members have come together to represent the interests of all local authorities, not their individual local authorities. Iwi/Māori members have come together to provide the perspective of the Treaty partner, not to represent their individual iwi/hapū. We agreed the following shared principles and values for how to work together through the process.

1. **Shared intention:** operate with the shared intention of supporting the kaupapa of the Working Group, including by committing to discussing in good faith how the representation, governance and accountability arrangements for new WSEs can best enable the achievement of the shared reform objectives.
2. **Mutual respect:** build and foster working relationships and practices that are based on, and value, mutual respect, including addressing any issues and concerns that arise early and constructively.
3. **Constructive:** non-adversarial dealings between the parties, and constructive mutual steps to avoid differences and disputes, and to identify solutions that advance the shared objectives.
4. **Open and fair:** open, prompt and fair notification and resolution of any differences that may arise, and the identification of potential risks and/or issues (including potential causes of delay) that could adversely impact the provision of advice and recommendations by the Working Group to the Minister.

5. **No surprises:** adopt a ‘no surprises’ approach in respect of matters arising, including with respect to communications to stakeholders and their public statements.
6. **Recognition of cultural values:** ensuring Te Ao Māori perspectives and mātauranga are incorporated into the working processes, dialogue and output of the Working Group.

We have taken a collaborative and bottom-up approach, with various governance models being presented by Working Group members and guests, followed by an analysis of the different options and the development of final recommendations. Meeting weekly, three sessions were held in 2021 before we reconvened 28 January through 4 March 2022. The approach adopted is summarised in the diagram below.



Recommendations were agreed by consensus except as noted in the appendix.

It is important to acknowledge certain matters are outside the scope of the Three Waters reform, and therefore outside the scope of this Working Group.

This includes, but is not limited to:

1. Ownership of water (including unresolved issues relating to iwi/hapū rights and interests).
2. Resource management and the Resource Management Act (**RMA**) reform.
3. The purpose and role of local government and how it may be impacted by a number of proposed reforms.

### 3. Key reflections

Throughout this experience, we have identified considerable value in the process, notably the reflections, sharing of experiences, talking through concerns, and finding practical solutions that provide for mutually acceptable outcomes. We consider continuation of this wānanga approach a critical requirement for the further development and success of the Three Waters reforms.

The discussions have led to our deeper understanding of the following:

1. The significant opportunity the Three Waters reforms present for a transformational change in Aotearoa.
2. The importance of Te Mana o te Wai in reflecting the paramountcy of the health and wellbeing of wai, its fundamental importance to the health and wellbeing of people and communities and understanding that it is universal<sup>4</sup>.
3. How Te Mana o te Wai can be given effect under a legislative framework when discussing water infrastructure and how an integrated and inclusive approach is necessary.
4. How Te Mana o te Wai provides the appropriate overarching framework for decision making and guidance to the WSEs.
5. The role of democratically elected local authorities in relation to placemaking, achieving outcomes for communities and strategic

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<sup>4</sup> See section 4 for a more detailed explanation of Te Mana o te Wai, which we consider should embrace all water bodies that are affected by Three Waters activities (not only fresh water).

- planning for communities, and the need for this role to be accommodated within the governance structure.
6. The possibility of a future where asset management integrates with tikanga and mātauranga Māori.
  7. The need for an intergenerational solution, and the important role the Crown has to play, in fixing the historic degradation of assets.
  8. The need for national compliance standards and the time and investment required to bring existing infrastructure up to compliance.
  9. The need for WSEs to raise significant levels of debt to pay for necessary investment in Aotearoa water infrastructure and the implications this has on how the governance arrangements operate.
  10. The need for the community to have clear lines of accountability and the ability to input into the priorities of the WSEs.
  11. The amount of time it will take to successfully implement the new WSE approach and the importance of doing that, and doing it smoothly, for our collective future as New Zealanders.
  12. The vulnerability of the sector due to skills shortages and capability.

We would like the Crown to provide our communities with the same opportunity to learn and understand and recommend that the Crown reconsider its ongoing communication and engagement with the public to better bring people along the journey to understanding the Three Waters reforms.

We also note that the WSE governance arrangements sit within a much wider framework that includes the role of Taumata Arowai, an economic regulator and resource management consents that all need to be complied with.

We recommend a commitment from the Crown in relation to its ongoing RMA reform process to ensure the outcomes under those reforms are consistent with the Three Waters reform programme, recognising the need for coordinated planning (in particular in relation to planning for growth) and the role of local government in relation to their communities.

We also believe the Crown will need to support the opportunity for transformational change the reforms offer. This is at the heart of Te Mana o te Wai and in making this concept familiar to all New Zealanders we believe the Crown should fund a well-planned change management programme founded on good policy advice, genuine engagement, input from credible independent expertise, and with excellent communications.

The importance of communicating what is happening and why to different audiences should not be underestimated. Public communications need to be led by the Government, but we believe councils and iwi will need funding to play their part in driving change management processes and ensure this important kaupapa is successful.

**Recommendation 1:** That the Crown acknowledges the significant contribution councils have made as stewards of three water infrastructure. We recommend the Crown undertake a positive communications campaign with the nation to explain the universally agreed 'need for change' to serve the needs of communities, expectations of how we best ensure the health of our wai, and the opportunities provided by the Three Waters reforms.

**Recommendation 2:** The Crown ensures Resource Management Act reforms are consistent with, and do not undermine, the Three Waters reforms (informed by the recommendations in this report).

## 4. The Working Group's priorities for the reform

### 4.1 Overview of Working Group's priorities

We have considered the Government's bottom lines (Treaty partnership, good governance, public ownership, and balance sheet separation) and identified our priorities for the reform. These priorities have guided our discussions and underpin our recommendations:

1. Te Tiriti o Waitangi as a whāriki (foundation<sup>5</sup>) which underpins the overall WSE system. This is expanded on in the section relating to Te Tiriti.
2. The importance of water and its health and wellbeing is recognised and protected throughout the system. This is expanded on below in the section relating to Te Mana o te Wai.
3. Co-governance responsibility and accountability through the RRG is actively enabled.
4. Accountability is made clear, with clearly distinguished roles and responsibilities.
5. The WSEs are sufficiently adaptable and flexible to meet the needs and circumstances of the takiwā (region), iwi/hapū as mana whenua<sup>6</sup> and local communities (including future generations).
6. The reform enables community, local voice and standing.

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<sup>5</sup> A "whāriki" is literally a woven mat but is used metaphorically in this case to refer to the foundation or base for the relationship between the Crown and tangata whenua.

<sup>6</sup> The Bill refers to "mana whenua", which the Working Group acknowledges as iwi/hapū and both terms are used in this report. We believe the Bill should define "mana whenua" to mean "the iwi or hapū holding and exercising customary rights, interests and authority in accordance with tikanga within an identified area".

7. A requirement for public ownership, noting the importance of the entities responsible for the delivery of water services (and owning assets that deliver water services) remaining with the communities they serve.
8. The role of local authorities as stewards and iwi/hapū as kaitiaki in respect of Three Waters infrastructure.
9. Form follows function; compliance with the new and higher water quality standards is key to driving better infrastructure for future generations.
10. Equity of access (and same quality of service) is a critical consideration for our communities and the need for this to form part of the reform principles.
11. The importance of a whole-of-catchment approach - ki uta ki tai (mountains to sea).

## **4.2 Te Tiriti o Waitangi**

Te Tiriti o Waitangi/the Treaty of Waitangi (Te Tiriti) is the founding constitutional document of Aotearoa New Zealand and provides the basis for the ongoing relationship between the New Zealand Government and tangata whenua.

The “principles” of Te Tiriti are derived from the text, spirit, intent and circumstances of Te Tiriti, but cannot reasonably be viewed in isolation from the original text and language of Te Tiriti. The principles of Te Tiriti have been developed over time and, as the Courts have recognised, the Crown’s obligations are ongoing and evolve as conditions change. However, the Courts and the Waitangi Tribunal have confirmed a number of well-established principles which include the overarching principle of partnership (including a

mutual responsibility for the partners to act towards each other reasonably and in good faith) as well as the principles of active protection, and the right to development and redress.

In the context of matters relating to the environment (including water), the Waitangi Tribunal has expressed the principle of partnership as including:

1. the duty of the Crown to make laws and set overall policy for the conservation of natural resources in order to protect the environment;
2. the Māori right to exercise tino rangatiratanga, which should not be lightly set aside;
3. the duty of the Crown to do what it can to enable Māori to be kaitiaki of their environmental taonga;
4. the relationship between the various environmental authorities of the Crown and Māori; and
5. working together to make decisions in a manner to be determined contextually on a case-by-case basis.

We endorse the express recognition of the Crown's responsibility to give effect to the principles of Te Tiriti through the Bill; and have reviewed and considered the proposed representation, governance and accountability mechanisms under the Bill against this standard.

We have proposed several recommendations to strengthen the Bill and WSE framework in order to give better effect to Te Tiriti and its principles (see section 5.5 and Recommendations 31 to 35).

### 4.3 Te Mana o te Wai

|                                 |                                                                 |
|---------------------------------|-----------------------------------------------------------------|
| <b>Tirohia te wai</b>           | <i>Observe the water</i>                                        |
| <b>He au</b>                    | <i>Its energy</i>                                               |
| <b>He au whiwhia</b>            | <i>A giving energy</i>                                          |
| <b>He au rawea</b>              | <i>A positive energy</i>                                        |
| <b>He au mahora, he wai e</b>   | <i>Energy offered, that is water</i>                            |
| <b>Tauwaretia te wai</b>        | <i>Touch it, but leave it undisturbed</i>                       |
| <b>E rere</b>                   | <i>Let it flow</i>                                              |
| <b>Pupū ake i te whenua</b>     | <i>Rising up from the land</i>                                  |
| <b>Pipī ake i te whenua</b>     | <i>Flowing from the land</i>                                    |
| <b>E rere te wai e</b>          | <i>Its pathway continues</i>                                    |
| <b>Hei oranga mō te katoa e</b> | <i>Providing life to all</i>                                    |
| <b>Nei ko te mana o te wai</b>  | <i>This is the mana (prestige/authority/power) of the water</i> |

We acknowledge and support the importance of Te Mana o te Wai as a core principle that will guide decision making, planning, governance, accountability, and service delivery. Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of water protects the mauri of the wai and the health and wellbeing of the wider environment and communities. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and people.

To this end, Te Mana o te Wai establishes the following hierarchy of priorities:

1. health and wellbeing of water bodies and ecosystems;
2. health needs of people (such as drinking water); and
3. ability of people and communities to provide for their social, economic, and cultural wellbeing for current and future generations.

Te Mana o te Wai is in turn underpinned by the principles of mana whakahaere, kaitiakitanga, manaakitanga, governance, stewardship and care and respect.

Te Mana o te Wai thereby provides a korowai (cloak) for the new Three Waters service delivery approach throughout the whole system from top to bottom. It appropriately reflects the fact that the utilisation of water for the needs of people and our communities and economies is dependent on the health and wellbeing of our waters and waterways. The Three Waters system, embracing drinking water, stormwater and wastewater and its related infrastructure, falls squarely within the scope of Te Mana o te Wai. Decisions concerning Three Waters now and into the future will therefore play a key role in realising Te Mana o te Wai.

As such, the guidance provided by Te Mana o te Wai will help us better respond to current challenges and realise future opportunities to achieve objectives that are shared by all communities (water quality, water security, sustainable economic growth and development, resilience and climate change mitigation and/or adaptation) in a way that also respects shared values. While Te Mana o te Wai is embedded in mātauranga Māori and tikanga, it is a concept that puts the health of our water first, and is a core principle that will serve all New Zealanders.

There is an increasing need to manage Three Waters in a sustainable and integrated way to ensure the availability of services to growth areas and the protection of the environment for future generations.

Consistent with this whole-of-system and intergenerational approach, we consider that Te Mana o te Wai appropriately restores and preserves the balance between the needs water (wai), the wider environment (te taiao), and communities and people (ngā tāngata), now and into the future.

Te Mana o te Wai recognises the interconnectedness of the environment, the interactions between its parts, responsibilities of our communities and people. It requires integration between water management and land use to avoid adverse effects (including cumulative effects) on the health and wellbeing of our waterways and environment, and ultimately our communities.

An integrated approach is essential to the reform objectives (both in the present, from an intergenerational perspective, and from a community/collective perspective and te taiao – and cannot just be limited to freshwater bodies).

The Working Group has proposed several recommendations in this Report to give better effect to Te Mana o te Wai within the Three Waters framework (see section 5.6 and Recommendations 36 to 39).

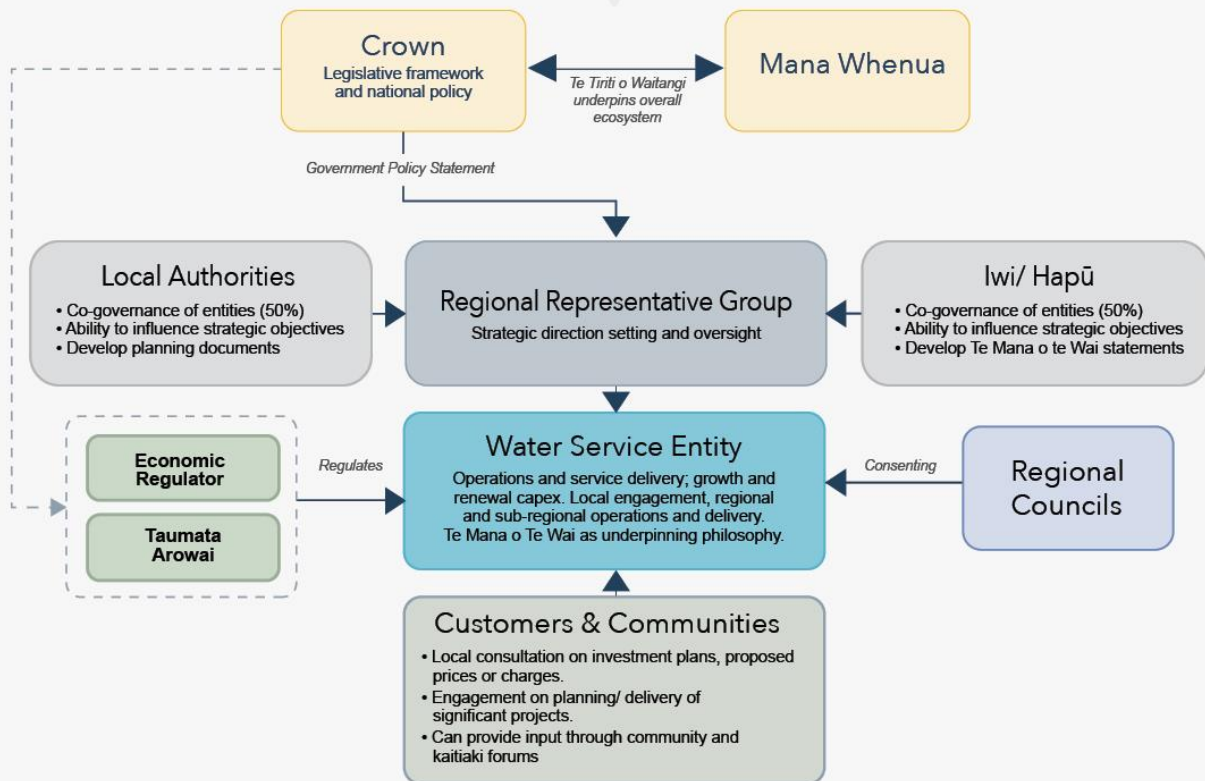
## 5. Our recommendations to the Government

Transformational change takes time and there is a need for a long-term enduring model that can accommodate changes over time in WSE accountability, governance and representation. We have strived to find the right balance between prescribing the requirements of the WSE governance model to ensure it encompasses key priorities while also leaving flexibility in the right areas for the WSEs to adapt to their own local and changing needs.

Recommendations outlined in this report have been specifically noted as referring to a change/provision in the Bill (if an absolute requirement or bottom lines) or in individual WSE constitutions (where governance structures are protected through a vote required to change rather than the need to amend primary legislation).

Where that flexibility within a WSE is required, additional context has been provided and should be used as a basis for a draft default constitution of the WSEs.

The strengthened governance model recommended by the Working Group is depicted below:



## 5.1 Ownership

### Ownership: Summary of recommendations

**Recommendation 3:** The Bill prescribes the collective ownership of each WSE by local communities through a direct shareholding interest allocated to their territorial authorities. One share for each 50,000 people, rounded up. As shareholding owners of the WSEs, each territorial authority will be required to vote on any proposal for the WSE to be sold (privatised) or involved in a merger of WSEs, in each case that changes the owners of the WSE. The proposal will only proceed if there is unanimous shareholder approval. This is in addition to the privatisation protections currently outlined in the Bill.

**Recommendation 4:** The Bill entrenches the need for a majority of 75% of all the members of the House of Representatives to repeal or amend provisions of the Bill where the repeal or amendment of that provision is necessary to allow privatisation of an WSE.

**Recommendation 5:** The Bill expressly provides a prohibition on local authorities providing financial support to, or for the benefit of, WSEs – this includes by way of guarantee, indemnity or security, or the lending of money or provision of credit or capital.

**Recommendation 6:** The Crown should further explore and clarify the thresholds regarding what constitutes a major transaction to be raised to the RRG for consideration.

The Working Group agrees that the underlying key principle to ownership is that three waters assets must remain in public ownership and the ownership model must help protect against privatisation. The draft Bill already reflects this principle, but we think it can be strengthened to provide communities and territorial authorities more confidence in these protections. We believe that the collective ownership of each WSE by local communities would best be expressed through a direct shareholding interest in the statutory entity with that interest being allocated to and held by territorial authorities in the WSE's region.

Having territorial authorities as shareholders will mean there is a tangible relationship between communities and their WSE that is well understood by the public (as compared to a legislated collective ownership). This will provide a connection to the WSE and additional rights that are recognised and have value for communities and territorial authorities.

The Bill already requires that a proposal for a WSE to divest its ownership in a water service, or sell or lose control of significant infrastructure, can only proceed with at least 75% support of both the RRG and a poll of the electors in its service area. If the proposal involved sale (privatisation) or merger of WSEs then shareholder approval would also be needed after a successful poll result.

These shares would:

- Be allocated to territorial authorities by reference to current district population (one share for each 50,000 people – rounded up – in order to reflect proportionality). This can evolve with population and be reset every five years. If all shareholders of a WSE voted unanimously for a WSE merging with another WSE then the shareholdings would be adjusted to reflect that.

- Entitle the shareholder to vote on any proposal for the WSE to be sold (privatisation) or merged with another WSE and unanimous shareholder approval would be required for that proposal to proceed. This would present an additional layer of protection which is separate from the exercise of any relevant Parliamentary power to change the legislation. This is not intended to cover changes in shareholding within a WSE as a result of territorial authority amalgamations which it is suggested will require a mechanism in legislation to determine the resulting shareholding interests within the relevant WSE of the merged territorial authority.
- Except for the above right, the shares would be non-voting and not confer other decision-making rights:
  - the existence of such shares would not disturb the role or operation of the RRG
  - all other decision-making rights would continue to be shared between the RRG and the WSE Board
  - matters that a conventional company might reserve to shareholders for decision will instead be reserved to the RRG.
- Be subject to the other restrictions already provided for in the Bill (e.g. no equity return)

The importance to communities (including iwi/Māori) of retaining public ownership of water services also warrants a further layer of protection against the ability for Parliament to legislate to allow privatisation by requiring a 75% Parliamentary majority to make any legislative changes necessary to enable privatisation.

We further recommend that legislation expressly provides a prohibition on local authorities providing financial support (such as guarantees or indemnities) or

lending money or providing credit or capital to WSEs – this is not however intended to restrict what is likely to become business-as-usual arrangements such as service agreements or joint ventures. This will help ensure the ownership model is not seen by the credit rating agencies as a form of parent-company support.

The Working Group would like the Crown to explore whether any major transactions (additional to divestment proposals, which must go to the RRG for approval, followed by a poll of electors) should be approved by the RRG using the co-governance consensus principles outlined.<sup>7</sup>

## 5.2 Strengthening co-governance of the RRG

### Strengthening co-governance of the RRG: Summary of recommendations

**Recommendation 7:** The Bill requires RRG co-chairs, one council and one iwi/hapū representative.

**Recommendation 8:** The Bill requires consensus decision making for all decisions on RRG. Where consensus cannot be reached within an appropriate timeframe, 75% majority vote will be sought as agreed by co-chairs. This process should be prescribed in the Bill.

**Recommendation 9:** The RRG requires appropriate secretariat and resource provisions to enable it to perform its role, and to allow for meaningful council and iwi/hapū participation in the RRG. This should be funded by the WSE.

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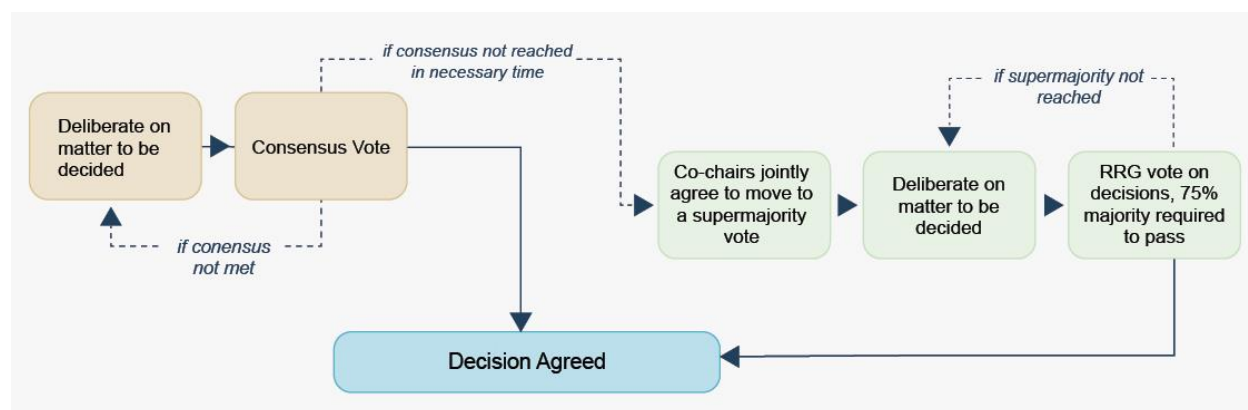
<sup>7</sup> For example, the threshold applied for the purposes of the Companies Act.

The Working Group agrees with a co-governance model for the WSEs. Building on that principle and from the positive experiences many of the members have had on co-governance bodies, we have strengthened the Crown's co-governance principles and recommend the following:

**Co-chairs:** The RRG (including any advisory bodies to the RRG, as described in section 5.3.5) will require co-chairs, one council representative and one iwi/hapū representative, with this requirement to be prescribed in the Bill. The appointment process of the co-chairs will be left to the RRGs of individual WSEs and outlined in their constitutions.

**Consensus voting:** A strong expectation of decisions by consensus promotes robust discussion within a co-governed group and enables its members to work collaboratively through decisions as they arise. The RRG (including any advisory bodies to the RRG) will require consensus decision making for all decisions by the RRG to be prescribed in the Bill.

In the event that consensus is not reached within the necessary timeframe<sup>8</sup>, the co-chairs can jointly agree to move to a 75% majority vote with 1 vote per representative.



We agree that appropriate secretariat support will be needed to assist the RRG and that this should be funded by the WSE. The Bill should provide for this.

<sup>8</sup> Necessary timeframe for the decision, as determined by the time sensitivity of other matters depending on the decision (e.g. finalisation of the SSPE to enable the SOI to be prepared).

## 5.3 Strengthening the role of and accountability to the RRG

### Strengthening the role of and accountability to the RRG: Summary of recommendations

**Recommendation 10:** The role of the RRG is to collate inputs to the SSPE, including alignment with the Government Policy Statement (**GPS**), direction from regulators, local community priorities within the region as outlined in council strategic documents, Te Mana o te Wai statements, and alignment with RMA. This is to ensure that the WSEs receive clear strategic direction. It is recommended that the Bill is amended to reflect this approach and ensure the RRG receives all necessary information to undertake its role, this includes receiving copies of the WSE Asset Management Plan and Te Mana o te Wai statements to support the development of the SSPE, and the ability to seek further information as necessary for it to undertake its role.

**Recommendation 11:** The Bill is amended to ensure the SSPE, which covers a period of 3 years, be issued annually to the WSE

**Recommendation 12:** The role of the RRG be extended in legislation to include the approval of the strategic direction outlined by the WSE in the Statement of Intent (**SOI**) (on the assumption that the SOI is limited to strategic direction only).

**Recommendation 13:** The role of the RRG be extended in legislation to allow comment on the operational direction of the WSE through the Asset Management Plan and other key documents.

**Recommendation 14:** The Bill clarifies the scope of the SSPE and excludes directing the WSE at a project, investment or management level.

**Recommendation 15:** The Bill should specify that the RRG will monitor performance of the WSE on delivering strategic outcomes of the SSPE and

## Strengthening the role of and accountability to the RRG: Summary of recommendations

SOI through six monthly reporting from the WSE. Individual constitutions could require additional performance reporting requirements (e.g. quarterly reporting).

**Recommendation 16:** The Bill is amended to allow RRGs to provide additional competency requirements for appointees to the WSE Board.

**Recommendation 17:** The Bill is amended so that conflict of interest requirements for RRG and WSE board appointments need to be stated.

**Recommendation 18:** The Bill is amended to provide for bi-annual Board performance reviews. Independent reviewers or additional reviews can be included in individual constitutions.

**Recommendation 19:** The Bill requires a minimum of 12 and maximum of 14 representatives on the RRG. The composition and appointment of council and iwi/hapū representatives will be left to individual WSEs and outlined in their constitution, noting that the Working Group also recommends that the Crown consult the Working Group as they draft the default constitutions.

**Recommendation 20:** The Bill requires that Council representatives should have a mix of representatives from urban, provincial, and rural councils.

**Recommendation 21:** The Bill requires that iwi representatives should have a mix of representatives that are appointed on a tikanga basis reflecting their whakapapa affiliations through waka groupings. Entity D will appoint on a tikanga basis reflecting their hapū groupings.

**Recommendation 22:** The Bill provides for bespoke arrangements for the Entity A RRG, specifically 14 members with 50:50 Council and iwi/hapū composition. There should be 4 Auckland Council representatives, 4 Tāmaki

## Strengthening the role of and accountability to the RRG: Summary of recommendations

Makaurau iwi/hapū representatives, 1 representative each from the Northland Councils and 3 iwi/hapū representatives from Te Tai Tokerau.

**Recommendation 23:** The Crown provides financial support to Councils so they can be appropriately resourced to allow them to fulfil their RRG roles.

**Recommendation 24:** The Bill requires a competency requirement for representatives to the RRG but detailed criteria will be left to individual WSE constitutions.

**Recommendation 25:** The Bill includes provision for regional advisory groups (sub-RRGs) to the RRG to exist within legislation. Other than 50/50 co-governance between council and iwi/hapū, composition and number of advisory groups (sub-RRGs) will be left to individual WSE constitutions.

**Recommendation 26:** The Bill is amended to require a single constitution that governs the RRG and WSE for each region and modifications to the constitution will require the co-governance consensus agreement of the RRG.

**Recommendation 27:** The Crown consults the Working Group as they draft the default constitutions.

As described in the model originally proposed by the Government (July 2021), the role of the RRG was seen as unclear and lacking in a genuine ability to provide input from iwi and councils from the regions they represent. As the RRG is the co-governance body made up of representatives from councils and iwi/hapū, the Working Group considers this body as having a primary role in

driving strategic direction that encompassed all of the various priorities and local voice within the WSE region, including Te Mana o te Wai, catchment priorities, headline matters from local council strategic plans, and future development strategies. Its role was also to appoint/remove Board members and monitor the performance of the Board and the WSE.

### **5.3.1 Strategic direction and accountability**

The RRG is responsible for developing the strategic priorities for the WSE, for inclusion in the SSPE. The mechanism for the RRG to provide strategic direction to the WSE is through the SSPE which the WSE Board will respond to in its SOI.

The RRG will need to collate, and prioritise as required, inputs to the SSPE, including ensuring alignment with the Government Policy Statement (GPS), direction from regulators, local community priorities within the region as outlined in council strategic documents, Te Mana o te Wai statements<sup>9</sup>, and alignment with RMA. This approach should be captured within the Bill. We also recommend that the Bill be amended to include a requirement the RRG will issue an SSPE annually, noting that the SSPE will cover a period of three years<sup>10</sup>.

We agree with the Bill revisions which see the WSE having to give effect to the SSPE. However, we recommend that to ensure accountability the legislation needs to include that the RRG will approve the strategic direction outlined by the WSE in the SOI. It is not the role of the RRG to approve the operational programme of the WSE, it is however appropriate that the RRG can comment on the operational direction outlined in the Asset Management Plan (AMP) or other key documents from the WSE.

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<sup>9</sup> Note: The inclusion of Te Mana o te Wai statements at this level is in addition to them being provided directly to the WSE.

<sup>10</sup> The Working Group acknowledges that some strategic inputs (e.g. all Te Mana o te Wai statement, economic regulator requirements, and RM reform) may not be in place on day 1 of the WSE "go-live" and strategic direction may change as these inputs materialise.

We recommend the Bill be amended to clarify that the RRG will monitor the performance of the WSE in delivering the strategic outcomes outlined in the SSPE and SOI through twice a year performance reporting, with a requirement that the WSE Board members engage with the RRG on a regular basis.

We note that, through conversations with S&P, SOI approval may have potential balance sheet implications and requests that Crown include this within the next RES for consideration. If this is not feasible and the RRG does not approve the SOI, we recommend the constitution will set out a process for resolving the issues with the WSE Board.

### **5.3.2 Board appointments and WSE performance**

The Working Group agrees that the RRG is able to appoint Board members, as currently outlined in the Bill, and is able to remove Board members through a consensus vote (per co-governance principle outlined in section 5.2). Given the recommendation to reduce the size of the RRG, we consider that the use of a RRG selection subcommittee to nominate Board members should be left to individual WSEs and outlined in their constitution.

We agree that there should be a competency-based Board per the Bill (and endorse the express requirement for experience and expertise in the principles of Te Tiriti and the perspectives of mana whenua, mātauranga, tikanga, and Te Ao Māori) but recommend this is expanded to include other skills as recommended by the RRG, which may include environmental protection and expertise in relation to community and iwi/hapū engagement <sup>11</sup>. The Working Group agreed that there must be independence of the WSE Board and clear conflict of interest requirements guidelines<sup>12</sup>.

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<sup>11</sup> These skills could be outlined in the RRGs WSE board appointment policy.

<sup>12</sup> The Bill should expressly recognise that membership of an iwi/hapū or membership of a local authority does not, in itself, comprise a conflict of interest.

We agree it is the role of the RRG to monitor the performance of the WSE Board and recommend that they complete a bi-annual Board performance review. This should be prescribed in the Bill. The ability for the RRG to appoint independent reviewers or complete additional reviews (i.e. annually) will be left to individual RRG and outlined in their constitution.

To support the RRG's role of WSE monitor, we recommend that the WSE provide performance reporting to the RRG at minimum twice a year and monthly key metric dashboards, to be outlined in individual WSE constitutions.

### **5.3.3 Providing regional flexibility and an enduring model**

As there are unique considerations both across the WSEs and across catchments within each WSE, the Working Group explored how the RRG's could work in practice, driving the right level of strategic direction while ensuring regional flexibility.

### **5.3.4 Composition of the RRG**

We have engaged in significant discussion around the potential composition of the RRG as it relates to individual WSEs. We believe each WSE needs to work through the best composition for their region, along with how this composition is reached across councils/iwi, and that this can be prescribed through their constitution.

We agree with the following RRG composition principles in the Bill:

- 50/50 council and iwi/hapū composition of the RRG.

- The process of iwi/hapū appointments to the RRG will be developed and defined by iwi/hapū based on tikanga Māori, and documented in the WSE constitution, not prescribed by the Crown
- The process of council appointments to the RRG will be developed and defined by councils, and documented in the WSE constitution, not prescribed by the Crown.

We considered the current proposal, which saw over 40 RRG members for some RRGs, would be unworkable and in principle considered that 12 members would be a more workable option. However, recognising the need for an enduring model and the differences between the WSEs we recommend a minimum of 12 and a maximum of 14 representatives, to be prescribed in the Bill<sup>13</sup>. The composition and appointment of council and iwi/hapū representatives will be left to individual WSEs and outlined in their constitution but considerations for bespoke arrangements are outlined below.

**Entity A:** We discussed an option for the Entity A RRG, being four Auckland Council representatives, four Tāmaki Makaurau iwi/hapū representatives, one council representative for each of the other councils and three iwi/hapū representative from Te Tai Tokerau.

The bespoke composition of the RRG for Entity A has implications for the majority vote provisions for that entity. The majority view of the Working Group was to recommend the 75% majority vote provision for Entity A. The alternative view of Dr Jason Smith, Mayor of Kaipara District, and Chair of the Northland Mayoral Forum, is set out below:

#### **Alternative view: Extra consideration of Entity A majority voting rights**

<sup>13</sup> The Working Group expects 12 representatives for Entity B, Entity C, and Entity D, and 14 representatives for Entity A as outlined.

Bespoke arrangements are proposed for the Regional Representation Group of Entity A, intended to reflect the relative size and scale of Northland and Auckland and also to meet the required balance sheet separation of no council having dominance of RRG decision-making (see section 5.3.4) Representation has been well considered here, but decision-making processes for Entity A's RRG have not been considered as fully. I supported Auckland Council having four seats and one for each Northland council (with equal seats for iwi) on the assumption the different formula would also allow a bespoke arrangement for majority voting rights (not 75%). It's disappointing that bespoke consideration of majority voting rights has not been followed through.

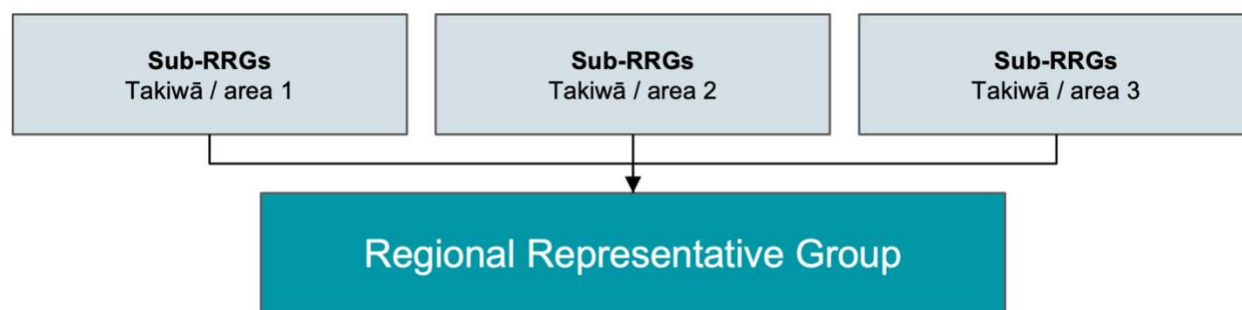
As it stands, the proposed bespoke arrangements for Entity A are distorted because the voting right majority provisions are simply proposed to be the same as for the other entities. There would be inequitable decision-making processes in Entity A if the majority vote remained at 75% (viz. 10 of the 14 people) because Auckland Council could never be outvoted while Northland councils or Northland iwi could be. This imbalance is unacceptable. If the majority required were shifted more towards consensus, to 90% (12 of the 14 votes) then, again, Auckland could never be outvoted but any majority decision would require votes from each of the four voting groups. This would be an improvement, as it is closer to consensus. For good governance I recommend Entity A has a 90% majority for decision-making and that this matter is considered fully before final decisions are taken.

**Entity B, Entity C, and Entity D:** We see RRG representatives for these WSEs sitting at 12 members (6 council and 6 iwi/hapū), with council membership reflecting metro, provincial, and rural representation, and iwi membership in accordance with tikanga and whakapapa affiliations reflecting representation from each of

the waka groupings within the WSE region. Entity D will appoint on a tikanga basis reflecting their hapū groupings.

We agree that competency criteria are developed for each RRG, and the representatives on the RRG must collectively meet these competency requirements. This competency requirement must be prescribed in the Bill, with each entity constitution providing the detail on these criteria, noting this may evolve over time. We have noted the need for resourcing for local council participation in the RRG and advisory groups. Proper resourcing will be required for all participants and this may require financial support from the Crown. In addition to the Crown's Te Tiriti obligations, we recommend that the Crown also provide funding to enable full council participation in the new Three Waters environment.

### 5.3.5 Advisory groups (sub-RRGs)



*Representative diagram, number of sub-RRGs may vary by WSE*

We recommend that there is provision for regional advisory groups<sup>14</sup> to the RRG to exist within the Bill. Sub-RRGs would follow the same co-governance principles of the RRG, they would be aligned to sub-regions, takiwā or catchments (to be agreed by each RRG), and would provide additional local strategic focus. Sub-

<sup>14</sup> Crown will need to consider the right name for such groups, for the purpose of this report they have been referred to as sub-RRGs

RRGs will be responsible for agreeing regional strategic priorities using inputs that may include Te Mana o te Wai statements, direction from regulators, local community priorities within the region as outlined in council strategic documents, and alignment with RMA.

To capture the localised differences across the four WSEs, we are not prescribing a uniform approach to the number of sub-RRGs or their composition, other than 50/50 co-governance between council and iwi/hapū. Consideration should be given to each sub-RRG having one appointee from each council within the sub-region or catchment.

### **5.3.6 WSE constitution**

To promote regional flexibility and an enduring model through use of entity constitution, the Working Group recommends that the Bill requires a single constitution for each WSE. This constitution will outline the roles and relationships of the RRG, WSE Board, and WSE. We recommend that modification of the constitution require the RRG co-governance consensus agreement with a 75% majority backstop vote (see section 5.2), rather than the 75% majority currently outlined in the Bill.

We recommend the Crown engages with and consults with us further as they draft the default constitution.

## 5.4 Community and local voice

### Community and local voice: Summary of recommendations

**Recommendation 28:** The Bill requires the RRG to have input into the investment prioritisation methodology and framework through consultation between the WSE and the RRG.

**Recommendation 29:** The Bill includes provision for the WSE to engage with councils on the development of the WSE Asset Management Plan (**AMP**) as it applies to their district and to respond to Council's comments.

**Recommendation 30:** The Bill includes the establishment of a national Water Services Ombudsman with jurisdiction over all the public facing activities of each WSE, incorporating a tikanga based dispute resolution process.

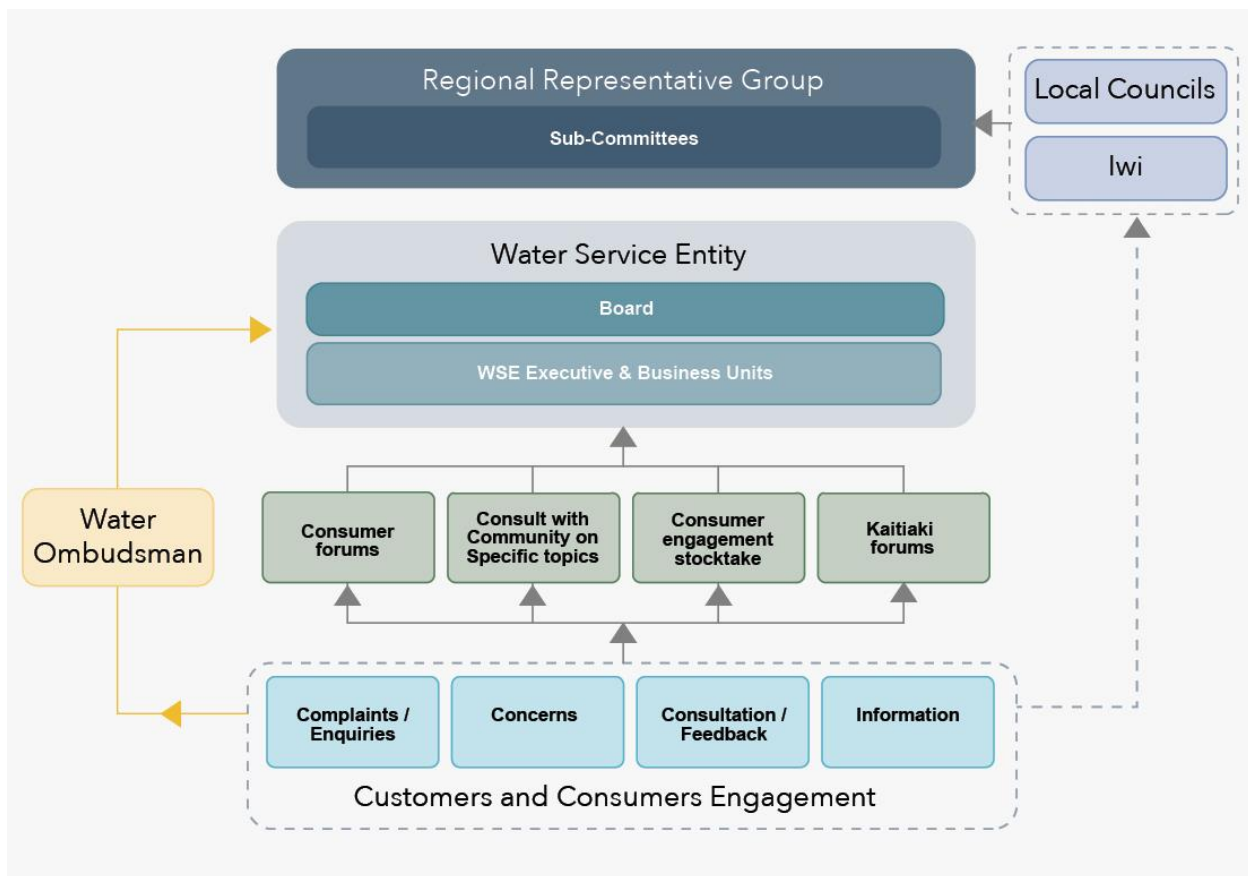
Accountability to and input from community and local voice was considered to be a weakness of the Crown's originally proposed model and has been at the core of our discussions. We agree on the importance of effective and meaningful community engagement.

The recommendations in previous sections that strengthen this area include:

1. The Bill provides that the RRG is responsible for holding the WSE accountable for their engagement with communities in the preparation of their plan and summaries within the SOI and AMP.

2. The Bill provides for the RRG to be responsible for holding the WSE accountable for performance/compliance with Te Mana o te Wai.
3. The Bill requires the Te Mana o te Wai statements are also provided to the RRG and are taken into account during the strategic priority setting.
4. The Bill allows for the establishment of fit for purpose sub-RRGs (see section 5.3.3) reflective of the local catchments of the WSE to provide a whole-of-catchment lens over the strategic priorities and that the RRG size and shape will adjust to enable and support this.
5. The Bill requires WSEs to engage with local councils to comment on the draft AMP as it relates to their district to ensure that councils planning priorities are reflected in the WSE's strategic priorities.
6. Councils and iwi are able to feed back to their RRG members their views on whether or not the WSE is delivering at a local level, providing councils and iwi/hapū a performance monitoring role.
7. Council shareholding (see section 5.1).

Community and local voices will feed into the WSE governance model throughout different levels:

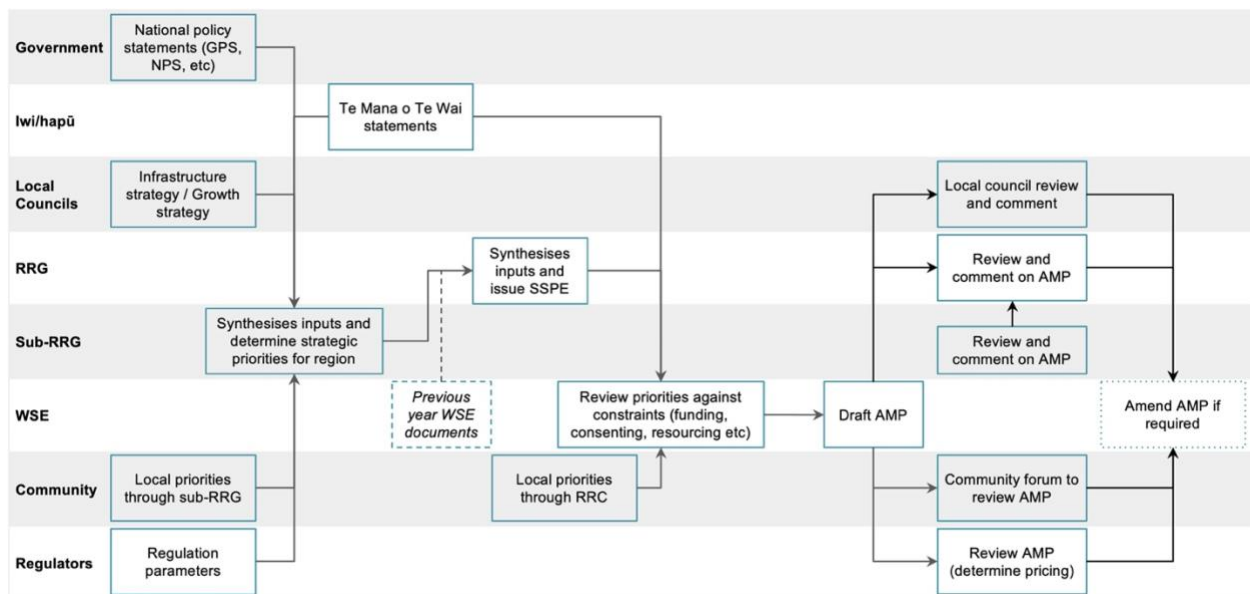


### 5.4.1 Investment prioritisation

The Working Group acknowledges that detailed direction to the WSE on their investment prioritisation is considered operational direction and not permissible in order to achieve balance sheet separation for councils. The WSE board also needs to be given appropriate independence to direct the operations of the WSEs. However, we recommend that the Bill requires the RRG to have input into the investment prioritisation methodology and framework via way of consultation between the WSE and the RRG. Through discussions of how the WSE investment prioritisation may work in practice, we also recommend that councils are able to comment on the draft AMP as it applies to their district.

We note our concern about the constraints on the WSE being able to undertake investment prioritisation given the number of inputs including regulations, GPS and Te Mana o te Wai statements. We are concerned as to how well the WSE will be able to respond to needs and requirements that are identified through separate stakeholder and community engagement while giving effect to the different regulations and requirements.

How inputs will influence the investment prioritisation:



### **5.4.2 Water Services Ombudsman**

The Working Group recommends that the Bill includes establishment of a national Water Services Ombudsman with jurisdiction over all the public facing activities of each WSE, incorporating a tikanga based dispute resolution process. Benefits of an ombudsman include:

1. Operated by a not-for-profit independent body, free for customer enquiries or complaints.
2. Works towards a fair and reasonable outcome for the parties involved in a dispute, is not a public advocate and does not represent industry.
3. Gives public access to an independent complaints process.
4. May give the public some additional comfort about the reforms (especially in advance of the economic regulator being fully implemented).
5. Provides raw data to the RRG on the number of complaints, the types of complaints and the way in which complaints are resolved by the WSE, potentially identifying trends before they become systemic problems.

To reduce additional overhead costs, the Crown should consider using an existing body that provides the type of dispute resolution services recommended by the Working Group<sup>15</sup> (i.e. a single national service).

### **5.4.3 Compliance of the WSE**

The Working Group has discussed the importance of the accountability of the WSE, ultimately to the public, and how good compliance standards will support WSEs working towards the best outcome for local communities. We support having two regulators, Taumata Arowai and an economic regulator. We have voiced the need for compliance across Aotearoa's water infrastructure and we

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<sup>15</sup> Considerations will need to be made if the existing body has sufficient expertise in Te Ao Māori and tikanga based dispute resolution practices in place to carry out this additional role.

are expecting the regulators to drive and support the achievement of those requirements.

## **5.5 The role of Te Tiriti within the Three Waters system**

The Working Group acknowledges that Te Tiriti is the foundation for the relationship between the Crown and mana whenua (see section 4). Te Tiriti provides a whāriki (woven mat) which underpins the mechanisms in the Bill that ensure representation, participation and accountability for mana whenua.

We endorse the express recognition of the Crown's responsibility to give effect to the principles of Te Tiriti in the Bill. However, we consider that there are several areas in which the legislative framework could be strengthened to better recognise and respect the Crown's obligation to give effect to Te Tiriti and its principles.

### **The role of Te Tiriti within the Three Waters system: Summary of recommendations**

**Recommendation 31:** The Bill requires the Crown and Minister to give effect to Te Tiriti and its principles when exercising powers and functions under the legislation (including in issuing the GPS and exercising monitoring, review and intervention powers in relation to WSEs).

**Recommendation 32:** When developing the GPS, and consistent with the principles of Te Tiriti, the Crown engages with its Te Tiriti partner (separate from any public consultation).

## The role of Te Tiriti within the Three Waters system: Summary of recommendations

**Recommendation 33:** The Bill includes a provision confirming that nothing in legislation creates or transfers a proprietary interest in water or limits, extinguishes, or otherwise adversely affects or constrains iwi or hapū authority over, or rights and interests in, water.

**Recommendation 34:** The Bill includes appropriate provisions to ensure that Treaty settlement mechanisms which interrelate with or affect the current legal regime governing the Three Waters reforms (including but not limited to provisions of the LGA and RMA) are carried across and have application to the equivalent or analogous aspects of the new water services regime.

**Recommendation 35:** The Crown provides equitable resourcing to enable the full and effective participation of iwi and hapū in the Three Waters regime.

### 5.5.1 Crown Statutory obligations

At present the operative provisions in the Bill which are expressed to reflect the Crown's obligations under Te Tiriti are directed towards the recognition of Te Mana o te Wai and the governance and responsibilities of the WSEs. However, the Minister also has several important statutory functions under the Bill, which states that the Minister may “consult any person, organisation, or group” when determining what action to take in terms of such interventions and appointments (including formulating any terms of reference). However, the Working Group considers the Minister should be expressly required to give effect

to Te Tiriti and its principles when exercising these important Crown statutory powers and functions.

In relation to the GPS, we also recommend that the Crown engages with its Te Tiriti partner separate from any public consultation. The GPS is a key direction and priorities setting document under the Bill and must include, among other things, the Government's expectations in relation to Māori interests, partnering with mana whenua, and giving effect to Te Mana o te Wai.

### **5.5.2 Upholding Treaty settlements**

The Bill presently includes a provision which states that if there is an inconsistency between a provision of the Bill and a Treaty settlement obligation, the Treaty settlement obligation prevails. It also includes an operating principle for WSEs to give “effect to Treaty settlement obligations to the extent that the obligations apply to the duties and functions of an entity”. Consistent with the Crown's Te Tiriti obligations, these provisions reflect the Crown's clear intention to uphold Treaty settlement arrangements under the new Three Waters regime.

We support this intent and recommend that, where required, the Bill includes appropriate additional provisions to ensure that Treaty settlement mechanisms which interrelate to or affect the current legal regime governing Three Waters (including but not limited to provisions of the LGA and RMA) are carried across and have application to the equivalent or analogous aspects of the new water services regime.

### **5.5.3 Preservation of issue of water ownership**

The Three Waters reforms and the establishment of WSEs relate to the provision of water services and water services infrastructure only. They are not concerned with the issue of water ownership, although we note with concern that there has

been public commentary suggesting otherwise. We expect the Crown to address this within their positive communication campaign (see Recommendation 1).

We acknowledge that the unresolved issue of iwi and hapū rights in water is an important one that the Crown has committed to addressing, and that this will be a separate discussion between the Crown and iwi/hapū. However, to avoid any residual uncertainty, we recommend that an express provision be included in the Bill stating that nothing in the Bill:

1. creates or transfers a proprietary interest in water; or
2. limits, extinguishes, or otherwise adversely affects iwi or hapū authority over, or rights and interests in, water.

#### **5.5.4 Resourcing**

Two of the key governance inputs and accountabilities for WSEs under the Bill are heavily dependent on iwi/hapū as mana whenua, namely:

1. the appointment of representatives to the RRGs; and
2. the preparation of Te Mana o te Wai statements.

We consider that the effectiveness and integrity of the Three Waters regime requires iwi and hapū to be appropriately and equitably resourced to carry out these important functions. The Working Group considers that, consistent with the obligations and relationship under Te Tiriti, these matters should be the subject of dedicated Crown funding in addition to any contribution from the WSEs.

This ensures that the regional voices of mana whenua are also supported appropriately through the Crown/WSE and that mana whenua are well positioned to:

1. take advantage of the proposed Te Mana o te Wai statement mechanism;
2. ensure that any plans are informed by Te Mana o te Wai statements; and
3. ensure on-going compliance of giving effect to Te Mana o te Wai in all activities and operations.

## 5.6 Strengthening Te Mana o te Wai

The Working Group agrees with the Crown's policy intent for incorporating Te Mana o te Wai as a key feature within the new Three Waters system. However, we recommend several enhancements to ensure Te Mana o te Wai is appropriately reflected throughout the WSE framework and to provide more clarity on its application and effect.

### Strengthening of Te Mana o te Wai: Summary of recommendations

**Recommendation 36:** The Bill includes Te Mana o te Wai as an overarching objective guiding decision making, planning, governance, accountability, and service delivery.

**Recommendation 37:** The definition and application of Te Mana o te Wai in the draft Bill be amended to ensure that Te Mana o te Wai encompasses the interconnection with, and the health and well-being of, all water bodies that are affected by the Three Water system (including marine and estuarine waters, lagoons, and puna that are either the source, conduit or receiving environment for Three Waters activities).

## Strengthening of Te Mana o te Wai: Summary of recommendations

**Recommendation 38:** Te Mana o te Wai is reflected at all levels of the WSE framework, including but not limited to:

1. Te Mana o te Wai being given effect to by the Minister in developing the GPS;
2. Te Mana o te Wai being given effect to by the RRG in the development of the SSPE and SOI;
3. Te Mana o te Wai being given effect to in asset management plans; and
4. Te Mana o te Wai being given effect to in infrastructure strategies.

**Recommendation 39:** The Crown furthers work to design inclusive communications and processes to support the embedding of Te Mana o te Wai in the community.

### 5.6.1 Te Mana o te Wai as an overarching objective

The Bill currently refers to Te Mana o te Wai within a series of stated objectives for WSEs. However, reflecting on the various stated objectives beyond Te Mana o te Wai, it was apparent to the Working Group that those other objectives all necessarily fell within the scope of Te Mana o te Wai. Te Mana o te Wai expressly identifies within its hierarchy the needs of people and communities (including not only drinking water, but also economic development). It is a purpose-made korowai for the Three Waters system.

We recommend therefore that Te Mana o te Wai is separately stated as the overarching objective for WSEs within the Bill with the consequence that the other subsidiary objectives identified for WSEs in the Bill should be expressed as being achieved “in a manner which gives effect to Te Mana o te Wai”.

We consider that a focus on achieving Te Mana o te Wai as a core and overarching objective will also support an integrated approach to service delivery in the following ways:

1. coordination between each of the WSEs (including their RRGs) that share catchments with each other or where one will be materially impacted by decisions made by their neighbour (e.g. flood protection and water scarcity);
2. addressing some Three Waters legacy and historical issues;
3. integration of Treaty settlement issues and already existing co-governance and co-management matters which are consistent with iwi and hapū values where water bodies are viewed as indivisibly and metaphysically whole (recognising that some of the best examples of integrated management have come from innovative Treaty settlements or close collaboration between iwi and hapū and their local councils, including the 2009 Waikato River Settlement, the 2009 Canterbury Water Management Strategy and the 2014 Te Awa Tupua (Whanganui River) Settlement); and
4. integration across legislative frameworks that affect waterways is necessary to ensure that water quality outcomes are approached consistently and in a joined-up way – in particular, the Three Waters reforms (including Taumata Arowai), the economic regulator and the resource management reforms.

### **5.6.2 Extending the definition of Te Mana o te Wai**

The National Policy Statement for Freshwater 2020 (**NPS-FM**) has provided a blueprint for the transformation of Te Mana o te Wai, but there needs to be

clarity and certainty about its meaning, role and purpose to ensure its successful implementation in Three Waters.

In the context of the NPS-FM, Te Mana o te Wai is focused on freshwater bodies. However, the Three Waters system necessarily also interacts with and affects non freshwater bodies, including marine and estuarine waters, lagoons and puna. We therefore recommend that the definition and application of Te Mana o te Wai in the draft Bill be extended to enable the consideration of the health and well-being of all such waters (given the importance of the inter-relationship and effects of Three Waters activities on those environments).

This is to recognise the integrated whole-of-system approach to wai, from mountains (maunga) to the sea (moana), or ki uta ki tai. This all-of-system approach also recognises the fundamentals of tikanga, mātauranga and kaitiakitanga Māori. It will provide a unique, inclusive and transformative approach to the management of water and water-related infrastructure in Aotearoa for the benefit of all New Zealanders.

At a practical level, it also provides a bridge and connection to resource management planning and consenting on water take and discharge – helping to underpin consistency across the wider system and guide behaviours to a common sense of purpose.

### **5.6.3 Te Mana o te Wai and WSE Framework**

We agree that Te Mana o te Wai needs to be reflected at all levels of the WSE framework. However, certainty and clarity of Te Mana o te Wai is also required (including as it applies at each level of the system) and how it infuses itself within and guides the WSE decisions and choices.

As a result, Te Mana o te Wai implementation will need to be considered in three broad ways.

## **Strategy**

The co-governance arrangements that set strategic guidance for the WSEs will need to ensure that key strategic outcomes and priorities reflect or must be delivered consistent with achieving the overarching purpose of giving effect to Te Mana o te Wai. The Water Services Entities Bill should be clear that this Te Mana o te Wai objective applies:

1. in the development of the GPS;
2. in the development of the SSPE by Regional Representative Groups;
3. in the development of asset management plans; and
4. in the development of infrastructure strategies.

## **Community engagement**

Local councils, mana whenua (iwi/hapū) and individual customers will have their own specific location/catchment-based needs and aspirations and expressions of Te Mana o te Wai. The 'plan-making' role and function of councils will need to recognise and be consistent with Te Mana o te Wai.

## **Operations and delivery**

Water Services Entities are responsible for effectively, efficiently and sustainably matching their strategy with the community needs in a way that meets all legal or regulatory requirements within the actual (and ever changing) operating environment (i.e. while performing their 'plan-taking' role) and in a manner that gives effect to Te Mana o te Wai.

There also needs to be a clear process for measuring/evaluating WSE compliance with Te Mana o te Wai (and takiwā-specific Te Mana o te Wai statements).

#### **5.6.4 Development of Te Mana o te Wai statements**

We acknowledge that wai, or water, is a taonga of paramount importance to iwi and hapū and is essential to life and identity. Every iwi will have a whakataukī or pepehā which references an expanse of water, whether it is a river, a lake or a harbour. For many iwi, a body of water is their most important self-identifying feature.

In addition to the overarching commitment to recognise and provide for Te Mana o te Wai, we acknowledge that mana whenua whose rohe or takiwā includes a water body in the service area of an entity can draw on Te Mana o te Wai statements in a number of ways to assist with local water services delivery arrangements. This includes:

1. development of Te Mana o te Wai statements for water services as identified by relevant mana whenua (which statements may relate to an individual iwi/hapū or catchment, or may be multi-iwi/hapū or multi-catchment);
2. advisory groups (sub-RRGs) to the RRG providing direct input into regional strategic priorities by reference to relevant Te Mana o te Wai statements; and
3. Regional Representative Groups, setting the strategic direction for WSEs (including recognising and providing for Te Mana o te Wai as a core principle that will guide service delivery).

We also recommend that inclusive communications and processes be designed to support the embedding of Te Mana o te Wai in the community (including enabling the wider community to develop its own sense of connection with, and also become invested in, the Te Mana o te Wai statements that apply in their area).

## 5.7 The role of the Crown

### Role of the Crown: Summary of recommendations

**Recommendation 40:** Due to the number of bodies that provide strategic direction to the WSEs the Bill should include strengthened provisions around the content of the GPS, and consultation requirements, to mitigate the risk of disconnected priorities.

**Recommendation 41:** When the Crown develops or reviews the GPS it should consult with the RRGs of the WSEs, and follow the standard GPS consultation process which includes community consultation.

**Recommendation 42:** The Bill includes provision for a non-voting Crown liaison to the RRG.

**Recommendation 43:** The Crown confirms that it will provide sufficient financial support to the WSEs to ensure 'balance sheet separation' from councils, that the WSEs have sufficient borrowing capacity to invest in the required infrastructure and can borrow funds at a cost similar to councils.

**Recommendation 44:** The Crown confirm to iwi and councils the size of investment required to address issues of historic degradation of waterways and inequalities in the provision of water services for their consideration,

## Role of the Crown: Summary of recommendations

along with a plan as to how addressing these issues will be funded.

**Recommendation 45:** The establishment of the WSEs is not the end of the Crown's involvement in addressing water services issues, and the Crown should have an ongoing role to support and invest in water services.

**Recommendation 46:** A review of the Three Waters structure is undertaken five years after the WSEs are operationalised.

The Working Group acknowledges the Crown's role as a steward of the system, including those that regulate the WSEs. We had considerable discussion about the GPS and have voiced concerns on:

1. The role of the GPS in directing operational decisions of WSEs and how council, iwi and WSEs are able to have a voice in the GPS.
2. Interaction between the GPS and the ability of WSEs to undertake investment prioritisation based on the needs of communities.
3. Questions about who has input into and is consulted in the development of the GPS.

We acknowledge that a GPS is required as an instrument that provides high level national direction and achieve coherence across the system (including coordination of regulators). However, we recommend that the Bill strengthens provisions around the content of GPS and consultation to mitigate the risk of disconnected priorities. The GPS should reflect the objectives of the reform. Clarity on the GPS (and the process for setting the GPS to ensure it doesn't have

unintended consequences for WSEs) needs to be provided by the Crown before the establishment of the WSEs.

We also recommend that a provision for a non-voting Crown liaison with the RRG be included in The Bill.

### **5.7.1 Crown funding**

The Three Waters reforms are partly premised on the new WSEs being able to borrow more than councils can to invest in water services. This is to be achieved by separating the balance sheets of the WSEs from councils. We have discussed how the Crown will need to provide sufficient financial support to the WSEs to not only ensure that 'balance sheet separation' is achieved, but also that the WSEs have sufficient borrowing capacity and are able to borrow funds as cheaply as possible, and ideally at the same rate as the Crown. If the WSEs' cost of borrowing is greater than councils or they are subject to borrowing restrictions that mean they are unable to fund necessary investment, it will undermine part of the rationale for the reforms.

We note the requirement by the credit rating agencies for backstop support and recommend the Crown confirms back to iwi and councils the provision of this support, along with how it will ensure this support is sufficient to ensure the financial strength, and consequent borrowing capacity, of these entities.

The Working Group has also discussed the role of the Crown as the potential funder of the WSEs. We note there are significant legacy infrastructure investment issues across the proposed entities which need to be more fully understood. In particular, investment will be needed to deal with historic degradation of waterways, and inequalities in provision of water services. Some of these issues may be due to Treaty breaches. This may require investment in infrastructure that would not pass traditional cost benefit analysis but will

nevertheless be required to meet new regulatory standards, and address inequalities.

We recommend the Crown confirm to iwi and councils the size of these issues for their consideration, along with a plan as to how addressing these issues will be funded. Given the sheer scale of investment required, additional Crown investment may be required in the future, as the WSEs may not have the capacity to fund all of what is required.

We have stated earlier that iwi/hapū and councils will require financial support from the Crown to ensure that they have the capability and capacity to fulfil their roles in relation to the WSEs. An increase in investment will also require an increase of investment in education and training, to ensure that the water industry has sufficient capacity and capability to deliver.

In short, the establishment of the WSEs should not be the end of the Crown's involvement in addressing water services issues. We believe the Crown will have an ongoing role to support and invest in water services.

### **5.7.2 Five year review**

Real transformational change takes time. The Working Group recommends instituting a formal review of the structure as a whole five years after the “go-live” date of the WSEs. This should be an independent review of the governance structure, including a review of how effective the accountability mechanisms are that rely on Te Mana o te Wai and local voice, the Crown's role, role of the RRG and their relationships with the WSEs and composition of the RRGs.

## 6. A comment on balance sheet separation

Throughout this process, the Working Group has engaged in informal discussions with S&P Global Ratings on the potential balance sheet implications of some governance features being considered. Where applicable, recommended governance features that may increase linkages of WSEs to council balance sheets have been noted in the report. We have not been able to test the complete governance model with S&P as their contract with the Crown is pending. We recommend the Crown formally test all recommendations in this report as a comprehensive governance model with S&P, to ensure balance sheet separation between the WSEs and council.

**Recommendation 47:** The Crown formally tests the recommendations outlined in this report with S&P to ensure balance sheet separation.

## 7. Other considerations raised outside of the Terms of Reference

### 7.1 RMA alignment

The Working Group considered the importance of the resource management reforms and how those reform proposals will impact on the WSE. It is clear that the proposed Spatial Planning Act (**SPA**), which will require the development of long-term regional spatial strategies, will be of key importance for the new WSE. These strategies will identify the areas that will be suitable for development, need to be protected or improved, need new infrastructure and are vulnerable to climate change effects and natural hazards. The development of natural and built environment plans under the proposed Natural and Built Environments Act (**NBA**), which will likely also need to give effect to Te Mana o te Wai (under the NPS-FM 2020), will also be important to decision-making within regions.

Policy decisions in resource management reform are yet to be finalised and there was no information available to us on the respective governance model being considered in this area. Both reforms, however, seek more collaborative arrangements between mana whenua and local government, and between local government itself, but with potentially different rights and responsibilities in each governance model. We believe that attention should be given to streamlining and aligning these arrangements. Ideally the regionalisation and co-governance arrangements should conform with each other, and any differences should be kept to a minimum and only exist for very good reasons.

We want to ensure that further work on the reforms recognise:

1. The important and ongoing role local councils will have in planning decisions on regional infrastructure, development priorities and local place making, and the need to ensure there is alignment on key aspects of the water and resource management reforms.
2. WSEs will need to participate in the new NBA and SPA processes, providing input into spatial strategies and NBA plans and expert advice on consents.
3. The timing and sequencing of the various component parts of the new system (and what happens with the existing system) will be key to a successful transition.

## **7.2 Stormwater**

Although outside the terms of reference, the Working Group considered the merits and issues associated with including stormwater into the water service entities. We also considered a proposal to defer the inclusion of stormwater from the three water reforms, while further investigation of the best approach to take for stormwater management in the context of Te Mana o te Wai and the NPS Freshwater. While there was not unanimous support for deferring stormwater, with the majority considering that waters needed to be considered holistically and in an integrated way, there was recognition that stormwater needed further consideration.

The inclusion of stormwater is necessary to fully give effect to Te Mana o te Wai and for the co-governance opportunity to be fully realised and meaningful because:

1. Te Ao Māori view of wai is holistic/single system – ki uta, ki tai (mountains to sea).
2. An integrated approach is essential to the reform objectives (both in the present, from an intergenerational perspective, and from a community/collective perspective and Te Taiao, and not limited to freshwater bodies).
3. There is a need for improved collaboration across agencies (both local and central government).

The key concerns identified were:

1. The stormwater system is fundamentally different from the other two waters being proposed for reform. The stormwater system is an open system; including retention basins and wetlands, as opposed to the closed networks that pipe and treat drinking water and wastewater. Stormwater management is integral to flood management and land drainage and their environmental impact is very much influenced by the many activities that take place in each catchment.
2. Ownership and management of the stormwater system is complex and fragmented – key owners include council, transport authorities and private property owners.
3. Stormwater could be considered as narrowly as piped conveyance networks, or as broadly as the management of our land, water and coasts. It is not clear from the reform proposals to date what is being defined as stormwater.
4. The efficiencies, benefits and implications of the decision to include stormwater have not been assessed.

5. The interface requirements (e.g. planning, regulatory, ownership) between local, regional and road controlling authorities (and civil defence and emergency management) are complex and the mechanisms to manage these require greater consideration and collaboration, especially when considered within the context of the ongoing RMA reform.
6. There will be a need for a phased/staged transfer (of assets, people and responsibility) into each WSE to enable clear planning around what stays with each council, what moves and where joint management will be required for dual/multiple use elements/assets. The WSEs will also need to pay their share. There is no precedent internationally for economic regulation of stormwater. It is unknown whether economic regulation can deliver multi-benefit outcomes across several organisations that exceed minimum engineering or cost options.
7. Without appropriate consideration being given to these concerns, the allocation of stormwater functions to WSEs could affect their ability to deliver positive land and water outcomes at the catchment level.
8. Fundamentally different charging systems will be required: volumetric charging is available to two waters, as they are a service provided to property connections. Stormwater services on the other hand are a public good and for the benefit of the community and the environment. How stormwater charges (akin to a rate or tax) are set will need to be addressed.

The inclusion of stormwater within an WSE means these entities will not be simple utility companies as some have suggested. They will be vital to delivering councils' land-use plans, and community aspirations regarding water quality improvements. This will require a high level of collaboration

and coordination after the establishment of the reforms. We recognise that councils and iwi/hapū will need to be involved in the transfer of stormwater functions to WSEs, and mechanisms need to be developed to facilitate collaboration and coordination.

# Appendix

## **Minority Report of the Working Group on Representation, Governance and Accountability of new Water Services Entities**

This minority report expresses dissent from some of the views expressed by the working group on Representation, Governance and Accountability of new Water Services Entities (Working Group). I welcome the process of the Working Group which has resulted in constructive discussion of the issues and recommendations for some positive and worthwhile improvements to the Government's original proposals.

However, these changes still fall short of what Auckland Council and Aucklanders require in the area of governance and accountability. The nature of our disagreement is not about the need for water reform in New Zealand, or the intent to significantly improve the safety and quality of our drinking water, and the environmental performance and resilience of our three waters. Water is a vital service and public good. There is an urgent need to reform the sector, achieve economies of scale outside Auckland, and enable increased investment in infrastructure to achieve these outcomes. We support the Government's desire to achieve change in the delivery of water services and in particular the need for water quality and economic regulation to ensure that the goals are achieved.

We acknowledge that many Councils under the current water services structures have been unable or unwilling to invest sufficiently in water infrastructure. This has resulted in some areas not meeting water quality and consent requirements. Measures designed to ensure water conservation and detecting leaks, such as water metering have also not been adopted by many Councils. Auckland has invested strongly in 3-waters, with increased investment of \$11 billion in its latest long-term plan. We also meter water usage, deliver high drinking water standards, and have achieved, through conservation measures, one of the lowest levels per capita water consumption in New Zealand. Despite this, we feel penalised by losing control and accountability over our services because of the shortcomings of some other local authorities.

Our concerns relate to the proposed governance and accountability arrangements which Auckland considers are too far removed from the community and democratic accountability. The Working Group recommends changes in this regard to the Government's proposal which do improve the proposal. In particular, we welcome the recommendations which secure proportional shareholding by individual councils as a concrete expression of ownership, proposals to strengthen the governance and accountability of the Water Services Entities to the regional representation groups, greater representation for Auckland on the Regional Representation Group overseeing the Northern Water Services Entity and other improvements recommended.

Despite those recommendations, Auckland is still left as a minority voice on governing and holding accountable those who deliver water services despite Auckland Council providing 93 per cent of the new Water Services Entity's assets.

Given the unique nature of Watercare which serves over a million and a half customers and already has economies of scale and operates effectively, a one size fits all approach does not meet our needs. In fact, Auckland has already achieved most of the size, scale and efficiency benefits the reforms are seeking to achieve for New Zealand. Indeed in her cabinet paper of 14 June 2021, Minister Mahuta acknowledges "I consider it would be possible to exclude Watercare from the reforms on the basis that it already has many of the desired features of the reform." This leads to the question, what is the problem the Government is trying to solve in Auckland?

I set out below the areas of disagreement with regard to specific recommendations and with the Government's current proposal. These reflect the views of elected members in Auckland and the views Aucklanders expressed in submissions and independent survey results.

### **Re: recommendations on ownership of Water Service Entities (WSE)**

We agree with the concepts of kaitiakitanga supported by the Working Group and support the Working Group's shareholding model recommendation as a significant improvement over the Government's original proposal. The change would emphasise and entrench community ownership of the assets and would be an additional safeguard against privatisation. However, ownership of assets should mean appropriate control over those assets. Auckland Council, representing its community, ends up as a minority voice on the Regional Representation Group despite contributing the overwhelming majority of the assets. We therefore disagree with the recommendations for the following reasons:

- With ownership comes rights, responsibilities and obligations. Ownership needs to be reflected in democratic accountability and this proposal would lead to the loss of direct accountability and control the people of Auckland over water service entities through their elected representatives.
- Feedback from the people of Auckland, through three and a half thousand submissions and an independent and representative polling survey, confirms that they do not support the Government's proposal as currently constituted. More than three-quarters (77 per cent) of submitters supported the council's position that any new water entity should be kept accountable and responsive to the public through their elected council representatives. Results of the independent polling were similar, with 67 per cent supporting the council's position. Submitters were even more strongly supportive of Auckland Council having the majority of control in any new entity, with 83 per cent of submitters and 74 per cent of survey respondents agreeing with the council's position. As Mayor of Auckland, it is my responsibility to represent the views of elected members and the people of Auckland they represent.
- Auckland Council wants to retain its current CCO model. Auckland already has specific 'substantive CCO' legislation. The CCO model has proven to be effective and a recent independent review confirmed that "the CCO model remains the right one for Auckland, bringing together strong business disciplines, agile decision-making, streamlined administrative structures, operational efficiencies and specialist skills and expertise".<sup>1</sup>

### **Re. recommendation re. strengthening the role and accountability to the Regional Representation Group (RRG)**

While we consider the working group's recommendations relating to the size and composition of the RRGs, and bespoke arrangements for Entity A, an improvement on the Government's proposal, we disagree with the recommendations for the following reasons:

- Proportional representation on the RRG is required to reflect the population and economic contribution of Auckland Council and would address our concerns.
- The proportional representation of Entity A (and indeed other entities) under either the Government's or the Working Group's proposal is not equitable or representative of the investment, population and assets Aucklanders are transferring to the Water Service Entity. Auckland Council's ownership of assets constitute 93 per cent of the water assets in Water Services Entity A. Under the Government's proposal, with one seat at the table (12.5 per cent) Auckland would be reduced to a minority voice in decisions as to how those assets were used (noting the 75 per cent majority vote provision). With the amendments proposed by the Working Group, Auckland Council's voice on the RRG would increase to 28 per cent but would still be a minority voice in decisions.

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<sup>1</sup> Review of Auckland Council's council-controlled organisations (July 2020), Report of Independent Panel, p. 1.

- Consultation and polling indicate the public strongly supports the council's position, with more than 80 per cent of those submitting on to the consultation agreeing council should have majority control of a new water entity, while more than 75 per cent backed council's view that a new entity should be kept accountable to Aucklanders through elected representatives.

### **Re: recommendation on co-governance of the RRG**

We disagree with the recommendation for the following reasons:

- Democratic accountability, through elected representatives, to people who funded the water infrastructure in Auckland valued at many billions of dollars, and who continue to pay for its operation, is critical. It is not appropriate to cede control over this infrastructure to other councils and mana whenua and to remove existing accountability to Aucklanders through elected representatives.
- We are committed to work in partnership with mana whenua which we have done through the development of our Water Strategy, and to consider alternative ways of strengthening this partnership.

### **Re: Stormwater**

We advocate further consideration on inclusion of stormwater and believe there should be a specific stormwater recommendation seeking a deferral on the inclusion of stormwater in the new WSE until further work is undertaken. More specifically:

- There has been inadequate analysis of the benefits and costs of transferring stormwater functions to a new WSE. The focus of the Stormwater Technical Working Group was to consider how these assets and functions should be transferred, not why.
- It is unclear how an economic regulator will be applied to stormwater functions and how it may consider the very difficult task to measure social, community and environmental benefits that are intrinsically linked with stormwater management.
- Stormwater is intrinsically linked to the land use planning function of council and more detailed consideration needs to be given to the implications of this function being separated. An understanding of the changes the Resource Management reform will bring is also required before any separation should be considered.
- This does not preclude options, such as an entity contracting the management and maintenance of stormwater assets as interim steps nor to the ultimate inclusion of stormwater in the water entity. However, further work needs to be done to understand the consequences and to justify its inclusion before this can be supported. Given the radical changes proposed to water, it would also make sense to allow a new water service entity to focus on the massive tasks of amalgamating and delivering water and wastewater services in the first instance.

### **Re: Recommendations regarding strategic direction and local voice**

We support and advocated for the accountability improvements suggested by the Working Group, but with the relegation of the owners of the infrastructure to a minority position on the RRG, this does not resolve the problem of the loss of democratic accountability.

The following section outlines our general concerns with the Government's proposal.

### **Scale and efficiency**

Auckland is a high-growth area. This requires significant coordination to achieve development. The amalgamation of Auckland in 2010 was intended to achieve this. The CCO model was considered as the most appropriate model to ensure the alignment and coordination between council planning,

transport, water and community infrastructure. Auckland and Watercare are already of a scale and size that achieves the efficiency and competency gains expected by the Government. The introduction of an economic regulator will also help improve efficiency gains and we are not opposed to this.

Auckland has demonstrated that it is willing to share its learnings and capabilities through Watercare's current contracting to deliver services to the Waikato District Council. We are willing to consider applying this model to those councils in Northland should they wish to do so.

### **Coordinated city planning and investment to meet economic and growth needs**

As the economic power-house for New Zealand, Auckland needs to deliver coordinated and timely investment. Auckland Council is seen by the public as the entity responsible for planning and infrastructure investment in Auckland. Dilution of our role will exacerbate piecemeal planning and infrastructure provision. I am concerned that it will make it harder to ensure we have pipes and roads in the right places at the right time. We need to simplify the planning, funding and delivery of infrastructure for Auckland, not add to its complexity.

We strongly believe to achieve the coordination a city the size of Auckland needs, the current CCO model with some further refinement is the best option.

### **Investment and balance sheet separation**

There is insufficient evidence that establishing these four water entities will deliver the efficiency gains the Government is expecting. Indeed, they may not be able to borrow significantly more to invest in infrastructure. This is because:

- the additional costs these entities will face due to increasing bureaucracy and compliance are likely to be considerable.
- S&P's original assessment of the proposed entities indicated they required the support of the Government to raise the Issuer Credit Rating. We have serious concerns about the cost of the debt envisaged by the Government and whether the proposed WSE boards will have the ability to, or be comfortable with, borrowing significantly more to invest in infrastructure. The Government has not shown what benefit there would be to Auckland in terms of the ability to invest more in infrastructure. Auckland Council will not benefit from any increased debt headroom. One of our credit rating agencies, Moody's, already excludes Watercare debt from its considerations. While Watercare's debt would be removed from our books, so too would its direct revenue stream, cancelling most of the benefits from a debt to revenue perspective. We will therefore not be able to accelerate our investment in other infrastructure as a result of these reforms.
- The consequence of fragmented planning and infrastructure delivery environment may well lead to more expensive infrastructure provision and greater inefficiencies. This is an issue that needs to be dealt with in a holistic manner, not in an ad hoc piecemeal way.
- We are also concerned at the viewpoint expressed by Standard and Poors that accountability to consumers and funders of Water Services Entities through elected representatives is regarded as "undue influence". We believe that the role of the regulators, the Government's ability to set policy through National Policy Statements, a requirement that Councils not set water prices or bail out a Water Services Entity in financial difficulty, and the Crown providing a liquidity facility or guarantee would all allow accountability as well as allow a separation of books to facilitate access to additional investment capital.

### **Connection with wider government reforms**

There is a strong connection between the water reform and the reform of the Resource Management Act and the future of Local Government. The potential for unintended consequences is a significant risk. Council and the public have insufficient information to understand how these

reforms will work together. For this reason, we support the continuation of the current CCO model for Auckland.

In conclusion, I ask the Government to consider these issues carefully and take account of concerns raised by Aucklanders and their elected representatives in particular about the proposed governance and accountability structure.