

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".¹

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.

¹ 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.