

To: Waipa District Council and Hamilton City Council

From: Peter Winder, Independent Chair Waters Governance Group Hearing Panel.

Subject: **Consultation on forming a Shared Waters Management Company**

Meeting Date: 12 December and 19 December 2017

1 EXECUTIVE SUMMARY

Waipa District and Hamilton City Councils both resolved to jointly consult on a proposal to form a Shared Waters Management Company (SWMC). A statement of proposal was released for public consultation on 25 October 2017. The period for feedback and submissions on the proposal closed on 27 November 2017.

Seventy-five submissions (including late submissions) were received, 24 supported the proposal, 45 opposed it and 6 submitters neither supported nor opposed the proposal. Five submitters that asked to present their views in person were heard by the Waters Governance Group members of both Councils on 1 December 2017.

Both Councils delegated public consultation (which included the hearing and consideration of submissions) to the Waters Governance Group. Neither Council delegated decision making. This report presents the recommendations to the two Councils from the Waters Governance Group.

Following the hearing of submissions, the Waters Governance Group deliberated and agreed on recommendations to the two Councils. The recommendations reflect the consideration of the community views expressed through the consultation process along with the range of other factors that must be taken into account in this decision (as required by the Local Government Act (2002)).

The Waters Governance Group recommends that the Councils proceed to establish a Shared Waters Management Company. The reasons for this recommendation are set out in the body of the report.

This report presents:

- Analysis of the submissions
- The decision making requirements
- The recommendations of the Waters Governance Group
- The reasons for the recommendations.

Included with this report:

- Appendix 1: Statement of Proposal
- Appendix 2: Submissions Received
- Appendix 3: Additional information provided

2 RECOMMENDATIONS

That [Waipa District / Hamilton City] Council:

- a) *Agrees to proceed to establish a Shared Waters Management Company*
- b) *Delegates to the members of its Waters Governance Group responsibility to develop and agree with [Waipa District Council / Hamilton City Council] representatives, by 30 June 2018, the final detail of the establishment of the Shared Waters Management Company for approval by the Councils, including:*
 - i. *the design of the constitution, statement of intent, letter of expectation, shareholders agreement, and shareholders forum*
 - ii. *the transition process and establishment plan (including project management, oversight and governance)*
 - iii. *the costs of transition and establishment*
 - iv. *the cost sharing framework.*
- c) *Directs the Waters Governance Group to engage as appropriate with the Government and the Local Government Commission.*
- d) *Directs the Waters Governance Group to regularly report its progress.*
- e) *Allocates a total joint budget of \$450,000 for the period 1 January 2018 to 30 June 2018 to support the development of the final detail of the Shared Waters Management Company (noting that this will be split equally between the two Councils and may be refunded from future company operations).*

For the reasons that:

- *The SWMC offers substantial financial benefits to both Councils over the medium to long-term compared with the status quo.*
- *The proposed SWMC will provide regional benefits through collaboration and working together. The proposed SWMC is scalable and has lower barriers to entry for other local authorities than an asset owning CCO. This means that the door is open for other Councils to subsequently join and benefit from the scale and specialisation that the SWMC will achieve.*
- *The proposed SWMC offers considerable non-financial benefits to both Councils. In particular it will improve the resilience of both Councils and provide an effective way of ensuring that both Councils have the specialised and expert*

staff that are required to meet the needs of our communities both now and in the future.

- *The proposed SWMC will provide a sound way of positioning and supporting both Councils to respond to the challenges that they face, including the delivery of significant capital works programmes, responding to rapid population growth, and the stronger regulatory requirements that are expected following the Havelock North inquiry.*
- *The proposed SWMC provides significant benefits without being exposed to the considerable risks associated with the transition to a full asset owning CCO.*
- *Establishing a SWMC best meets the obligations of the local authorities under s10 of the LGA02 because it balances the democratic decision making (within each Council) with the cost-effective delivery of good quality infrastructure.*
- *The views expressed through the consultation process did not raise issues or concerns that were considered sufficient to negate the benefits that the Councils identified.*

3 PURPOSE

The purpose of this report is to present to Hamilton City Council and Waipa District Council:

- the results of the public consultation on the proposal to form a Shared Waters Management Company
- the unanimous recommendations of the Waters Governance Group that considered, heard and deliberated on the submissions received.

The report represents the culmination of many years of work to identify the best way to deliver water, wastewater and stormwater services. It recommends the establishment of a Shared Waters Management Company and proposes the next steps to progress the establishment of that company.

4 OPTIONS AND ASSESSMENT

BACKGROUND

Since 2012 Hamilton City and Waipa and Waikato District Councils have been considering options to improve the delivery of waters services. Multiple independent reports have been commissioned and received by the three councils. The reports have identified the potential to deliver significant financial and non-financial benefits for ratepayers and communities by changing the way in which the councils deliver water services and manage waters assets.

Prior to the elections in October 2016 the three councils reached agreement on a possible council controlled organisation (CCO) which would own, manage, operate and

maintain the water and wastewater assets and services currently provided by each council. Following the 2016 election the approach was reconsidered.

On 4 May 2017 Hamilton City Council approved a shared service, non-asset owning waters management company as its preferred model for collaborating with other councils to best manage water. On 30 May 2017 Waipa District Council also agreed a non-asset owning CCO (a Shared Waters Management Company) was its preferred model. Waikato District Council has continued to investigate other options for the delivery of waters services.

As set out in the previous reports to both councils, the essential elements of the Shared Waters Management Company (SWMC) envisaged by Hamilton City and Waipa District are:

- The company would be a CCO. It would employ staff who would manage water, waste water and storm water assets on behalf of the shareholding councils.
- The company would be a not-for-profit entity. (By law, Councils cannot make money out of water. They can only cover the costs to supply, treat and dispose of water).
- The company would not own any major water assets. Those assets would remain 100 per cent owned by each council. (The company might own some minor assets like cars and computers).
- All major decisions would continue to be made by shareholding councils. The water company, as a specialist waters company, would provide advice to each Council on where and when to invest.
- The water company would be responsible for maintenance of the waters networks.
- Each shareholding council would continue to set the cost for water services (to be recovered through general rates, [or] targeted rates, [or] water meters, trade waste fees etc.) just as they do now.
- The water company could not force Hamilton City to install residential water meters. Nor could the water company force any other shareholding council to change the way it charges for water.
- The water company would be jointly controlled by the shareholding councils through a Shareholders Forum.
- The water company would be accountable to shareholding councils who would ensure it operated openly and transparently.
- The water company would offer operational, environmental and financial benefits that could not be achieved by councils operating on their own.

On 21 September 2017 **Hamilton City Council** resolved:

That the Council:

- a) *receives the report; and*
- b) *approves:*
 - i. *public consultation on the proposal to form a Shared Waters Management Company is undertaken; and*
 - ii. *public consultation is undertaken in collaboration with Waipa District Council;*
 - iii. *that the Hamilton City Council Waters Governance Group is delegated authority to liaise with Waipa District Council and approve consultation materials and a process for public engagement, with public engagement to occur prior to the end of 2017; and*
 - iv. *the Chief Executive to engage in additional resources in 2017/18 to progress the Waters Study collaboration project at a cost of up to \$200,000, noting that this cost is unbudgeted.*

On 3 October 2017 Waipa District Council resolved:

That:

- c) *The report of David Hall, Deputy Chief Executive be received;*
- d) *Public consultation on the option to form a Shared Waters Management Company be undertaken, as required by Section 56 of the Local Government Act 2002;*
- e) *Public consultation be undertaken in collaboration with Hamilton City Council, but be designed to meet the needs of the Waipa District;*
- f) *The Waipa Waters Governance Group be delegated authority to liaise with Hamilton City Council to mutually agree the model and to finalise the process and materials for public engagement, including the appointment of an independent Chair.*
- g) *That Cr Thomas be delegated to the Waipa Waters Governance Group during Cr Brown's leave.*

Following these resolutions the Statement of Proposal was prepared and joint public consultation commenced.

STATEMENT OF PROPOSAL

The Statement of Proposal is Appendix 1 of this report. It sets out the proposal to establish a Shared Waters Management Company. It outlines:

- The challenges that the two councils and ratepayers face in relation to the provision of waters services.
- What a SWMC would do and a possible structure.
- The options that have been considered.
- The preferred model (a SWMC).
- The benefits expected from a SWMC.
- The potential for financial efficiencies.
- A range of possible questions and answers.

The Statement of Proposal included references to the wealth of background information and reports available on the www.waterstudywaikato.org.nz website. It also set out how to provide feedback and make submissions.

CONSULTATION

The Statement of Proposal was released for public consultation on 25 October. Submissions closed on Monday 27 November.

The consultation process was supported by:

- Proactive media releases by both councils.
- A page 3 article in the October edition of City News.
- An article on the Councillor contact page of the November edition of City News.
- Featured links on the websites of both councils.
- Links to the detailed background information and reports available on the www.waterstudywaikato.org.nz website.
- A promoted Facebook post on the Hamilton City Council Facebook page (which was shared).
- Two Facebook posts on the Waipa District Council Facebook page (which were also shared).
- Hard copies of a consultation document made available at Council offices and libraries.

The proposal and/or the public consultation process was covered by the Waikato Times on 25 and 26 October 2017, Hamilton News on 13 October 2017, and Te Awamutu Courier on 26 September 2017. There has also been coverage in the Cambridge Edition and the Cambridge News.

SUBMISSIONS

Submissions were prompted by a feedback form on the Statement of Proposal, on the websites of both councils, and from the www.waterstudywaikato.org.nz website.

By the time of the hearing of submissions on Friday 1 December 75 submissions (including late submissions) had been received. All submissions (including late submissions) were received and considered by the Waters Governance Group.

Given that the issue being considered affects the urban populations and water customers of both Hamilton and Waipa the relatively small total number of submissions received is significant. It is even more telling that only 8 submissions have been identified as submissions from within Waipa District. Forty-five submissions (60%) came from Hamilton, 14 (19%) failed to state which district they came from or were from individuals from outside of both districts, and 8 (11%) came from national or regional organisations.

The 8 submissions from organisations that are either national or regional in scope were from the Waikato Regional Council, the Waikato District Health Board, the Local Government Commission, Wellington Water Committee (the shareholder committee that oversees Wellington Water Ltd), Water New Zealand, Infrastructure New Zealand, Federated Farmers, and the Property Council.

Of the submissions received, 11 (15%) were from anonymous submitters (no name and address provided). A further 17 (23%) submitters provided their name but asked that it be kept confidential. An ambiguity on the submission form probably contributed to a larger than normal group of submitters that sought to have their name kept confidential.

In total 24 (32%) submitters supported the proposal and 45 (60%) opposed it. Six submissions neither supported nor opposed the submission.

Five submitters that asked to present their views in person were heard by the Waters Governance Group members of both Councils on 1 December 2017. Appendix 2 provides the full text of all the shorter submissions. Appendix 3 provides the full text of the longer submissions that do not fit within the standard response template.

ANALYSIS OF SUBMISSIONS

A break-down of the submissions is set out in Table 1.

Table 1: Breakdown of Submissions

Area	Support	Oppose	Neither Support or Oppose	Total	% by Area
Hamilton	12	32	1	45	60%
Waipa	2	4	2	8	11%
District Not Recorded or Other ¹	6	8	0	14	19%
National / Regional Body	4	1	3	8	11%
Total	24	45	6	75	100%
% by Submission	32%	60%	8%	100%	

Generally, the submissions in opposition to the proposal expressed a broader range of reasons for their submission than those in support. The key concerns of those in opposition are:

- concerns over the profit motive and the potential for privatisation of water assets
- a lack of trust in decision makers and a fear that this proposal is the start of a larger change
- concerns that this proposal will result in water meters in Hamilton and opposition to water meters
- concerns from some Hamilton submitters that the benefits will accrue primarily to Waipa
- not being convinced of the identified savings or the ability of the CCO to realise those savings
- concerns over duplication and additional governance and management costs of the proposed new structure
- concerns over the scale of the investment in waters infrastructure and affordability of rates
- a view that insufficient independent analysis has been undertaken and that the information provided in the proposal is inadequate to inform the public
- a view that the proposed CCO must include Waikato District
- support for an asset owning CCO and opposition to the proposed SWMC because it will realise fewer benefits than would be possible by transferring assets.

¹ Two submissions were received from individuals that were from outside both districts.

A number of the concerns expressed in opposition would perhaps be more relevant in the context of an asset owning CCO. However, that is not what is proposed.

Submissions in support tend to focus on the potential for economies of scale and savings in both operating and capital costs. There is reference to positive experiences elsewhere from similar sorts of change. Some submissions in support encourage the councils to go further and establish an asset owning CCO. Other reasons for support include:

- benefits from better governance and more strategic decision making
- improved and more consistent asset management
- benefits from being able to attract and retain skilled staff (including achieving critical mass)
- improvements to water quality
- the ability to develop a centre of excellence and share best practice.

Some submissions included suggested processes or controls in order to ensure sound oversight of the proposed SWMC. These included:

- suggested entry and exit provisions for shareholding councils
- stronger reporting requirements
- a more detailed financial disclosure regime than is required by the Local Government Act 2002
- clear consultation requirements and governance procedures.

A number of submissions clearly favoured the establishment of an asset owning CCO, rather than the proposed SWMC. For example, the Infrastructure New Zealand submission states that they could support the SWMC as an intermediate step toward an asset owning CCO. Infrastructure New Zealand argue that the legal obligation of the councils is to provide the most cost-effective and efficient water, wastewater and stormwater services possible, and that therefore the councils are *“required to establish a full asset owning CCO, or present a more efficacious alternative.”* As with some other supporters of an asset owning CCO, they do not support a SWMC as an end in itself and are recorded as a submission in opposition to the proposal.

The submission from the Purekireki Marae Trust was initially misplaced when it was received. It is recorded as a late submission, but was in fact submitted on time. The submission notes particular concerns over water quality and the need to focus on the health and safety of water and water networks, not just on the cost-effectiveness of service delivery. The Trust’s submission also criticises the engagement with Māori through the process of considering the delivery of water services. Engagement has focused on iwi, not on hapū or marae. Whilst the proposed SWMC does not change the obligations, or decision making role of Councils, or their obligations to and relationships with Māori and iwi, this is an issue that will need to be addressed if the Councils resolve to proceed to establish a SWMC.

KEY SUBMISSIONS

It is important to note some of the submissions because of the nature of the statutory responsibilities and/or experience of the submitters.

Local Government Commission

Given the statutory role of the Local Government Commission in considering any possible re-organisation (which can include establishing CCOs) they have been careful not to express a view either in support or opposition of the current proposal. However, under their role to promote good practice relating to local government, the Commission's submission presents a range of lessons, insights and implementation considerations that would be useful to consider if the councils decide to proceed with establishing the proposed CCO.

Waikato Regional Council

The Waikato Regional Council *"supports the overall intent of the proposal and the benefits it may provide to the management of water and improving water quality"*. Their submission makes a number of points in support of the proposal, including noting the benefits of size and technical focus, the ability to attract skilled staff, sharing best practice, and a more resilient funding framework for the management of the three waters. The regional council also seeks more detail in relation to who would have responsibilities and liabilities under the RMA, information relating to the funding model to be used and use of the model outlined in the Waikato Regional Fresh Water Strategy.

Waikato District Health Board

The Waikato District Health Board (DHB) submission seems to neither fully support nor oppose the proposal. Their submission accepts and supports the need to consider how to best provide waters services and acknowledges the identified benefits, but overall suggests further work. The DHB suggests that the councils consider working alongside DHB staff to complete and fund a health and well-being impact assessment on the proposal.

Wellington Water Committee

The Wellington Water Committee is the shareholder committee that oversees Wellington Water Ltd. Their submission neither supports nor opposes the proposal, but provides a range of insights from the experience of the Wellington councils.

Waikato District Council

No submission was received from the Waikato District Council.

DECISION MAKING

Councils must consult the public on a proposed establishment of a Council Controlled Organisation (CCO) as required by s56 Local Government Act 2002. Councils are not required to consult using the Special Consultative Procedure for this purpose.

All of the normal decision making requirements of the Local Government Act 2002 (LGA02) apply to a decision to establish a CCO. The decision making requirements of sections 77 to 82 of the LGA02 require (amongst other things) councils to:

- consider the reasonably practicable options for achieving the objective of a decision
- assess the options in terms of their advantages and disadvantages
- give consideration to the views and preferences of persons likely to be affected by, or have an interest in the matter.

Both councils also need to apply the principles relating to local authorities set out in s14 of the LGA02. Of particular relevance to this decision are the requirements:

- for openness and transparency
- to be aware of and taking into consideration the views of communities
- to provide opportunities for Māori to contribute to decision making
- to actively seek to collaborate with other local authorities
- to apply sound business practises to commercial undertakings
- to ensure prudent stewardship and effective use of its resources
- to take into account the social, economic and cultural interests of people and communities
- to take into account the need to maintain and enhance the quality of the environment
- the reasonable needs of future generations.

The process of decision making in relation to the delivery of waters services has spanned several years. Over that time both Councils have considered a large number of options and alternatives and the relative advantages and disadvantages of the alternatives. This consideration was reflected in the decisions of both councils to adopt the proposal for a SWMC as their preferred option for the delivery of waters services.

The current consultation process provides the opportunity to weigh and consider the views of communities alongside the body of technical and professional advice that the councils have received. The views of communities are important, but they are only one of the matters that the Councils must consider as they decide on how to best meet their obligations with respect to the delivery of waters services and infrastructure.

Both Councils delegated the hearing and consideration of submissions to the Waters Governance Group. Neither Council delegated decision making. This means that once the Waters Governance Group heard and considered submissions it was required to make recommendations to the two Councils.

Final decision making on the establishment of a SWMC sits with each Council. To establish a new jointly owned CCO both possible shareholding councils would need to decide to proceed.

DELIBERATIONS AND RECOMMENDATIONS FROM THE WATERS GOVERNANCE GROUP

The Waters Governance Group considered and heard submissions on 1 December 2017.

The Waters Governance Group noted that points raised in a number of submissions tended to suggest that the submitter did not necessarily understand some aspects of the proposal. For the sake of clarity, the Waters Governance Group notes that:

- The proposal to establish a SWMC is not the first part of a staged process. It is not a transition to any other form of CCO. It is a proposal to establish a SWMC and that is all.
- Only Councils would be eligible to be shareholders in the proposed SWMC.
- The proposed SWMC will not own any waters assets. All waters assets will remain owned and funded by each of the Councils.
- All planning, financial decision making and public reporting obligations will remain with each Council and will be done transparently through their Long-term Plans, 30 Year Infrastructure Strategies, Annual Plans, Annual Reports and normal Council agendas.
- The proposed SWMC will be a not-for-profit undertaking.
- Establishing the proposed SWMC is not and will not result in the privatisation of water or water assets. The SWMC will manage and operate waters assets but the Councils will retain ownership and full financial responsibility for the supply of water and the provision of waters services.
- The Councils will continue to make all decisions about levels of service and the development of waters assets, including how waters services are funded and any water related charges.
- Establishing a SWMC will not change anything with respect to water meters. All decision making relating to the way in which the costs of providing water and waters services are charged will remain with each Council, as would any consideration of the use of water meters.
- Establishing a SWMC will not limit the ability of the Councils to pursue innovative options for the provision (and funding) of infrastructure.

Whilst the majority of submissions received opposed the proposal, the Waters Governance Group noted that the total number of submissions was very low, in particular from Waipa. The points that were raised in the submissions had, by and large, been canvassed and considered by the Councils in their consideration of the issues over several years. The Waters Governance Group considered that the

submissions did not raise issues that had not been considered previously. Neither did they raise issues or concerns that were considered sufficient to negate the benefits that the Councils identified when they resolved that the SWMC was their preferred option.

Having carefully weighed the submissions with the reports and other advice received the unanimous recommendation from the Waters Governance Group is that Waipa District and Hamilton City Councils proceed to establish a Shared Waters Management Company. The resolution to make this recommendation was moved by Mayor Mylchreest and seconded by Mayor King.

The reasons for this recommendation are:

- The SWMC offers substantial financial benefits to both Councils over the medium to long-term compared with the status quo.
- The proposed SWMC will provide regional benefits through collaboration and working together. The proposed SWMC is scalable and has lower barriers to entry for other local authorities than an asset owing CCO. This means that the door is open for other Councils to subsequently join and benefit from the scale and specialisation that the SWMC will achieve.
- The proposed SWMC offers considerable non-financial benefits to both Councils. In particular it will improve the resilience of both Councils and provide an effective way of ensuring that both Councils have the specialised and expert staff that are required to meet the needs of our communities both now and in the future.
- The proposed SWMC will provide a sound way of positioning and supporting both Councils to respond to the challenges that they face, including the delivery of significant capital works programmes, responding to rapid population growth, and the stronger regulatory requirements that are expected following the Havelock North inquiry.
- The proposed SWMC provides significant benefits without being exposed to the considerable risks associated with the transition to a full asset owing CCO.
- Establishing a SWMC best meets the obligations of the local authorities under s10 of the LGA02 because it balances the democratic decision making (within each Council) with the cost-effective delivery of good quality infrastructure.
- The views expressed through the consultation process did not raise issues or concerns that were considered sufficient to negate the benefits that the Councils identified.

The Waters Governance Group notes that further work will be required to finalise the detail of a transition to a SWMC. This work includes developing the constitution of the company and the related shareholders agreement, establishing a shareholders' forum and the framework for the Statement of Intent and Letter of Expectation, developing and agreeing both the establishment plan and the cost sharing formula that will apply to the overhead costs of the SWMC, and finalising the costs of establishment and

transition. This work will need to be completed and agreed to the satisfaction of both Councils before a final establishment decision is confirmed. It is recommended that the Waters Governance Group be delegated responsibility to develop and agree the final detail of the establishment of the Shared Waters Management Company by 30 June 2018 for approval by the Councils.

It is also recommended that the Waters Governance Group engages as appropriate with both the Government and the Local Government Commission, and reports regularly to both Councils. The reason for this is to ensure that all avenues for possible assistance in establishing a SWMC can be explored. In particular, the Local Government Commission's emerging role in supporting best practice is worthy of further exploration.

It is estimated that the work required to finalise the transition to a SWMC will cost a further \$450,000 in the period from 1 January 2018 to 30 June 2018. This budget will provide for the detailed legal, accounting, tax, governance and management advice necessary to progress:

- the adoption of the constitution, statement of intent, letter of expectation, shareholders agreement, and shareholders forum
- the transition process and establishment plan (including project management, oversight and governance)
- the costs of transition and establishment
- the cost sharing framework.

It is recommended that these costs be shared equally between the two Councils. Whilst these costs will need to be met in the current year it would be possible to treat them as a shareholder loan when the SWMC is established and to repay them over a period of time from SWMC operations. This approach would have the added benefit for being able to identify establishment costs that could also be recovered in part from any council that subsequently becomes a share-holder.

RELEVANT BACKGROUND MATERIAL AND REPORTS

The full set of background reports, council agenda items and decisions relating to the proposal and the delivery of waters services is set out on the www.waterstudywaikato.org.nz website.



Peter Winder
Independent Chair

