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Report to the Policy and Finance Committee
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Water Services Integration Proposal : Supplementary Report

1. Purpose

Having heard the variety of views by all participating Councils, Porirua City Council (PCC), Upper Hutt City Council (UHCC), local iwi and the public on the integration proposal, this report provides a response to the general positive comments and criticisms and suggests changes and modifications that could be made if the proposal were to proceed.

In addition, comment is provided on the other main issues that emerged from the Councils' debate and public consultation.

2. Background

In the development of this proposal, the Project Group was aware that a number of the areas within the proposal needed further development, analysis and Council guidance. Some areas such as the selection process for trustees were left open to gauge both council and public opinion. Further decisions as to whether trustees should be councillors, non-councillors, or a mix of both were also left undetermined. If the proposal was to proceed, further an in-depth analysis by all three Councils of the Trust Deed and other documents must be completed.

Now that the views of PCC, UHCC and the general public have been heard, we have addressed the main issues that have arisen.

As outlined in the Councillors' report back on the public consultation and the earlier Council debates, the main themes that have caused concern are:

- **Privatisation** – that creation of the Trust would increase the potential that assets and/or operations would be privatised.

- **Governance** – relating to accountability and resolution of disputes between owning councils.
- **Appointment of Trustees** – Should trustees be councillors, professionals, a mix of both or directly elected?
- **Savings** – Will they be achieved and even if they are, is the level of expected savings enough to justify change.
- **Access to Information** – Will the Trust be subject to the Official Information and Meetings Act?

Some themes we would like to discuss a little further are associated with:

- **Other Models** – Is there a better model, given a green fields approach?
- **Sustainability** – The water cycle from source to sea and the advantages of managing the service delivery of water waste and drainage under one roof.
- **Iwi** – Additional background on the consultation process.
- **Other Issues** – Cost of future admission by other councils, ring fencing of costs, four cities’ review, non-financial benefits, transfer of assets.

This report addresses each of these points in turn.

3. **Privatisation**

The public consultation brochure stated that the Councils are committed to public ownership of the region’s water and wastewater services. Even so, a number of submissions were made about the possibility of the Trust being privatised. Several features were incorporated into the proposal to guard against this. They include:

- Setting the Trust up as a Unit Trust so the original assets transferred to the Trust by each Council are “marked” for return to that Council if the Trust is dissolved.
- Allowing units in the Trust only to be held by local authorities.
- Restrictions on the disposal of infrastructure assets.
- Restrictions on the ability to undertake major business transactions.
- Requirements that the Trust’s business plan is approved by the Councils.

The possibility of the Trust contracting out all activities was also raised in submissions. A parallel with the lease arrangement of Papakura District Council was drawn. It was not intended by the Project Group that this would be possible. However, for the avoidance of doubt the Trust Deed can be strengthened to prevent the Trust’s functions from being totally contracted to one or more parties.

At present the Councils have a number of options open to them which can involve privatisation to varying degrees. By setting up a Trust most of these options are removed for as long as the Trust is in existence. A review is planned after five years. A Council could not exit the Trust before then without the agreement of the other Councils. The Trust strengthens public ownership by removing privatisation options.

4. **Governance**

The proposed governance model in the integration proposal aims to achieve a balance between overall control of water services being maintained by elected members and professional skills based trustees managing the delivery of the water services outcomes which have been set by elected members of the three Councils. This governance model is not untried. Reforms in the public water sector in Australia in recent years have led to this governance model being commonly adopted for water services in the major urban areas of Australia where it has been very successful. In Melbourne outcomes to be achieved, prices for water services and a comprehensive range of performance measures are set by elected members. The Melbourne water entities have professional skills based boards, which are required to report in detail to elected members on the performance they achieve. It is unclear what differences exist between New Zealand and Australia that would prevent this governance model from working equally well here.

The Water Services Integration Project Report (Project Report) proposes a publicly owned Unit Trust. A Unit Trust is a relative unique concept for this type of water operation. Accordingly, the report included several draft governance documents, namely the Trust Deed, Operating Charter, Supply and Services Agreements and Customer Charter.

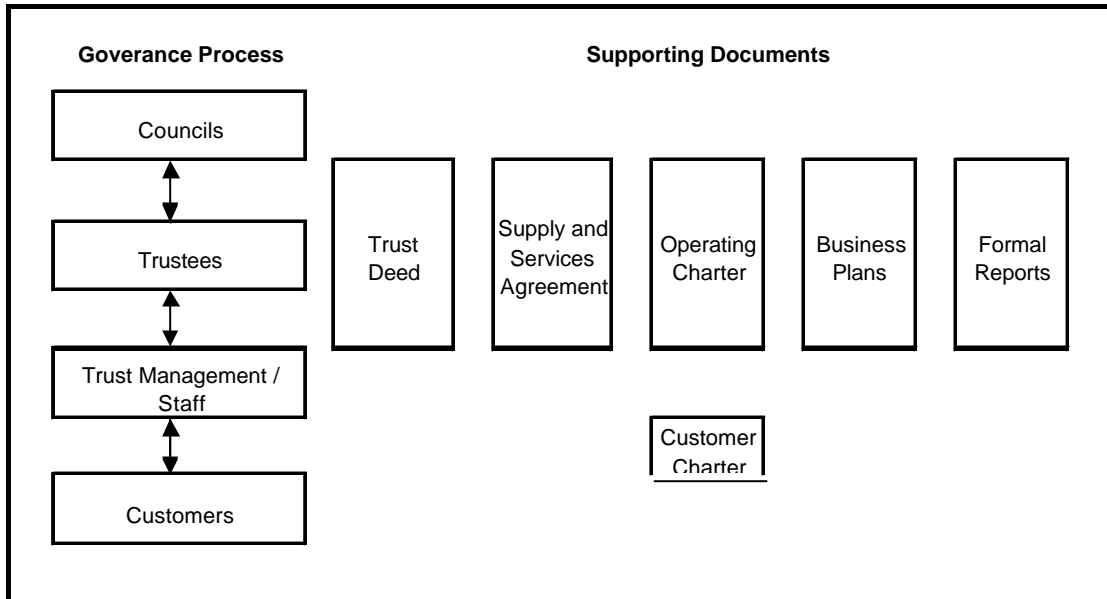
Various governance issues have been raised. This section explains some of the original concepts in more detail and addresses some of the governance issues.

In addition, since the release of the Project Report, the Controller and Auditor General has issued a report on “Local Authority Governance of Subsidiary Entities – March 2001.” The Auditor General’s report raises several issues which are applicable to the Trust proposal. These have been evaluated in the attached Appendix 1.

It is pleasing to note that few changes are required to comply with the Auditor General’s recommendations. It is apparent, from the Auditor General’s report, that Trusts, LATEs and joint ventures work satisfactorily in other parts of New Zealand though in some cases there is room for improving the governance.

4.1 **Governance Documents**

Governance can be guided by a series of documents. In addition to those mentioned above, the project report also noted the need for business plans and formal reporting. How these documents relate to the governance process is shown in the diagram below.



4.2 Issues of Concern

Several governance related issues have been raised since the project report was released:

- How will major decisions be made
 - by the Trust?
 - by the Councils?
- How are issues resolved when there is conflict?
- Who decides issues such as:
 - Service quality?
 - Business plan approval?
 - Capital works programmes?
 - Funding the business plan and capital works programme?
 - Debt repayment profile?
 - Key strategic issues?
- Who has the ultimate power?
 - The Trust?
 - The Councils?
 - No one?

- Will existence of the Trust confuse accountability in the eyes of the public?

4.3 **Criteria for Addressing Issues of Concern**

Solutions to the issues of concerns should be arrived at within defined criteria. Acceptance of the criteria is just as important as the solutions.

Suggested criteria are:

- The Councils remain accountable to the public and ratepayers for the water, wastewater and stormwater services, this essentially is a statutory requirement;
- The Trust is accountable to the councils for the delivery of the water, wastewater and stormwater services;
- Divisions in accountability should be clear;
- The Councils commit to the well-being of the Trust for as long as the Trust Deed exists;
- Councils are able to resolve conflict issues concerning the Trust in private.

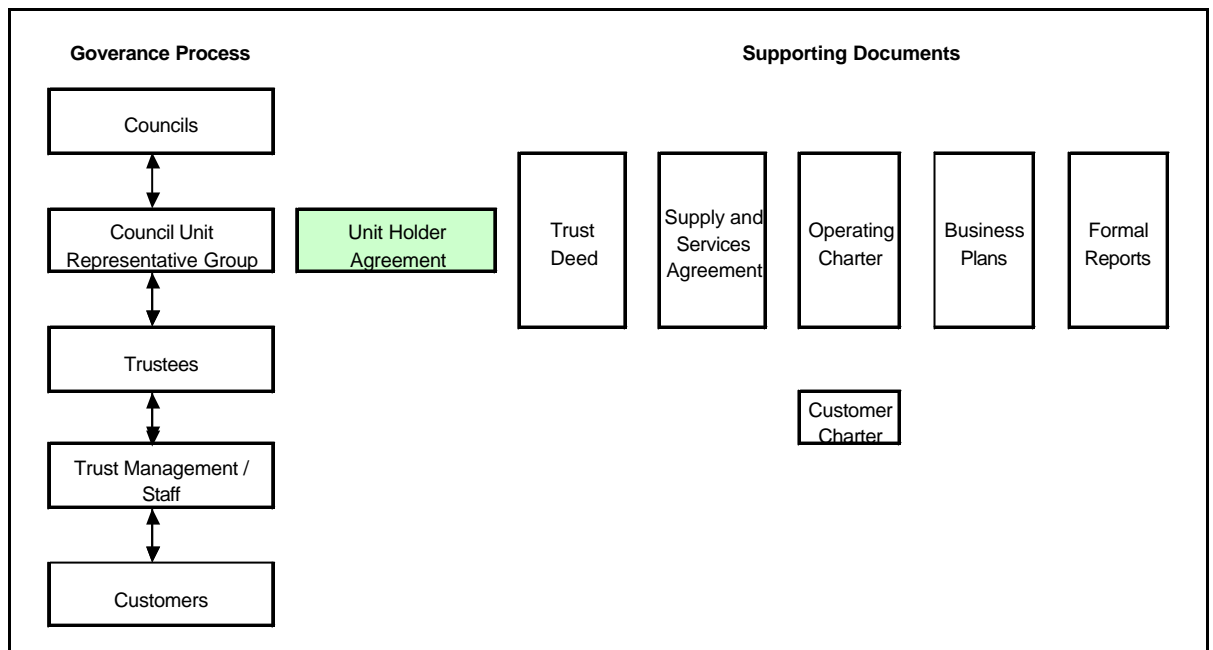
4.4 **Unit Holder Agreement**

One of the issues not addressed in-depth in the Project Report is how the Councils will hold discussions related to various issues. Examples are admission of another Council to the Trust arrangement, consideration of various people to be offered a Trustee position. It is difficult and probably not appropriate to hold a joint meeting of all three Councils. Rather a small joint committee of the Councils is proposed.

A new document is recommended, which was not included in the Water Services Integration Project Report. This would be titled a "Unit Holder Agreement". It would set out the processes for the Councils appointing Trustees and how the Councils make joint decisions about the Trust. Precedents are available for this type of agreement, though it often relates to companies and is called a shareholder agreement. It is useful where say two or more shareholders have a majority interest in a company. Auckland Councils who jointly own Watercare Services Ltd have a shareholder representative group to deal with company issues.

A possible arrangement is for two Councillors from each Council to be appointed to a Unit Holder Group to administer the Unit Holder Agreement. Any key decisions made by the Group, concerning the Trust, would have to be referred to the Councils for approval. In this way the Group functions like a Council joint committee. It could be set up on this basis. Ideally decisions are by consensus within a partnering framework. This could be set out in the founding agreement. Dispute resolution could include mediation, but is unlikely to include arbitration.

Where the Unit Holder agreement fits within the governance structure is shown in the diagram below:



4.5. Comment on the Issues

4.5.1 *How will decisions be made by the Trust?*

Clauses 109 to 118 of the draft Trust Deed relate to the proceedings of the Trust. Particular points are:

- The Chairperson of the Trust is not entitled to a second or casting vote. This means that all decisions must be by majority. An exception is special resolutions which requires three quarters of the Trustees to be in favour to pass a resolution.

4.5.2 *How will decisions be made by the Councils?*

The concept of the Unit Holder Agreement is outlined in section 4.4 of this paper. Assuming it is adopted, then the Council appointees to the Unit Holder Group would make recommendations to their respective Councils. Councils have well defined decision-making procedures. In the event one or more Councils did not accept a recommendation from the Unit Holder Group, then the issue would have to be referred back to that group.

4.5.3 *How are issues resolved when there is conflict?*

How to resolve conflicts within the Unit Holder Group can be covered in the document setting up the Group.

There may be conflicts between the Trust and the Councils from time to time. To minimise uncertainty it is desirable that the various documents are clear about who

has responsibility for various issues. For example, section 6 of the Trust Deed sets out powers of the Trust which can only be exercised with the Council's prior agreement. These include:

- Not selling significant or critical assets;
- Not entering into major transactions which are defined in the Trust Deed;
- Restrictions on transactions with related parties;
- Restrictions on investments with related parties.

This list can be expanded before the Trust Deed is finalised.

Provision is made in the Supply and Services Agreement for resolving the amount paid by a Council for a particular water service in the event the Trust and the Council cannot agree. The position if the parties cannot agree is the Trust is paid the lesser of the amount it requested, or the amount paid in the previous year changed by CPI and other adjustments.

In summary, the various documents already contain a number of dispute resolution mechanisms, or are specific about which party has the right to make the decisions when there is a conflict.

Expanding the number of dispute resolution mechanisms and indicating who makes a decision when there is conflict is probably worthwhile before the documents are finalised. There is a danger though in being over prescriptive. A reasonable measure of goodwill by the three Councils and the Trust is required for the arrangement to succeed.

4.6 **Who Decides Particular Issues?**

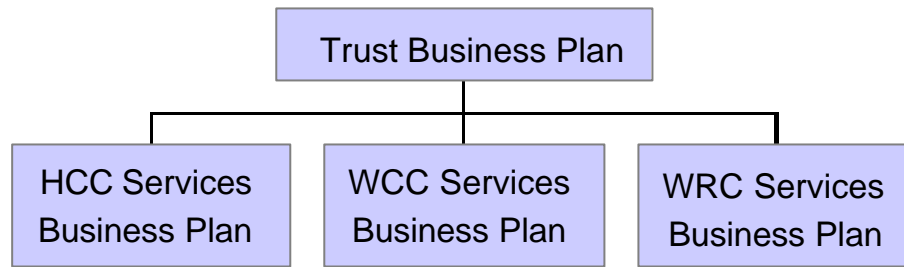
4.6.1 *Service Quality*

Hutt City Council (HCC) and Wellington City Council (WCC) remain accountable to the public for the delivery of the water services. Wellington Regional Council (WRC) will still be accountable to the four city Councils for wholesale water supply. HCC is accountable to the UHCC for bulk wastewater services. Hence, setting the standards for the various services will be the prerogative of the individual Councils. The Operating Charter and Services Agreement set out the draft service quality standards. Provision is also made for altering these standards. In reality the Trust will be in a good position to advise the Councils on appropriate standards. Therefore it is likely the standards will be jointly developed with the Councils having any final say.

4.6.2 *Business Plan*

The business plans and supporting resources will be largely output documents. They reflect how the service requirements decided by the Councils are delivered in a sustainable way. It is expected the majority of the content of each plan would be non-controversial.

The business plan would probably be in four parts.



The Trust's business plan mainly relates to shared management resources, for example water conservation policy and information technology policy. It would be approved by the three Councils through the Unit Holder Group.

Each of the Council specific plans would be approved only by the Council that was directly concerned with it.

4.6.3 *Capital Works Programme*

It is expected the capital works programme for each water service will be incorporated in the business plan and approved as part of that process. Capital works are undertaken for a purpose. As long as the Councils understand the purpose, for example, replacing life expired assets or maintaining water quality, Council approval of the plan should not be a problem. It is expected councils will create a linkage to their own long-term financial strategies.

4.6.4 *Funding the Business Plan and Capital Works Programme*

Councils no doubt will want the best outcome at the lowest cost. The Trust will want to ensure that it has adequate funding to achieve the standards required by the Councils. This creates a healthy tension.

Ideally the Trust will agree the annual funding with each individual Council. Details of how the Trust will charge for the services provided are set out in the Services Agreement. In the event the parties cannot agree on how much the Trust should be paid by a particular Council, for providing the water services, then the non-agreement clauses apply. Basically, the Trust receives the lesser of the amount it requested, or the amount paid in the previous year changed by CPI and other adjustments. As the Trust only has three owners, it requires a high level of revenue certainty for prudential reasons.

4.6.5 *Debt Repayment Profile*

About 90% of the Trust's initial debt will relate to the wholesale water supply assets. Hutt City's assets account for the remainder.

In recent years the WRC has been in active debate with its customers about the rate at which the wholesale water debt is repaid. If the transfer of the WRC debt and water supply assets to the Trust was straightforward, then the responsibility for determining the debt reduction profile would rest with the Trustees. Obligations

imposed by the Wellington Regional Water Board Act, though, mean the transaction is not straightforward.

Phillips Fox (solicitors), in their letter dated 20 October 2000 to the Water Integration Project Group note;

Accordingly, until either the Wellington Regional Water Board Act (WRWBA) is repealed, or until the consistent authorities agree, there could be no absolute vesting of WRC assets in the new Trust. At least, WRC must retain the ultimate power to control the assets to the extent they are necessary to fulfil its obligations under WRWBA.

The legal opinion creates some potential uncertainty over who has responsibility for debt policy – the WRC or the Trust? To resolve this it is preferable for the Trust Deed to incorporate any conditions the WRC may wish to impose on the Trust regarding debt policy. Hutt City may also require specific conditions.

4.6.6 **Key Strategic Issues**

Section 5 of the Trust Deed sets out what the Trustees may do. Section 6 outlines what the Trustees may do, provided the Councils have approved. Other parts of the Trust Deed specify decisions that can only be made by the Councils. For example:

- Appointment of Trustees;
- Approval of business plans;
- Approve major transactions;
- Approve the disposal of major or critical assets;
- Amend the Trust Deed;
- Amend the term of the Trust;
- Amend the Operating Charter;
- Issue additional units in the Trust.

Further thought needs to be given to the likely strategic issues and ensuring the Trust Deed is clear as to who makes the relevant decisions.

4.7 **Who Has the Ultimate Power?**

It could be argued that ultimately the voters have because they elect the Councillors. In the context of this paper the ultimate power rests with the Councils. The reason being the Councils:

- Set the operating standards;
- Approve the Trust's business plan;
- Approve the Customer Charter;
- Approve the Services Agreement with the Trust;

- Fund the Trust;
- Appoint the Trustees.

Essentially the Trust would be a joint service delivery organisation set up specifically to carry out the requirements of the Councils.

4.8 **Accountability**

In the course of the consultation process concerns were expressed that the governance model proposed would result in a lack of accountability by elected members for water services. We believe that under the proposed governance model elected members on the participating councils would retain ultimate control of and responsibility for water services in the same way they do in Australia. However, it may be possible to overcome the concerns expressed and still achieve an appropriate balance of skills by having a mix of political representatives and appointed skills based trustees on the board. Political representatives on the board could be either appointed by the three Councils or directly elected. The direct appointment by the Councils of elected members to the board of trustees would be preferable, as the separate election of trustees would dilute the accountability of the Councils for public water services. Section 5 expands on the trustee appointment process

In any organisation there is the potential for confusion when the method of service delivery changes. An appropriate public relations strategy is required to minimise the potential confusion. It will be essential though that any enquiries to the Councils about the likes of leaking pipes and blocked street drains can be directly transferred to the customer service staff at the Trust. Over time the public will get used to contacting the Trust directly.

Again, an element of goodwill is required between the Councils and the Trust to ensure a smooth transition in the service delivery function.

4.9 **Conclusions**

Shifting a service delivery function from direct council control to another organisation involves some risk. Currently the Councils use contractors to undertake some of the service delivery work. Detailed performance based contract documents and appropriate supervision are two of the means of controlling contractor risk.

In the Trust proposal the whole service delivery function is transferred. Given the magnitude of the transfer a considerable amount of documentation is required to control the risks involved. These documents were outlined in the Project Report.

In addition, as a result of concerns that have been expressed, a further document is proposed – a Unit Holder Agreement. Collectively these documents will place the Councils firmly in the control of the Trust.

5. **Appointment of Trustees**

Comments have been made about the trustee appointment process following the release of the Project Report. In particular, about whether or not councillors should be trustees. This section explores the trustee appointment issue in more detail.

5.1 **Project Report**

Appendix E of the Project Report outlines a process for selecting the trustees. It does not say whether or not councillors should or should not be the Trustees. This decision has been left to the councils to decide. Legal advice received by the Project Group suggests the Trust Deed should be specific as to whether or not councillors (or Council Officers) can be trustees. The draft Trust Deed concentrated on the range of skills needed by the trustees to provide a balanced trust, namely:

- Financial skills;
- Engineering and technical skills;
- Social responsibility;
- Asset management;
- Environmental; and
- An ability to be impartial in carrying out the purposes of the trust.

5.2 **Comments of the Controller and Auditor-General**

Part six of the Controller and Auditor-General's report, referred to earlier, is about Trusts and other non-profit entities. Because the Trust is a hybrid – cost minimiser but commercial, sections from parts six and seven are attached in Appendix 1. Numbers in the margin refer to the paragraph numbers used in the Auditor General's report.

5.3 **Trustee Mix: Options**

Provision is made in the draft Trustee Deed for a minimum of six and a maximum of nine trustees. For convenience of the analysis in this section it is assumed there are six trustees.

5.3.1 ***All Councillors***

Concerns of some of the submitters on the Water Integration Proposal would be met by having only councillors as trustees. Views of the Controller and Auditor-General on this are included in section 5.2.

With three Councils involved in the trust the simplest method is for each Council to appoint two trustees. A possible outcome though is an unbalanced skill mix measured against the criteria set in the Trust Deed. Instead, each Council could appoint one trustee and then submit a range of councillors to be considered by the Unit Holder Group. This group would then work through a process of selecting the three remaining trustees, one being from each council.

Trustees are required to act impartially in the best interests of the trust. Circumstances could arise where their independent thinking is influenced by other information they hold. Decisions could be made on retail vs wholesale (WCC + HCC vs WRC) or WRC being influenced by what their major customer (WCC) might think resulting in WCC + WRC vs HCC. Hence, there are some perceived risks in having only councillors as trustees.

5.3.2 *All Professional Trustees*

There are not expected to be any difficulties in attracting suitable applications to be a trustee. Assets of nearly \$1b, and revenue of approximately \$30 m should ensure this. It will be the second largest water services operation in New Zealand. A wide range of applicants allows a balanced skill mix to be achieved. Councils have to decide whether or not they support the concept of the trust being governed by only professional trustees.

5.3.3 *Mix of Councillor and Professional Trustees*

Half the trustees being councillors and half being professional trustees does have some advantages. These include:

- An ability to fill any gaps in the skills mix;
- It is much more difficult for two Councils to take a view against a third council, particularly if most resolutions of the trust have to be passed by a majority of trustees.
- Providing a balance as to what may be good for the trust as a service delivery vehicle and the councils as customers;
- Allowing professional trustee's terms to be counter cyclical to three year local body terms, thereby providing greater continuity for the trust.

One of the disadvantages is a perception by some of the public of less council control. If an equal mix of councillors and professional trustees is not found to be satisfactory then it can be changed after a trial period.

Taking into account the comments of the Controller and Auditor-General, an equal number of councillors and professional trustees may be a preferred starting point for the trust.

6. **Savings**

The estimated savings result from an independent assessment of the integration proposal by PricewaterhouseCoopers Ltd. PricewaterhouseCoopers have indicated that their estimate of potential savings is robust and conservative. It is generally the view of the joint project team that the PricewaterhouseCoopers assessment is at the lower end of the scale of probable savings. Four reviews of water services in the Wellington area since 1997 have identified that savings in the range \$20 m-\$40 m over 10 years are achievable through rationalisation of water services.

Some submitters during the public consultation have questioned whether the projected level of savings can be achieved. Analogies were drawn with restructuring of other utilities in the past decade or so where it was claimed prices had not decreased. Unfortunately prices and costs have perhaps been confused by submitters. In some cases the benefits of reduced costs had gone to shareholders rather than customers. With the Trust it will be a cost minimiser so the benefits from reduced costs will go directly to the Councils.

The submission of Hutt Valley Wastewater Services, which have extensive international experience in the water industry, suggests that the level of savings estimated is much lower than they would have expected supporting the view that the savings estimate is conservative. Sinclair Knight Merz, which similarly have international experience in the water industry, have also stated in their submission that they would expect significant savings to be achieved through the integration of water services.

In any proposal such as this it is impossible to give an absolute guarantee of the level of savings that will be achieved. For this reason scepticism concerning the likely level of savings is difficult to refute. The estimate of savings achievable by this proposal has been independent and professional. The estimated savings are not inconsistent with but are at the lower end of the scale of savings estimated by other reviews as being achievable.

At present PricewaterhouseCoopers is the only organisation with sufficient information available to make a reasonable assessment of the savings.

The Project Group is confident that the savings are conservative. Clearly, however, the work to date has of necessity been at a high level. Should the Councils wish to proceed further with this proposal, one of the next stages would be developing the detailed business plans for each area of activity. This would include looking at detailed head count and associated costs, scale and scope efficiencies, overheads, debt management and taxation, amongst other things. The outcome of this work would enable the councils to proceed with confidence.

Should the business plans not reveal the level of savings expected then the councils could decide not to proceed.

7. Access to Information

The proposed trust would not be subject to the requirements of the Local Government Official Information and Meetings Act. However, similar provisions to those contained in LGOIMA could be written into the trust deed. This would ensure that there was no significant difference between the ability of members of the public to access to information held by the trust and their ability to access to information held by Councils. The right of appeal to the ombudsman contained in LGOIMA would not apply to requests for information made to the trust. It would be possible to include in the trust deed an alternative appeal provision through an independent party. Alternatively, a requirement could be included in the trust deed that copies of all records and information and other documentation held by the trust must be supplied to the Councils in which case this information would become subject to LGOIMA provisions, including rights of appeal to the Ombudsman.

8. Other Models

The project group was tasked with developing an integration model which most closely met four key requirements specified by the three Councils at the outset of the process. These key requirements were:

- Continued public ownership
- Quality standards maintained
- Flexibility to meet changing needs
- Significant savings

In the course of developing the trust proposal the project team considered a number of options. These included a LATE, a water board, a joint committee and a management entity. The reasons that the trust proposal was considered superior to these alternatives in meeting the above requirements is briefly discussed as follows. Comment is also made on the extent to which these other options may address some of the concerns that have arisen during the consultation process.

8.1 LATE Option

Metrowater in Auckland is an example of a Council owned water services LATE. As a result of significant public concerns expressed about Metrowater and the associated adverse publicity there is likely to be significant difficulty achieving acceptance for this model elsewhere. A LATE is a company which would be required to operate under company rules. These rules could be in conflict with Council aspirations for a public water entity. A LATE could be readily sold which means that this option does not meet the requirement for continued public ownership. A LATE must have an objective to operate as a successful company. While a LATE could potentially operate very efficiently, it would need to aim to achieve a profit which would be taxable, reducing the potential savings which could be passed to consumers. While any profit by a trust would be taxable a trust would have an objective to minimise costs rather than to make a profit, thereby minimising any potential tax liability. The Councils could exert a degree influence over a LATE through the SCI. However the extent of Council influence would be less than for other options such as a trust. Iwi interests could be provided for through assured representation on the board of directors. A LATE would not be subject to the Local Government Official Information and Meetings Act.

8.2 Water Board Option

This would be similar to the water/drainage boards which existed prior to local government reform in 1989. Being special purpose authorities these boards generally managed technical functions to a very high standard. Although the security of public ownership with a water board would be comparable with the status quo, it would be easier for water assets be disposed of by a water board than it would be under the proposed trust. It is anticipated that board members would be directly elected by the community. While these board members would be accountable to the community through the three yearly electoral process, they would

not be accountable to the Councils. Council influence on public water services issues would therefore be reduced to that of a submitter to the board. Representation of iwi interests would be comparable with the status quo. A Board would be subject to the Local Government Official Information and Meetings Act. The financial performance of the pre 1989 boards, and the absence of a assured balance of skills on the board indicates it is unlikely that a board would achieve the financial efficiencies potentially achievable by other entities such as a LATE or a trust. The establishment of a water board would require the passing of special legislation. Our legal advisers have indicated that this would probably take at least two years to achieve and would ideally require the support of all Councils potentially affected.

8.3 **A Joint Council Committee**

A joint Council Committee may well be an appropriate governance arrangement for some joint activities of Councils. However, the actual integrated entity over which the joint committee would be exercising governance would still need to be agreed. Options for this entity include a joint business unit, or accommodating all water services within one of the participating Councils. Some elected members will be able to make a judgement from their participation on the joint panel hearing submissions on the water integration proposal on how effectively a joint committee is likely to operate. The project team believe that there is a greater likelihood of decision making being influenced by parochialism than with other options and of any two councils being able to dominate decision making. Representation of iwi interests would be comparable with the status quo as would the security of public ownership. As asset ownership would be separated from the asset management and as an appropriate balance of skills on the governing committee could not be assured it is unlikely that this option would achieve the financial efficiencies potentially achievable by other entities such as a LATE or a trust. The provisions of the Local Government Official Information and Meetings Act would apply to this option.

8.4 **A Joint Management Entity**

Under this option the participating Councils would retain direct ownership of their water services infrastructure. An entity jointly owned by the participating Councils would be contracted to deliver the water services outcomes specified by the individual participating Councils. In many respects this option is similar to the trust proposal but without the transfer of assets meaning that security of public ownership is comparable with the status quo. The entity could be a LATE, a trust or a joint business unit. As asset ownership would be separated from asset management, the level of savings achievable by this proposal would be less than achievable by the proposed trust or a LATE unless the management entity was able to gain additional outcome by providing asset management services beyond the three Councils. In order to maintain this flexibility a LATE or trust structure would be preferable to a joint business unit. As the assets would not transfer it is likely that there would be less public concern about a LATE or trust structure possibly leading to privatisation.

The provisions of the Local Government Official Information and Meetings Act would not apply to a management entity which was a trust or a LATE. As the entity would simply be providing management services back to the Councils and as there would be no change in asset ownership, this may be of less concern than for other options. Representation of iwi interests would be comparable with the status quo.

9. **Iwi**

Consultation with iwi authorities was undertaken by the project team, utilising the links and relationships already established by the constituent Councils. Hui were held and throughout the process offers of separate or individual sessions with iwi to elucidate the project and respond to concerns were made. During the consultation phase of the Water Integration Project, Council Officers met with the Trustees of the Wellington Tenth Trust and a variety of issues were raised during this meeting. The officers were able to address a number of the concerns, but the Treaty of Waitangi issue relating to the ownership of the water was considered beyond the brief of the Water Integration Project.

The major issues raised were:

- Wellington Tenth Trust was not opposed to the integration of water on the whole, but believed that forming a Trust could lead eventually to privatisation and the loss of public ownership of water.
- Te Runanganui o Taranaki Whanui questioned the projected savings from integration.
- The question of governance could not be decided without the question of ownership being first addressed under the Treaty of Waitangi.
- Maori view access to water as essential to development and survival.
- Water has traditional, cultural and spiritual values to Maori beyond that which is valued by contemporary society.

While the Runanganui O Taranaki Whanui Ki Te Upoko O Te Ika A Maui did not take up the opportunity to meet with the Council Officers representing the three Councils, the Chairman of the Runanganui o Taranaki Whanui was present at the meeting held with the Wellington Tenth Trust.

A technical workshop was held with iwi representatives at the Regional Council as part of the consultation process. Each of the iwi in the Region took up the opportunity to make submissions, and a separate set of hearings was held to allow iwi the opportunity of adequately presenting their viewpoint.

10. **Other Issues**

10.1 **Cost of Future Admission to Wellington Water Trust**

The proposed Wellington Water Trust would run the water services activities of three of the five Councils in the Wellington metropolitan area. The participating Councils are the Wellington Regional Council, Hutt City Council and Wellington City Council. The other two Councils in the Wellington metropolitan area, Porirua City Council and Upper Hutt City Council have decided at this point not to participate in the trust proposal. While the trust would have the ability to accommodate the water services activities of these Councils, any future participation would of course be a matter for those Councils to decide.

An issue has arisen about whether there would be a “cost of admission” to any Councils which decide in the future to participate in the trust. This would be a matter for decision by the participating Councils.

The proposal aims to ensure that there will be no cross subsidisation between the Councils. The absence of a “cost of admission” to future participants would be inconsistent with this objective. The participating Councils have all incurred costs in developing the proposal (both in terms of staff time and direct costs) and will incur additional costs (estimated to be up to \$3m) for implementing the proposal if the Councils agree to proceed. The shares of these costs to be met by each of the three participating Councils will be greater than if all five Councils in the Wellington area were participating. The absence of a future “cost of admission” would therefore effectively result in a cross subsidy from the original participating Councils to subsequent participants. In reaching a decision on whether to charge future entrants to the trust a “cost of admission” the three original participating Councils would need to weigh the potential cross subsidy to new entrants against the benefit to all participants in the trust of the greater economies of scale which would result from operating across a larger base.

10.2 **“Ring Fencing” of Costs**

Costs for providing water services will vary between the three participating Councils. This will reflect differences in the age and condition profiles of the asset systems, differences in the types of assets used and factors such as topographical differences. While most differences in costs between the Cities will balance out over the long-term, scope exists for considerable cross subsidisation to occur over the short/medium-term unless specific measures are put in place to prevent this from occurring. The trust proposal aims to prevent cross subsidisation occurring by ensuring all costs for water services in each city remain financially ring fenced. The Councils already keep separate the costs for the different services (water supply, wastewater and stormwater) so it is not anticipated that there would be any significant practical difficulties or cost implications in extending this separation to differentiate between costs in the different cities. Modern accounting and asset management systems have the ability to assign costs to different asset systems.

As a further safeguard against cross subsidisation the trust deed could expressly provide for the annual external audit to include an audit of the separation of costs.

There is ample precedent for the successful ring fencing of costs. This has been occurring for many years with respect to the Bulk Wastewater Hutt Valley activity managed by Hutt City Council on behalf of Hutt City and Upper Hutt City and the Bulk Water Supply activity of the Wellington Regional Council. This financial ring fencing has been necessary to meet the requirements of the specific legislation under which these activities operate.

10.3 **The Four Cities Review**

In 1999 the four City Councils in the Wellington metropolitan area commenced a joint project to determine the best option for the delivery of water in the Wellington area. In the course of this project nine possible options, including the status quo, were identified. These options were considered by a joint meeting of elected

members of the four City Councils in November 1999 and subsequently at separate workshops of the four Councils. It should be noted that these options represented the varying levels of integration that were possible (e.g., joint contracting between the Councils, retail distribution entity, full integration etc) and not the legal form of any entity (e.g., LATE, trust, board, etc.). It had been anticipated that the structured process adopted of evaluating the options against agreed criteria would be likely to produce a high level of consensus between the Councils on the way in which to proceed. This did not occur and no clear consensus between the Cities arose from either the joint meeting in November 1999 or from the subsequent individual workshops of the Councils leaving the four cities project effectively at an impasse. This lack of consensus led to the current proposal in which Porirua and Upper Hutt Cities were invited to participate.

10.4 **Non-financial Benefits**

In recent years standards for the management of water services have been continually increasing. This has been driven by legislative change, by changes in what is considered to be good industry practice, by a recognition by the New Zealand water industry itself that it needed to lift its standards and by demands from consumers for better and more efficient services. Management practices of a decade ago are now simply no longer acceptable. Standards are continuing to increase further. A consequence of this is that some authorities in New Zealand are finding it increasingly difficult to manage to a standard that represents acceptable practice let alone best practice because the necessary expertise cannot be justified. As standards increase, this situation is likely to affect more and more Councils. Options available to Councils to address this issue are likely to involve setting up co-operative arrangements between adjoining Councils or contracting management activities to third party providers.

The integration proposal would bring together the management and technical skills of the water services staff of the three Councils. It would present an opportunity to achieve a standard of excellence in the management of water services which would not be achievable cost effectively by any of the Councils in isolation. This would inevitably be reflected in the quality and cost of water services provided to consumers in the Wellington area into the future.

10.5 **Transfer of Assets – Upper Hutt City Council Submission**

The trust proposal provides for the majority of water supply and wastewater assets to be transferred to the trust. This is intended to minimise duplication between the trust and the Councils and to maximise efficiencies.

Exceptions to the transfer of wastewater assets are the Hutt Valley bulk wastewater assets and the “Clearwater” assets of Wellington City Council. Hutt City Council would remain responsible through the Hutt Valley Services Committee for the provision of Bulk Wastewater Services to Hutt City and to Upper Hutt City. The majority of the management functions associated with the Hutt Valley Bulk wastewater activity would be carried out by the Trust on behalf of Hutt City Council.

It is proposed that the bulk water supply assets of the Wellington Regional Council would transfer to the trust. The Wellington Regional Council would retain

responsibility under the Wellington Water Board Act for the bulk water supply to the four cities in the Wellington metropolitan area. The majority of the management functions associated with the Bulk Water Supply activity would be carried out by the Trust on behalf of Wellington Regional Council in a similar manner to the Hutt Valley Bulk Wastewater activity. Upper Hutt City Council would in practice see little change in its relationships with Hutt City Council and Wellington Regional Council for the provision of these services

Through this arrangement Upper Hutt City Council would receive a share of savings in the Bulk Water supply and Hutt Valley Bulk wastewater activities that result from the trust. These savings would be distributed in accordance with existing formulae for the allocation of costs of these activities. The Bulk Water supply and Hutt Valley Bulk wastewater activities will be financially ring fenced within the trust. This ring fencing will be subject to audit.

The Wellington Regional Council and Hutt City Council would remain responsible for ensuring that Bulk Water supply and Hutt Valley Bulk wastewater activities respectively continue to be provided to a satisfactory standard despite any failure in the performance of the trust. If a satisfactory level of performance by the trust is not achieved there would remain as an ultimate sanction the ability of the councils to withdraw transferred assets and functions from the trust and to make alternative arrangement for the Bulk Water supply and Hutt Valley Bulk wastewater activities to be carried out.

11. **Sustainability**

Two of the objectives given to the Project Group to consider were environmental focus and sustainability. These objectives were considered in arriving at the trust proposal.

Several submitters have also commented on these two objectives, often by considering a water cycle or holistic approach.

Mr A Fricker, of the Sustainable Futures Trust, noted that historically supply and disposal have been separated. Provision has been supply driven and disposal has had to respond. The trust proposal will ultimately achieve a mountains to sea approach.

The Green Party has requested that the Trust has an objective to pursue water conservation, water reuse and promote the use of grey water.

New Zealand Water and Wastes Association made a submission through Mr R Blakemore. They quoted from *Beyond Ageing Pipes* published by the Parliamentary Commissioner for the Environment:

A more integrated and life-cycle approach is required. This involves treating the various components of water catchment, supply, wastewater and stormwater as one system or life cycle.

Local authorities must develop long-term strategic water services

plans integrating the management of water supply, wastewater disposal and stormwater.

Mr Blakemore also stated:

It is my understanding that Regional Councils throughout New Zealand have, as a prime objective, responsibility for the sustainable management of the natural resources within New Zealand – including water resources. The use of these natural resources by humans for water supply, wastewater and stormwater can have major impacts in the region. Furthermore the services are inevitably and unavoidably linked. Most water taken for supply ends up as wastewater. Very few wastewater systems remain unaffected by infiltration of stormwater. Discharge of stormwater and wastewater can, and does of course, dramatically affect the quality of the receiving environment. In other words, proper management of these services cannot be separated if sustainability is to be taken seriously.”

Submissions by the Department of Conservation and the Ministry for the Environment adopt similar themes. The Ministry for the Environment noted:

The formation of a Trust with specific responsibilities for water services will assist with the identification of specific costs associated with the provision of water services as cross-subsidisation with other local government functions is less likely to occur.

On the basis of the comments received as part of the public consultation process, the Project Group believes it has underestimated the potential environmental and sustainability benefits. Such benefits take time to achieve and are not directly monetary in most cases. Rather, the benefits are very much intergenerational.

12. **Recommendation**

That the report be received and the comments noted.

Report prepared by:

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