
Service Delivery Committee

Item for RECOMMENDATION

Report	Three Waters Update
Meeting Date	2 September 2021
Item Number	1
Prepared By	Steve Hill – Chief Executive
File Reference	614422

REPORT SUMMARY

This report provides an update on:

- the Government’s 30 June 2021 and 15 July 2021 Three Waters Reform announcements, which change the reform process previously outlined in 2020
- the specific data and modelling Council has received to date
- the implications of the revised Three Waters Reform proposal with the information known to date
- next steps (including uncertainties).

The intention of this report is not to replicate published information but instead to highlight matters of interest and direct the reader to those primary reports.

Staff therefore request Elected Members consider the issues that arise from the Government’s proposal and any potential solutions so these can be raised with Government and LGNZ before the end of September 2021

Note: There are a number of references in the item. These are available by clicking on the hyperlinks located within the body of the report or in section 9 Attachments. The exceptions are Reference 2 (Morrison Lowe Clutha District Council Impacts Assessment (June 2021) and Reference 10 Morrison Lowe Clutha District Review of WICS Data (August 2021) which are attached under a separate cover.

RECOMMENDATIONS

That the Service Delivery Committee:

- 1 RECEIVES THE ‘THREE WATERS UPDATE’ REPORT.**
- 2 NOTES THE GOVERNMENT’S 30 JUNE AND 15 JULY 2021 THREE WATERS REFORM ANNOUNCEMENTS.**

- 3 NOTES OFFICER'S ADVICE ON THE ACCURACY OF THE INFORMATION PROVIDED TO COUNCIL IN JUNE AND JULY 2021 BECAUSE OF THE RFI AND WICS MODELLING PROCESSES.**
- 4 NOTES OFFICER'S ANALYSIS OF THE IMPLICATIONS OF THE GOVERNMENT'S PROPOSED THREE WATER SERVICE DELIVERY MODEL ON THE CLUTHA DISTRICT COMMUNITIES AND WELL-BEING, INCLUDING THE IMPLICATION FOR THE DELIVERY OF WATER SERVICES AND WATER RELATED OUTCOMES, CAPABILITY, AND CAPACITY ON CLUTHA DISTRICT COUNCIL'S SUSTAINABILITY (INCLUDING RATING IMPACT, DEBT IMPACT, AND EFFICIENCY).**
- 5 NOTES THAT A DECISION TO SUPPORT THE GOVERNMENT'S PREFERRED THREE WATERS SERVICE DELIVERY OPTION IS NOT LAWFUL (WOULD BE ULTRA VIRES) AT PRESENT DUE TO SECTION 130 OF THE LOCAL GOVERNMENT ACT 2002 (LGA), WHICH PROHIBITS COUNCIL FROM DIVESTING ITS OWNERSHIP OR INTEREST IN A WATER SERVICE EXCEPT TO ANOTHER LOCAL GOVERNMENT ORGANISATION, AND WHAT WE CURRENTLY KNOW (AND DON'T KNOW) ABOUT THE GOVERNMENT'S PREFERRED OPTION.**
- 6 NOTES THAT THE GOVERNMENT INTENDS TO MAKE FURTHER DECISIONS ABOUT THE THREE WATERS SERVICE DELIVERY MODEL AFTER 30 SEPTEMBER 2021.**
- 7 NOTES THAT IT WOULD BE DESIRABLE TO GAIN AN UNDERSTANDING OF THE COMMUNITY'S VIEWS ONCE COUNCIL HAS FURTHER INFORMATION FROM THE GOVERNMENT ON THE NEXT STEPS IN THE REFORM PROCESS, AND IN ANY EVENT IF COUNCIL IS GIVEN THE OPPORTUNITY TO DECIDE, THEN COUNCIL WILL CONSULT.**
- 8 DIRECTS THE FOLLOWING FEEDBACK TO THE GOVERNMENT ON:**
 - a) (Insert section 6.2 if agreed)
 - b) (Insert any additions)
- 9 NOTES THAT FURTHER FEEDBACK MAY ARISE FROM ENGAGEMENT WITH COMMUNITIES PRIOR TO 1 OCTOBER 2021.**
- 10 NOTES THAT THE CEO WILL REPORT BACK FURTHER ONCE FURTHER INFORMATION AND GUIDANCE FROM GOVERNMENT IS ANNOUNCED OR PROVIDED.**
- 11 IN NOTING THE ABOVE, AGREES IT HAS CONSIDERED SECTIONS 76, 77, 78, AND 79 OF THE LOCAL GOVERNMENT ACT 2002 AND IN ITS JUDGMENT CONSIDERS COUNCIL HAS COMPLIED WITH THE DECISION-MAKING PROCESS THAT THOSE SECTIONS REQUIRE (INCLUDING, BUT NOT LIMITED TO, HAVING SUFFICIENT INFORMATION AND ANALYSIS THAT IS PROPORTIONATE TO THE DECISIONS BEING MADE.**

REPORT

1 BACKGROUND

- 1.1 Following the serious campylobacter outbreak in 2016 and the Government's Inquiry into Havelock North Drinking Water, central and local government have been considering the issues and opportunities facing the system for regulating and managing the three waters (drinking water, wastewater, and stormwater).
- 1.2 The focus has been on how to ensure safe drinking water, improve the environmental performance and transparency of wastewater and stormwater network and deal with funding and affordability challenges, particularly for communities with small rating bases or high-growth areas that have reached their prudential borrowing limits.
- 1.3 The Government's stated direction of travel has been for publicly owned multi-regional models with a preference for local authority asset ownership. The Department of Internal Affairs (DIA) acting in partnership with the Three Waters Steering Committee (which includes elected members and staff from local government) commissioned specialist economic, financial, regulatory and technical expertise to support the Three Waters Reform Programme and inform policy advice to ministers.
- 1.4 The initial stage (Tranche 1 - MOU, Funding Agreement, Delivery Plan and RFI process) was an opt in, non-binding approach. It did not require councils to commit to future phases of the reform programme, to transfer their assets and/or liabilities, or establish new water entities. It identified a 2020 indicative reform programme and the anticipated next steps ([Reference 1](#)).
- 1.5 In a parallel workstream the Otago/Southland Councils had commissioned Morrison Low to research the possibility of a regional entity and compare such an entity to Clutha going it alone. It was predicated on the basis that Otago/Southland might propose to government an option before any decisions were made. In June 2021 Morrison Low produced a report on the impact of three potential future scenarios for three waters service delivery in the Clutha District ([Reference 2](#)). The conclusion was that there was expected to be some efficiencies and benefits from a combined regional entity compared to Clutha delivering alone. This work was useful but was superseded by Government decisions in June and July 2021.
- 1.6 Council completed the RFI process over Christmas and New Year 2020/21 and the Government has used this information, evidence, and modelling to make preliminary decisions on the next stages of reform and has concluded that the case for change has been made ([Reference 3](#)).
- 1.7 In June 2021 a suite of information was released by Government that covered estimated potential investment requirements for New Zealand, scope for efficiency gains from transformation of the three waters service and the potential economic (efficiency) impacts of various aggregation scenarios ([Reference 4](#)).
- 1.8 In summary the modelling indicated a likely range for future investment requirements at a national level in the order of \$120 billion to \$185 billion, an average household cost for most councils on a standalone basis to be between \$1,910 and \$8,690+ by

2051. It also estimated these average household costs could be reduced to between \$800 and \$1,640 per household and efficiencies in the range of 45% over 15-30 years if the reform process went ahead. An additional 5,800 to 9,300 jobs and an increase in GDP of between \$14b to \$23b in Net Present Value, (NPV) terms over 30 years were also forecast.

1.9 As a result of this modelling, the Government has decided to:

- establish four statutory, publicly owned water services entities that own and operate three waters infrastructure on behalf of local authorities.
- establish independent, competency-based boards to govern.
- provide for iwi/Maori treaty obligations.
- set a clear national policy direction for the three waters sector, including integration with any new spatial / resource management planning processes.
- establish an economic regulation regime in addition to environmental regulation through Taumata Arowai and the Water Services Bill.
- develop an industry transformation strategy.

1.10 The proposed safeguards against privatisation can be found on pages 26 to 27 of the DIA's Case for Change ([Reference 3](#)).

1.11 Both DIA ([Reference 5](#)) and LGNZ ([Reference 6](#)) have produced two-page national overviews:

1.12 We have been placed in Water Services Entity D, although the precise boundaries are still up for discussion.

Entity A



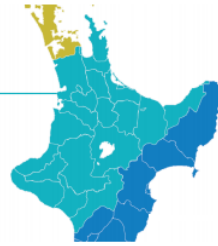
Entity A

Auckland
Far North
Kaipara
Whangarei

Entity A

Connected population (2020)	1.7m
Average household cost (2051, real)¹	
With reform	\$800
Without reform	\$2,170

Entity B



Entity B

Hamilton
Hauraki
Kawerau
Matamata-Piako
New Plymouth
Opotiki
Otorohanga
Rangitikei

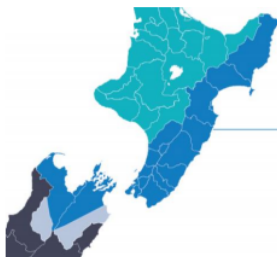
Rotorua Lakes
Ruapehu
South Taranaki
South Waikato
Stratford
Taupo
Tauranga
Thames-Coromandel

Waikato
Waipa
Wairarapa
Western Bay of Plenty
Whakatane
Whanganui

Entity B

Connected population (2020)	0.8m
Average household cost (2051, real)¹	
With reform	\$1,220
Without reform	\$4,300

Entity C



Entity C

Carterton
Central Hawke's Bay
Chatham Islands
Gisborne
Hastings
Horowhenua
Kapiti Coast

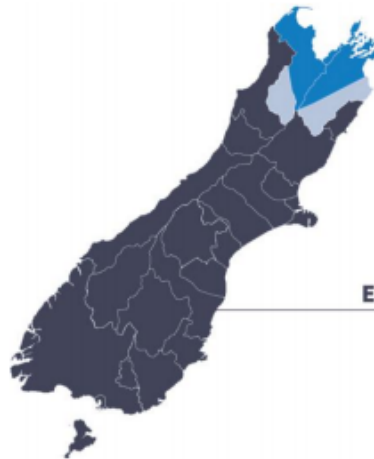
Lower Hutt
Manawatu
Marlborough
Masterton
Napier
Nelson
Palmerston North

Porirua
South Wairarapa
Tararua
Tasman
Upper Hutt
Wairoa
Wellington

Entity C

Connected population (2020)	1.0m
Average household cost (2051, real)¹	
With reform	\$1,260
Without reform	\$3,730

Entity D



Entity D

Ashburton
Buller
Central Otago
Christchurch
Clutha
Dunedin
Gore

Grey
Hurunui
Invercargill
Kaikoura
Mackenzie
Queenstown
Lakes
Selwyn

Southland
Timaru
Waimakariri
Waimate
Waitaki
Westland

Entity D

Connected population (2020)	0.9m
Average household cost (2051, real)¹	
With reform	\$1,640
Without reform	\$4,970

- 1.13 On 15 July 2021, in partnership with LGNZ under a Heads of Agreement ([Reference 7](#)), the Government announced a package of \$2.5 billion to support councils to transition to the new water entities and to invest in community well-being. This funding is made up of a ‘better off’ element (\$500 million will be available from 1 July 2022 with the investment funded \$1 billion from the Crown and \$1 billion from the new Water Services Entities) and ‘no council worse off’ element (available from July 2024 and funded by the Water Services Entities). The “better off” funding can be used to support the delivery of local wellbeing outcomes associated with climate change and resilience, housing and local placemaking, and there is an expectation that councils will engage with iwi/Māori in determining how to use their funding allocation.
- 1.14 Council’s funding allocation is \$13,091,148. The detail of the funding (including expectations around the use of reserves) and the full list of allocations have been published ([Reference 8](#)). Conditions associated with the package of funding have yet to be worked through.
- 1.15 In addition to the funding announcements, the Government has committed to further discussions with local government and iwi/Māori over the next eight weeks ending on 1 October 2021 on:
- the boundaries of the Water Service Entities
 - how local authorities can continue to have influence on service outcomes and other issues of importance to their communities (eg chlorine-free water)
 - ensuring there is appropriate integration between the needs, planning and priorities of local authorities and those of the Water Service Entities
 - how to strengthen the accountability of the Water Service Entities to the communities that they serve, for example through a water ombudsman.
- 1.16 As a result, the original timetable for implementing the reform and for councils to consult on a decision to opt-in (or not), no longer applies.
- 1.17 Next steps are expected to be announced after 1 October 2021, which would include the timeframes and responsibilities for any community or public consultation, if that was still going to be an option. Updated guidance for councils has also been provided ([Reference 9](#)).
- 1.18 It is also important to note that the Government has not ruled out legislating for an “all-in” approach to reform to realise the national interest benefits of the reform.
- 1.19 In the interim the DIA continues to engage with council staff on transition matters on a no regrets basis should the reform proceed. These discussions do not pre-empt any decisions about whether to progress the reforms or whether any individual council will transition. On the no regrets assumption that the reform goes ahead, it is anticipated that councils will continue to deliver water services until at least early 2024 and council involvement in transition will be required throughout.
- 1.20 In August 2021 Morrison Low produced a second report ([Reference 10](#)) that provided commentary to provide councils support to interpret Water Industry Commission for

Scotland (WICS) calculations and how those relate to the existing Clutha information, as well as a comparison of the approaches adopted by WICS and Morrison Low in the analysis of potential future costs with and without water reform. The conclusions were that overall, while the projected household charges from the WICS analysis may be the subject of some contention, they are likely to be directionally accurate. That is, household charges will increase in the new regulatory environment, and CDC ratepayers are likely to have lower household charges under the proposed entity delivery model than through continued council service delivery. This is consistent with Morrison Low's earlier analysis undertaken for the Otago and Southland councils. See Reference 2.

1.21 Independent reviews of the DIA/WICS modelling by Farrierswier ([Reference 11](#)) and Beca ([Reference 12](#)), whilst generally supportive of the model scope and direction also raised a range of issues with the model application, which whilst technical in nature, could have large impacts on the currently published model results – particularly in South Island provincial and rural areas.

1.22 In addition, and again in parallel, Councils in the Ngai Tahu takiwa (including Clutha) have been engaging with Ngai Tahu over the entity proposals. A general set of non-negotiables were agreed by the Mayors and Ngai Tahu for application to an entity if such was to be created. Those non-negotiables are:

1.22.1 Public ownership

Assets must remain in the hands of the communities for our generation and the future generations. Non-Council supplies default to the new entities.

1.22.2 Community Care

All communities need to be able to be looked after within Entity D, including those whose councils may be aligned with Entity C and the Chathams.

1.22.3 Retain local and bespoke service delivery

Our communities have differing needs. Where a district seeks to maintain a higher level of service, they can require it of Entity D, fund and deliver it locally.

1.22.4 Governance

Mechanisms must allow for representation across the region and accountability to communities.

1.22.5 Ability to Grow

Communities across Entity D must have access to the infrastructure they need to grow, regardless of whether they are small or large. The base of local knowledge and skills is retained and grown.

1.22.6 Ngāi Tahu is able to exercise rangatiratanga in the Takiwā

Must give effect to Treaty principles and legislation and enable Ngāi Tahu to meaningfully participate in decision making.

1.22.7 Transition for success

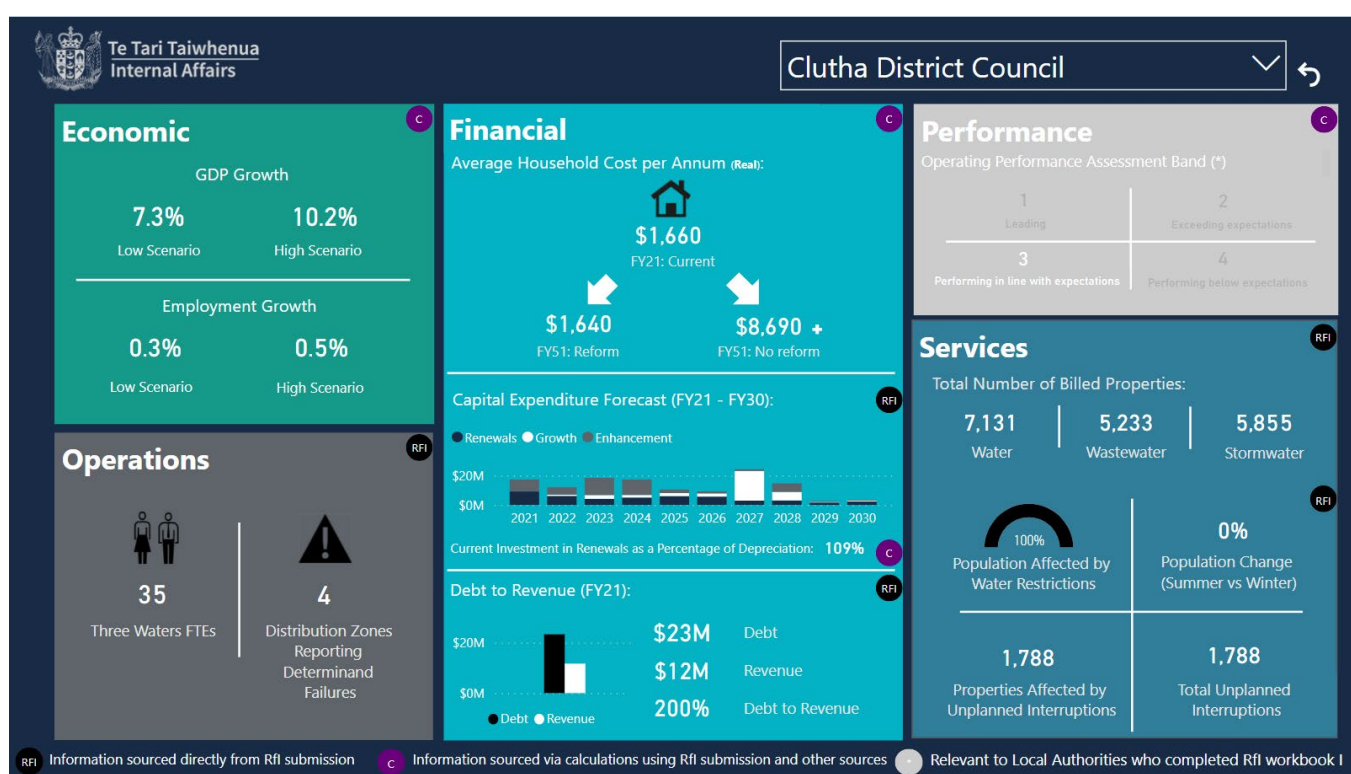
Right capability and understanding needed of local needs to guide Entity D through the design, establishment, and transition stages.

- 1.23 In respect of the Takiwa boundaries ongoing discussion is happening with regard to the Chatham Islands and there is no doubt that agreement will need to be reached by the Government and Ngai Tahu over these boundary matters, with Southern Councils in the discussion.

2 COUNCIL SPECIFIC INFORMATION AND ANALYSIS

- 2.1 While the Government and LGNZ consider that national case for change has been made, each council will ultimately need to decide based on its local context.
- 2.2 Councils do not have a national interest test for their decision making. Councils are required to act in the interests of their communities and the community's wellbeing (now and into the future), provide opportunities for Māori to contribute to their decision-making processes, ensure prudent stewardship and the efficient and effective use of its resources in the interests of the district or region (including planning effectively for the future management of its assets) and take a sustainable development approach (for example, as per sections 5 and 14 of the Local Government Act 2002).
- 2.3 Council currently delivers three waters as a stand-alone entity with a mix of inhouse staff and a network and operations maintenance contract. Clutha has a Service Delivery Department that looks after all infrastructure. There is a Water and Waste Operations team including four dedicated water roles. Infrastructure Strategy and Capital Delivery teams are shared with other council assets. There are 19 FTE shared across water and other assets including the Group Manager Service Delivery.
- 2.4 CDC's levels of compliance and levels of service for wastewater are generally low compared to the Otago-Southland region, with five disclosed serious pollution incidents in 2019/20 (one of only three councils in the region to disclose any serious pollution incidents). In addition, 54% of the district's wastewater receives only primary level treatment, with the majority (99%) being discharged to freshwater receiving environments. This is the largest compliance and level of service issue for the district. CDC has the third highest incidence of wastewater pipe blockages and the highest incidence of stormwater collapses in the Otago and Southland regions.
- 2.5 The required future investment for three waters services in CDC will see three waters debt exceed \$90 million by 2031 but because Council will use an internal borrowing regime total Council debt only reaches \$80 million. Council's debt to revenue ratio rises to 145% but remains well below the LGFA threshold. Council is therefore able to debt fund the required level of investment but at that level three waters will start to impact the extent to which other activities and services can use debt.
- 2.6 While over 55% of the drinking water in the district receives complex or multistage treatment, CDC notes that 14 of its drinking water treatment plants are not currently meeting the parasitic protozoal compliance regulations in the Drinking Water Standards.

- 2.7 A key challenge for Council will be in delivering that programme as there will need to be a 300% increase in the amount of three water capital works delivered and for that to be consistently through to 2031.
- 2.8 Our forecasts anticipated that the increased investment requirements, and associated impact on annual operating expenditure may result in three waters charges being as high as \$2,549 (uninflated) by 2031. This is a 200% increase on current charges.
- 2.9 Due to differences in the charging mechanisms and cost structure for rural schemes, the impacts on rural water schemes and their customers are not immediately clear. However, we note that rural ratepayers that do not receive wastewater or stormwater services may see their drinking water charges increase by approximately 27% before inflation. Further work would be required to disaggregate the impacts on rural and urban ratepayers.
- 2.10 In respect of the government’s published information our dashboard looks like this:



- 2.11 The key aspects Council should note will be detailed in a 2-page summary to be circulated.
- 2.12 Whilst the Morrison Low second report (Reference 10) has highlighted a range of areas where the WICS financial modelling and thus the Government’s case for change from a financial perspective has been overstated, the report still confirms that a larger water services entity such as Entity D will charge less for providing the service than if Council stands alone. The exact difference has not been able to be calculated.

3 IMPLICATIONS OF THE PROPOSED REFORMS WITH THE INFORMATION KNOWN TO-DATE

- 3.1 Other Government Reform Initiatives that will have impact on 3 Waters

3.2 In addition to the three waters reforms discussed above, the Government has also announced further wide-ranging reforms of freshwater, resource management, climate change and zero carbon, all of which have potential to have significant impacts on the delivery of 3 Waters services. These impacts have regulatory, operations and cost impacts:

- RMA reform
- National Built Environments Act.
- Strategic Planning Act (30yr spatial plans a required output – big picture, long term planning view).
- Managed Retreat and Climate Change Adaptation Act.
- NPS Fresh Water (including Te Mana o te Wai)
- NPS Urban development
- NPS Coastal
- NES Sources of Human Drinking Water
- Review of the Future of Local Government 2021 <https://www.dia.govt.nz/Future-for-Local-Government-Review>
- Zero Carbon Act and Climate Change Commission initiatives
- Climate Change adaptation initiatives
- Water Economic Regulator is being discussed and planned
- National Environmental Regulator is being discussed (see Infrastructure Commission ‘Water Reform in NZ’ report)
- Possible nationally mandated consumer protection oversight provisions in relation to the provision of three waters services.

3.3 Summary of Government Reform Initiatives

The Government has announced and is working through wide ranging reform processes across areas of New Zealand society. The government has initiated sustained and wide-ranging reform which is currently in process in 2021. These reforms (like current reforms of other sectors – Health, Education) have common features:

- Centralising of services and decision making
- Maori governance and decision-making roles, inclusion and involvement
- Broad inclusion of Te Tiriti o te Waitangi requirements.

3.4 Three waters reform is well advanced. Other water resources reforms – rma, nps, zero carbon etc. Have been commenced. The impacts of these reforms on new

zealand, council and three waters service provision will be profound. Unfortunately, there is no known system-wide view of the totality of the reforms and the impacts on our community and the council.

4 FURTHER IMPLICATIONS

4.1 IMPLICATIONS COMMON TO ANY OPTION

- 4.1.1 The environmental regulator taumata arowai and legislation will require a higher level and standard of compliance, including personal accountability, and this will translate also into a higher level of service, increased investment, and an increase in costs to the end-user. Council’s forecasting is based on what is currently known, and for example if standards dictate that there will be no more wastewater discharges to fresh water (as an example) then substantial investment increases and costs can be expected given 99% discharge into that environment currently.
- 4.1.2 The water services bill is currently grappling with private supplies and the latest health select committee report has kept the requirement for private supplies to be covered but has extended timeframes. The question of addressing private supplies in this new regulatory environment is a substantial risk for any option.
- 4.1.3 The increased investment requirement will have implications for the supply chain, more construction is required, and more jobs are forecast. If the workforce and supply chain demands aren’t met, then necessary investment and compliance are delayed. We are already aware that taumata arowai’s focus initially will be on drinking water standards, so it is unknown what is expected in wastewater and stormwater compliance.

4.2 IMPLICATIONS IF COUNCIL STOOD ALONE

Implication	Discussion	Mitigation
Loss of local decision making	Water quality regulator, Water economic regulator and regionally based resource management requirements may lead to an effective loss or major constraint of local decision making	Continued engagement with regulators, Ngāi Tahu, regional councils, DIA and other government departments to ensure local decision making is included where possible within the constraints of national regulations and standards
Service Delivery Cost	All current multi-regional entity models, analysis and reports show significantly higher costs associated with meeting increased service levels and compliance requirements.	When the increased costs reach the Community is unknown. It may be decades before the combinations of cost factors are felt and the Government’s case is based on demonstrating household average charges in 2051. There are a lot of uncertainties forecasting for 2051.

<p>Major increase in debt to pay for service level changes</p>	<p>The increased service levels required by water reform may require significant additional debt to spread the costs over a longer period, and assist with intergenerational equity with the use of the assets.</p>	<p>CDC currently has very low debt, and room to increase debt as required to meet any anticipated new requirements, subject to any future economic regulation requirements</p> <p>Council debt ceils could be extended and underwritten by central government if it decided to do so. Current debt limits are because of underlying government policy decisions that aren't being applied to the new Entities.</p>
<p>Loss of local staff</p>	<p>NZ is facing a sustained engineering and water supply operations staff skills shortage. This will be made worse over the next decade by the expected wave of retirements from the industry. The proposed water industry reforms have potential to see loss of skilled staff to the proposed large multi-regional water entities, and large contract and consulting organisations that will support these entities.</p>	<p>Local staff recruitment and retention policies implemented</p> <p>Industry competitive remuneration and conditions</p> <p>Support and engagement agreements / partnerships with external service providers (consultants, contractors)</p> <p>Structured use of internal / external resources to maintain expertise and resource availability</p> <p>Structured succession and staff risk management planning</p>
<p>Maintaining enough resources to meet new requirements</p> <p>Maintaining sufficiently qualified local resources to meet new requirements</p>	<p>Water reform will create multiple new workstreams in compliance, auditing, reporting, water treatment, quality monitoring, freshwater resource use and compliance etc. Concern has been expressed in a resource short industry how small rural authorities will maintain enough resources to sustainably meet the new requirements</p>	<p>This is not a new issue or problem for CDC although it will add cost.</p> <p>Council has addressed resource shortages by:</p> <p>Hiring local based staff</p> <p>Training and skill development of staff over the medium to long term</p> <p>Involvement in industry training, conferences, and skill development</p> <p>Use of skilled external resources where required for specialist support, or one-off projects</p> <p>Joined up procurement where appropriate</p>

Ability to deliver increased capital programmes	The proposed water quality reforms will require increased capital expenditure programmes over the next 30 years to deliver increased quality and environmental standards. Industry wide concerns have been raised	CDC has increased capacity in the Capital Delivery Team to achieve high percentages of project completion for the existing Capital Work Programme. This will have to be expanded again to cover for any increased investment programme. CDC will also be subject to any necessary industry capacity reforms which will be needed whether the reforms proceed.
Iwi, Hapu, Marae engagement to meet new statutory requirements	The new legislation and regulations for three waters and fresh water all require extensive engagement and consultation with Iwi/Maori. This engagement is far more wide ranging than current requirements, and will require time, resources and good will from both parties to be effective. It is likely that Iwi/Maori representation in decision-making will result.	Council can continue to retain very good relationships with Ngāi Tahu. Additional resources applied to ongoing Ngāi Tahu relationships. Representation on decision-making bodies.
Large amount of new sector legislation and regulation expected	Additional RMA, NPS, Climate Change (zero carbon), Water quality regulation, Water economic regulation, Regional planning, environmental protection, climate adaptation, and Te Mana o te Wai adaptation will be required of the 3W sector over the next 10-20 years. This will challenge a small rural Council.	Industry guidance and compliance templates can be expected to assist in standardising approaches, methods and processes. Council can engage additional resources to meet new sector legislation and regulation requirements. The cost of these resources and duplication of efforts completed by larger entities may be a concern.
Affordability of ongoing regulatory change	There is potential that a small council like CDC may be overwhelmed by the amount and pace of the proposed regulatory changes. The amount and pace of change also has affordability concerns, particularly as a wide range of external resources have to be	CDC has successfully managed regulatory change before. Whilst the pace of proposed change currently seems very high, the ability of government departments to sustain this pace has yet to be tested. Many of the proposed changes are likely to generate significant public

	engaged to assist meeting new requirements.	consultation prior to implementation The implementation period for many of these changes will stretch to decades due to industry and social capacity, which allows CDC time to adapt to meet the new requirements.
Changing district demographic – more retired population	The broad demographic changes have been a NZ wide issue that has been recognised for the past two decades. The ability of an increasingly retired population to afford the projected big cost increases associated with three waters reform has yet to be tested.	Clutha district is attracting a range of working families drawn to the district by the affordability of housing and a broad range of employment opportunities. Current demographic modelling may be lagging facts on the ground Service affordability for retired citizens is a society-wide issue that will require government planning and intervention to adequately resolve.
Water and wastewater pipe infrastructure nearing end of life	Pipe renewal costs increase significantly over next 30 years. Community ability to pay for these cost increases	Issue well developed in CDC LTP and Infrastructure Strategy. Currently the community has the ability to pay. Use of debt to spread cost impact over a longer period. CDC currently has a conservative low debt position.
Tranche 2 funding is at risk.	The government has signalled additional funding to those Council's opting in and CDC's share is just over \$13M. This would be at risk.	There seems to be no mitigation in this event.

4.3 IMPLICATIONS IF COUNCIL OPTED-IN

Implication	Discussion	Mitigation
Service Delivery Cost	All current multi-regional entity models, analysis and reports show significantly higher costs associated with meeting increased service levels and compliance requirements	There is an assumption based on some evidence that centralisation of services, planning, asset management and compliance activities will provide efficiencies, in addition to higher debt levels, to offset

		projected additional costs. Whilst there is debate about how much this will be, it is evident that it is more affordable than if CDC went alone.
Efficiency gains not realised	The proposed 30-40% efficiency gains may not be realised with the multi-regional entities, leading to further cost increases to achieve new regulations and service levels. The efficiency gains are a core assumption based on UK/Scottish Water experience. This assumption has yet to be fully tested. DIA have ongoing work streams around this. These assumptions are particularly at risk in smaller regional and rural populations such as CDC due to the different land area size and population distribution patterns between Scotland and NZ.	Additional debt capacity available to offset costs Government funding during the transition period is assumed to be in the order of \$1B, however, it is likely to require more. Further DIA analysis to test assumption of UK data-based econometric analysis models that use UK 2003-04 data as a source.
Loss of local decision making	CDC is a very small part – land area, population, and assets of the proposed multi-regional entity. However decision making is decided, CDC will have a very small % of shares, votes, board selection, or perhaps no share at all. This also impacts on Rural Water Schemes that have a voice through Rural Water Scheme Committees.	Strong local advocacy by Council, Rate Payers, ex-Rural Water Scheme Committees, and farming groups / Land Users. Council statements of service intent may be included in proposed multi-regional entity governance structures. This would provide a pathway for local decision input. There is a requirement that the Entity engages with communities and Council's planning and budgeting documents such as the LTP, but it is unknown at this time what form this will take and what influence CDC will have.
Questions Council being a sustainable entity	This assumes that without 3 waters Council will be significantly impacted as an organisation such that it may not	Council's financial position would be stronger as a result of opting in, so the risk is not a financial risk. The Future of

without 3 waters.	be sustainable as an organisation on its own.	Local Government Review is also intended to address issues of sustainability for Councils although what will be the eventual outcome is not known.
Major increase in debt to pay for service level changes	Industry papers indicate a major increase in debt to pay for increased service levels and associated capital works, and to keep the service charges more affordable. This can be as much as 800% compared to CDC's 250% debt limit. The ability of small and rural communities to pay for their share of this debt long term is an issue	NZ Government may release further tranches of funding to facilitate major capital expenditure. This would need to be funded in central government budgets.
Loss of local staff	Centralisation of services and opportunities may lead to loss of local expertise and skills.	Local staff recruitment and retention policies implemented Industry competitive remuneration and conditions Support and engagement agreements / partnerships with external service providers (consultants, contractors) Structured use of internal / external resources to maintain expertise and resource availability Structured succession and staff risk management planning. CDC would still intend to be a competitive employer of choice.
Large bureaucratic entity created	Whilst this is not proposed in the multi-regional entity structure, NZ actual practice with large single purpose authorities has been mixed both in results, delivery, and size/staffing of organisations	Statement of service intent may assist to offset this risk. The economic regulator will check on pricing and it is expected that a consumer advocate such as an Ombudsman will be created.
Larger urban issues dominate new authority	Model design, analysis (WICS) and issues discussion have been around larger urban area requirements and issues. These are expected to continue to dominate, and this may be at the	Statement of service intent and the engagement requirements may assist to offset this risk.

	expense of small urban area and rural water systems.	
Large amount of new sector legislation and regulation expected	Additional RMA, NPS, Climate Change (zero carbon), Water quality regulation, Water economic regulation, Regional planning, environmental protection, climate adaptation, and Te Mana o te Wai adaptation will be required of the 3W sector over the next 10-20 years. A larger multi-regional entity will be able to deploy resources to manage these changes	Significant legislative and regulatory change can be managed by the deployment of additional resources in a multi-regional entity. Pooling of resources in a multi-regional entity may increase efficiency and ability in meeting new requirements.
Local resilience during emergencies	With climate change research and a better understanding of probable seismic events (AF8) there is an increased awareness of probable increases in the number, size and severity of natural events and emergencies over the next 30 years. The ability of a small local authority to effectively respond to a major event may be tested with the loss of one third of our technical staff, and there would be challenges coordinating with contractors who are not contracted to Council.	Good emergency management planning and scenario analysis Community wide resilience planning and implementation Mutual aid agreements with neighbouring authorities, network service providers and the government Insurance cover for events

5 COUNCIL DECISION MAKING AND CONSULTATION

- 5.1 Part 6 of the LGA, sections 76 to 90, provide the requirements for decision making and consultation, including the principles of consultation and information that needs to be provided, the reasons for the proposal, and the reasonably practicable options.
- 5.2 Section 76 requires that in making a significant decision, which a decision on the future management and or ownership of three waters assets will be, councils must comply with the decision-making provisions. This is a 'higher bar' than the "promote compliance with" that applies for ordinary decisions.
- 5.3 Section 77 states that councils must seek to identify all reasonably practicable options and then assess the advantages and disadvantages of each option.

- 5.4 Section 78 requires that in the course of making a decision a Council must consider community views, but section 78(3) explicitly says that consideration of community views does not require consultation, which is reinforced by case law.
- 5.5 Section 79 gives Council discretion to decide how the above Part 6 requirements are met including the extent of analysis done etc. Therefore, while a decision could be challenged, a judicial review is unlikely to be successful unless the decision made by council was manifestly unreasonable, the process was flawed or the decision was beyond its powers (as given in law, ie the council did not act within the law).
- 5.6 However, despite section 79 of the LGA, a decision to transfer the ownership or control of a strategic asset from the council (or to it) must explicitly be provided for in the council's Long-Term Plan (and have been consulted on specifically in its consultation document).
- 5.7 Council's existing LTP and the consultation information and process used to develop it will not suffice to meet this test, as Council did not itself have adequate information on the options and the implications earlier this year when it consulted on the LTP. An LTP amendment and commensurate consultation process on the ownership and governance arrangements and asset transfers proposed would be necessary.
- 5.8 There are also provisions in the LGA that relate to unlawful decisions to sell or dispose of assets, which can be investigated by the Auditor-General (as per sections 43-47 of the Local Government Act 2002).
- 5.9 A decision to opt-out would also be affected by the consultation and decision-making requirements set out in this report, including the need to follow a robust process that could survive a judicial review, as well as make a final decision that was not manifestly unreasonable in the circumstances.
- 5.10 Given the Government's 8 week period of engagement with mana whenua and councils, commitment to explore issues such as council and community influence of service outcomes, integration with other reform proposals, spatial and local planning, request for councils to give feedback on the proposal, identify issues and solutions, and uncertainty around next steps, including whether the reform may become mandatory or legislative change will remove legal barriers to opting in, it would be premature to make a decision to opt out of the reform process and may expose the Council to litigation risk if it did so.
- 5.11 A Government Bill to progress reforms that could address the issues raised above, for example removing the section 130 requirements, has explicitly been raised.
- 5.12 At this stage no decision is required on future delivery arrangements. Based on the analysis in this report, Council should wait until it has further information before consulting on and/or deciding on the Government's proposal.
- 5.13 It is recommended that the Council therefore notes the options canvassed in this report, the analysis of them and the information and decisions that are yet to be made.

5.14 If reform is not made mandatory, to ensure sufficient information is available to meet the moral and legal requirements of Council decision-making, staff would then develop the analysis of options (based on further information from the Government, advice on next steps, and regional discussions) prior to Council decision making and consultation on future water services delivery. Whether this is ultimately required will be dependent on where the Government gets to with the reform process and the decisions it makes after 30 September 2021.

6 INFORMATION THAT THE COUNCIL REQUIRES OR POTENTIAL SOLUTIONS TO OUTSTANDING ISSUES THAT IT WOULD LIKE TO CONVEY TO GOVERNMENT AND LGNZ

6.1 There are still several issues that need to be resolved, including:

- the final boundaries
- protections from privatisation
- consultation with mana whenua and communities
- how will community voice be heard and what influence will local authorities have (and what can the community realistically expect the council to influence particularly if it is not on the regional Representation Group)
- representation from and on behalf of mana whenua
- integration with other local government reform processes
- integration with spatial and local planning processes and growth
- prioritisation of investment
- workforce and capability – we don't have enough of the right people now to deliver three waters and we need to retain our people through the transition
- what will a Government Bill cover and whether the reform will be mandatory
- conditions associated with the Government's package of funding for local government
- transition arrangements, including our own workforce challenges (without transition challenges on top) and due diligence for asset transfers etc.

6.2 Council is invited to discuss whether there are other specific information needs, issues, or solutions that the Council would like staff to convey to the DIA or LGNZ.

7 CONCLUSION

7.1 While there is uncertainty about the future steps in the Government's reform proposal, and current legislative impediments to it, the current eight-week period gives Council the opportunity to understand the information it has received (and will continue to receive) from the RFI and modelling processes.

- 7.2 It also provides an opportunity for Council to understand the implications of the proposal, including the financial, workforce and sustainability impacts for Council and the wider economic, social and cultural implications. It has also and is also providing Council an opportunity to engage in discussions with other councils in Entity D, share information and ask questions and propose solutions to issues it sees to Government and LGNZ.
- 7.3 All this information will be useful to inform future decision making by both Council and Government and consultation and engagement with mana whenua and communities.

8 DECISION MAKING COMPLIANCE STATEMENTS

8.1 SIGNIFICANCE

The future of water services delivery is a significant issue. This report however does not commit the Council to a decision relating to that reform. Instead, it provides initial analysis of the reform proposals for Council's information and highlights the uncertainties around information and next steps. As such the significance of this report is **Not Significant**.

8.2 RISKS / LEGAL AND FINANCIAL IMPLICATIONS

Significant risks, legal responsibility and financial implications have been identified in analysing the reform proposals and understanding the implications for this report. However, there is not a decision required, other than to note those issues and to request further information from Government if Council wishes to, to reduce the risks and implications to Council and its communities.

8.3 TE TIRITI/TREATY OF WAITANGI AND INVOLVEMENT OF MĀORI IN DECISION MAKING CONSIDERATIONS

The issues covered in this paper are important for Māori. The Crown is currently leading the engagement with iwi/Māori, mana whenua. As described earlier Council is engaged with Ngai Tahu over reform Entity proposals only on the basis that reform proceeds and it is better to be prepared. If the reform proposals don't proceed the engagement will still be useful in understanding Council's role with Ngai Tahu in the new legislative and regulatory environment.

8.4 CLIMATE CHANGE / ENVIRONMENTAL IMPACT

Climate considerations (both mitigation and adaptation), resilience and environmental impacts are drivers of the reform process. While there are no specific impacts arising from this report the decisions that occur post September 2021 will have an impact on climate and environmental issues. Some of these impacts have been canvassed in this report as appropriate to the implication identification.

8.5 ENGAGEMENT AND CONSULTATION

Council is not required to consult at this time as provided for in section 8 of this report. Further advice regarding any future consultation requirements will be provided after September 2021. In the interim Council is intending to engage with Rural Water Scheme Committees and their feedback can also inform feedback to Government. In view of the limited window that Council has to provide feedback staff will take Council's instructions on any other feedback or engagement opportunities.

9 REFERENCES

Reference 1: [Three Waters Delivery Reform Programme \(December 2020\)](#)

Reference 2: Morrison Lowe Clutha District Council Impacts Assessment (June 2021)

Reference 3: [Transforming the System For Delivering Three Waters Services Case For Change \(June 2021\)](#)

Reference 4: [Three Waters Review: Release of Second Stage Evidence Base \(May 2021\)](#)

Reference 5: DIA [Three Waters Reform Overview](#)

Reference 6: LGNZ [Three Waters Infographic](#)

Reference 7: [Heads of Agreement Partnering Commitment to Support Three Waters Delivery Service Reform](#)

Reference 8: [Three Waters Reform Support Package Information \(July 2021\)](#)

Reference 9: [Guidance For Councils August and September 2021](#)

Reference 10: Morrison Lowe Clutha District Review of WICS Data (August 2021)

Reference 11: [Farrierswier Three Waters Reform Programme Review \(June 2021\)](#)

Reference 12: [Beca Three Waters Reform Review \(June 2021\)](#)