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Committee Council  
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## Wellington Water – statement of proposal to become a shareholder in a council-controlled organisation

### 1. Purpose

The purpose of this report is to recommend that the Greater Wellington Regional Council (GWRC) adopt a statement of proposal (**Attachment 1**) and summary of information (**Attachment 2**) for consultation in accordance with the special consultative procedure under the Local Government Act 2002.

### 2. Background

Local authorities in the Wellington region (on request by the Mayoral Forum) have been considering ways in which they can collaborate more effectively through shared services. This is part of an overall drive to develop more effective and efficient practices under the Local Government Act 2002.

Water services have been identified as a priority area for consideration due to the nature of the network, and the similar but disaggregated roles of councils in the metropolitan part of the region.

GWRC owns and manages land and infrastructure to supply bulk water to Hutt City Council, Upper Hutt City Council, Porirua City Council and Wellington City Council (the Cities). This land and infrastructure includes water catchment areas, dams, reservoirs, water treatment plants, pumping equipment and pipes. GWRC's role in owning and managing infrastructure to supply bulk water to multiple territorial authorities is unique in New Zealand.

The downstream water infrastructure owned by the Cities is managed on their behalf by a council-controlled organisation called Capacity Infrastructure Service Limited (Capacity). Each of the Cities is a shareholder in Capacity. Capacity contracts separately with each of the Cities to provide infrastructure management services for water supply, wastewater and stormwater.

This paper puts forward a proposal to manage GWRC's bulk water supply assets on a network basis alongside (downstream) water supply, wastewater and stormwater services managed by Capacity. It does so in a way that:

- Retains public ownership of GWRC's bulk water supply infrastructure assets;
- Enables a strategic approach to, and the integrated management of, service delivery for the Wellington region's water supply network infrastructure;
- Enhances public accountability and maintains political oversight in relation to metropolitan Wellington's water assets; and
- Promotes cost-effectiveness over the long term.

### **3. Summary of the Proposal**

In addition to retaining public ownership of bulk water infrastructure assets, there are advantages to managing these infrastructure assets on a network basis alongside water supply, wastewater and stormwater services managed by Capacity. In summary, the proposal is that:

- GWRC retains ownership of its bulk water infrastructure assets;
- GWRC becomes a shareholder in Capacity;
- Capacity is renamed "Wellington Water Limited", trading as "Wellington Water";
- The make-up of the board of directors for Wellington Water is changed from the current Capacity model;
- The board of directors for Wellington Water reports to a new committee of GWRC (the Water Committee) made up of five elected members - one representing each shareholder of Wellington Water;
- Each council retains a direct relationship with the board of directors via service level agreements and funding agreements;
- Staff currently employed by GWRC to manage its bulk water infrastructure assets transfer to Wellington Water;
- Some operational assets (but not infrastructure) transfer to Wellington Water; and
- GWRC contracts Wellington Water to manage its bulk water infrastructure assets.

### **4. Reasons for the proposal**

Water supply is an essential service, vital to our health, quality of life and economic prosperity. Building, maintaining and operating water supply

infrastructure is expensive, so we need to make the most efficient use of our resources.

In the metropolitan part of the region, the supply is shared between GWRC (bulk water) and the four Cities (local distribution). This proposal is an opportunity to align the activities and provide a better service to the community. An improved ability to manage the water supply infrastructure in a strategic and integrated way, as well as the possibility of efficiency gains over the long term, are expected by taking a more coordinated approach.

While GWRC's water supply group has been operating very well in the current environment, the challenges faced in relation to water supply will increasingly require a strategic and integrated approach to managing the network infrastructure as a whole. Population growth may require us to increase our water supply capacity within the foreseeable future. Climate change will also impact on water supply. Increasing our water supply capacity will require capital investment.

The importance of integrated, strategic management of assets and service delivery is likely to increase in line with the scarcity of our water resource. For example, integration is likely to reduce the cost and improve the reach of water conservation measures and campaigns.

GWRC's long-term approach, as stated in its Long-Term Plan 2012-22 (page 72), requires that we:

*... maintain and operate our existing water supply system to the highest standard and to be ready to provide additional sources of supply, when these are needed, to meet our growing population. We will also continue to work with the local authorities we supply and with the community to promote efficient and wise use of water. We will maximise opportunities to work with others and take a strategic approach to enable better long-term planning, increased cost effectiveness and enhanced operational capability. This includes taking the lead in developing a regional approach to the provision of bulk water supply in emergencies to improve resilience.*

The proposals are also in-line with GWRC's stated operational values, which require GWRC to:

- Take a strategic and long-term view. Many of the issues we deal with are complex and span administrative boundaries and electoral timeframes. Taking a strategic and long-term view on planning and decision making ensures we put our efforts in the right place for current and future generations.

- Work towards shared solutions to shared issues. Issues such as freshwater management, land management, biodiversity, regional economic development and transport are shared issues that cannot be resolved by Greater Wellington in isolation. They require a collaborative approach with other key stakeholders, communities and agencies in local and central government.

This proposal is consistent with central government's policy of, and the Wellington Regional Mayoral Forum's commitment to, encouraging more collaboration and shared services between local authorities.

The objectives of the proposal are to manage GWRC's bulk water supply in a way that is optimal in terms of:

- Retaining public ownership of bulk water infrastructure;
- Enabling a strategic approach to, and the integrated management of, service delivery for the Wellington metropolitan water supply network;
- Enhancing public accountability and maintaining political oversight in relation to the management of the Wellington metropolitan water services; and
- Promoting cost-effectiveness over the long term.

## 5. Reasonably practical options

Consideration of this proposal requires the Council to think about all reasonably practical options to achieve GWRC's objectives. The reasonably practical options centre around two considerations - firstly, what is the best entity to manage GWRC's bulk water supply function; and secondly, if the answer is Capacity, what is the best way of structuring GWRC's relationship with Capacity?

The way GWRC funds its bulk water supply infrastructure and services (both capital and operational expenditure) would not change under the identified options. Currently GWRC recovers all of its water services costs by way of charges levied on the local authorities to which it supplies bulk water under the Wellington Regional Water Board Act 1972. The only difference under the options (other than the status quo) is that GWRC would use some of the water services charges it levies to pay for the costs of its contract for services with a council controlled organisation.

### 5.1 Status quo

As described above, the status quo is that the Cities contract with Capacity to manage their water services, whereas GWRC's bulk water supply function is managed in-house. The existing governance structure of Capacity is set out in an attached diagram (**Attachment 3**).

## **5.2 Establish a new council controlled organisation**

GWRC could choose to establish its own council controlled organisation to provide management services for its bulk water assets. The new council controlled organisation could manage the bulk water supply functions under contract to GWRC. This would mean that two separate management entities would be responsible for the management of water services, ie, Capacity and the new council controlled organisation.

## **5.3 Become a shareholder in Capacity and contract with it, but make no other changes**

Under this option GWRC would become a shareholder of Capacity in the same way as the Cities. This would allow GWRC to appoint a director to Capacity's board and participate in the existing shareholders' advisory group. See **Attachment 3**.

## **5.4 Become a shareholder in Wellington Water (Capacity re-named) and contract with it, and establish an oversight committee**

Under this option Council would become a shareholder of Capacity in the same way as the Cities. In addition, its name would become Wellington Water and the membership of the board changed so that all of its directors would be independent. The board would report to a new Water Committee comprising one political representative from each of Wellington Water's shareholders. The Water Committee would be subject to the Local Government Official Information and Meetings Act 1987 and provide a forum for transparent political oversight and community involvement.

A diagram of this proposed new governance structure is at **Attachment 4**.

Consideration was given to the establishment of a new CCO to replace Capacity. PricewaterhouseCoopers considered some of the business aspects of a new council-owned company (NewCo). Its assessment is in **Attachment 5**. Before establishing NewCo, the Cities would, if they wanted to be shareholders, each be required to consult the public, as they would be establishing a new council controlled organisation. Capacity staff would transfer to NewCo and all the existing contracts held by Capacity would be need to be assigned or novated to NewCo. There are a number of costs and risks involved in establishing a new company that could be avoided by retaining Capacity (albeit with a name change). This option was therefore not considered appropriate and is not being presented as one of the four practical options.

## **6. Assessment of options**

The options in this report need to be assessed in accordance with the Local Government Act 2002. This includes:

- Identifying the objective - what do you want to do and why?

- Assessing the options by considering:
  - The benefits and costs of each option in terms of the present and future interests of the district or region;
  - The extent to which community outcomes would be promoted or achieved in an integrated and efficient manner by each option;
  - The impact of each option on the GWRC's capacity to meet present and future needs in relation to its statutory responsibilities;
  - Any other matters which, in the opinion of GWRC, are relevant (such as existing policies).
- Giving consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.

The benefits and disadvantages/costs of each option have also been assessed against the following decision criteria which fit with GWRC's overall strategic direction:

- Ability to deliver high quality water services;
- Ability to enable more effective network service delivery via integrated services;
- Ability to enable more effective and integrated democratic decision-making;
- Ability to achieve step change cost efficiencies; and
- Ability to provide environmental protection and alignment with the ecosystem services approach to managing environmental decisions.

## **6.1 Assessment of the status quo**

The status quo option has no transactional/establishment costs or uncertainty associated with change. However it is considered sub-optimal for implementing a strategic and long-term integrated approach to water management services and will not realise any long term cost efficiencies from scaling up management of water infrastructure and services. The status quo also provides the Cities with limited input into planning that will influence the future cost of GWRC's bulk water supply.

## **6.2 Establish a new council controlled organisation**

This option is also unlikely to create new opportunities for improving the existing approach to strategic planning and integrated management, or for realising long term cost efficiencies. Given the costs, it is unlikely that the Cities would unwind Capacity to contract with an entity established by GWRC and, as a result, network integration is unlikely to be achieved. If a new entity was limited to providing services to GWRC, it would yield few benefits compared to the status quo of keeping GWRC's water supply group in-house.

### **6.3 Become a shareholder in Capacity and contract with it, but make no other changes**

This is the easiest change option to implement. GWRC would (with the consent of the Cities) become a shareholder in Capacity; appoint a director to the board; become a party to the existing Shareholders' Agreement with the right to have a representative appointed to the existing Shareholders' Advisory Group; and enter into a Service Level Agreement with Capacity. Staff from GWRC's water supply group would transfer to Capacity.

This option would allow GWRC to participate, in its role as a shareholder, in matters directly related to the management and governance of Capacity, such as approval of the Statement of Intent. However, without further amendment to the Shareholders' Agreement and the scope of the Shareholders' Advisory Group, it would not grant to GWRC or the Cities any overarching governance role with regard to the region's water assets, nor would it enhance the public accountability of Capacity.

To gain some of the governance oversight desired, the Shareholders' Agreement could be amended in various ways, but it is considered that the overarching governance aims and efficiencies would be better met by selecting an alternative option.

### **6.4 Become a shareholder in Wellington Water (Capacity re-named) and contract with it, and establish an oversight committee**

As this is the option recommended by this report, it is described in greater detail in the section below. This option would enable a more integrated and strategic approach to water management within the metropolitan part of the region. It would enhance democratic decision making by providing a forum for transparent political oversight of, and community involvement in, Wellington Water's governance arrangements, which includes water supply, stormwater and wastewater. It may also enable some long term cost efficiencies to be achieved resulting from scaling up the management of infrastructure under a single management company. And, like the Capacity option, it will allow for alignment of GWRC and the Cities' environmental objectives through the single management entity.

As with other change options, there will be some transactional/ establishment costs and uncertainty associated with the transfer of employees from GWRC's water supply group to Wellington Water. Under this option, each council retains a direct relationship with the board of directors via service level agreements and funding agreements.

## **7. Detailed description of the recommended option**

### **7.1 Becoming a shareholder**

There are currently two classes of shares in Capacity - equally held voting (Class A) shares and shares which reflect each shareholder's economic stake in the company (Class B). GWRC would be issued Class A shares which carried equal voting rights and would be expected to contribute financially by way of the Class B shares. If it were considered that Wellington Water has sufficient working capital, GWRC could purchase some of the existing Class B shares

from the Cities. However, it is more likely that further Class B shares would be issued to, and paid for by, GWRC. Depending on value, payment could occur through the transfer of operational assets.

As was done when Upper Hutt City Council and Porirua City Council became shareholders in Capacity, the appropriate proportion of Class B shares to be held by GWRC would need to be considered in light of the relative size of GWRC, and the extent of its water assets requiring management.

The company's constitution will need to be amended if GWRC becomes a shareholder, including changes to clause 3 regarding details of the shareholdings and clause 11 regarding the appointment of directors.

The existing Shareholders' Agreement will also need to be amended or (less likely) terminated entirely.

If the current arrangement of appointing directors to Wellington Water's board were followed when GWRC became a shareholder, the board could have five directors appointed directly by the participating councils, plus five independent directors appointed by the shareholders collectively. A board of ten directors would be unwieldy and, partly for this reason, it is recommended that a new framework be adopted.

A maximum of six directors would be ideal for Wellington Water. It is also recommended that each of these directors be independent. This would avoid the potential for conflicts of interest between the roles of elected member and company director, as well as improve the transparency of the political governance of Wellington Water and allow for a board comprised entirely of specialist directors with skills targeted to Wellington Water's business. The members of the Water Committee (under delegation from their respective local authority) would together appoint up to six directors.

As a shareholder in Wellington Water, GWRC would have input to the company's Statement of Intent. This provides a say in the strategic direction of the company and the approval of overall budgets for its administration and management. The integration of bulk water and downstream management services would foster broad consideration of strategic matters relevant to the water supply network.

Among other things, the Statement of Intent sets out the capital projects to be delivered by the company. These capital projects are, however, set by the individual entities contracting with Wellington Water (e.g. pursuant to Service Level Agreements) and are not dictated by the shareholding local authorities as a group. If GWRC wished to jointly fund a capital project, and this were agreed by the Cities, Wellington Water could manage this joint capital project either under the existing Service Level Agreements or pursuant to a bespoke contract. Ownership of the capital project would be retained by GWRC subject to any joint funding arrangements agreed with the Cities.



At a practical level, if GWRC considered that a new bulk water supply asset was needed (such as a reservoir), that decision would remain to be made by GWRC. As is currently the case, it would be up to GWRC to negotiate with other parties regarding issues such as cost sharing, access to suitable land and long term ownership. The other shareholders could not use GWRC's involvement with Wellington Water or the Statement of Intent process to prevent such a project from going ahead. That said, the governance structure recommended by this report may help to promote agreement about, and cost sharing in relation to, regional water supply infrastructure.

Renaming Capacity as Wellington Water would reflect:

- The integration of the management of the metropolitan region's water, wastewater and stormwater services;
- The fact that the nature of Capacity had changed; and
- A commitment to public ownership and management of the metropolitan region's water, wastewater and stormwater services.

## **7.2 Entering into a Service Level Agreement with Wellington Water**

Wellington Water would manage GWRC's bulk water supply assets in accordance with a Service Level Agreement to be negotiated between the parties. The Service Level Agreements in place between Capacity and each of the Cities are on identical terms, save for certain schedules that are specific to each local authority. It is anticipated that most of the terms of these existing agreements would be included in GWRC's Service Level Agreement with Wellington Water, but a degree of tailoring is likely to be required.

Currently, Capacity manages both operational expenditure and capital projects on behalf of the Cities, although certain larger projects are kept outside of these arrangements. If GWRC becomes a shareholder of Wellington Water, it would similarly be able to elect, pursuant to its Service Level Agreement, which capital projects would be managed by Wellington Water. These capital projects would be recorded in the company's Statement of Intent but would be managed in accordance with the terms of the Service Level Agreement.

A Service Level Agreement between Wellington Water and GWRC would need to be in place prior to the company taking on any management services. This could coincide with the date on which GWRC becomes a shareholder of Wellington Water. However, depending on the timing of issues such as transferring GWRC employees, transitional arrangements may be needed.

The day-to-day operational aspects of these Service Level Agreements would be between Wellington Water and the individual shareholding local authorities. Any change to the overarching governance structure should not affect this.

### **7.3 Ongoing asset management**

GWRC would retain ownership of its bulk water assets and would need to ensure it maintains sufficient access to resources and expertise to oversee the management of those assets by Wellington Water, including by providing input into Wellington Water's Statement of Intent and the programme of works to be carried out by Wellington Water on GWRC's behalf. This would include, for example, ensuring GWRC continues to meet its obligations under its Long-Term Plan and other legal requirements such those under health and safety legislation.

### **7.4 Relationship with iwi**

Issues of interest to Maori will continue to be addressed through existing Maori representation arrangements on GWRC's Strategy and Policy Committee. Through these arrangements, Maori values would help to inform the development of GWRC's service level agreement with Wellington Water and any decision GWRC makes in relation to its infrastructure (e.g. investigating a new water source). Service level agreements are anticipated to include a requirement for Wellington Water to engage proactively with iwi on related matters.

### **7.5 Committee Governance options**

Two committee options have been considered to provide a governance role.

#### **7.5.1 Establish a joint committee**

Under this option, Wellington Water would be established as a joint committee of the five local authority shareholders. This governance option is similar to the region's Civil Defence and Emergency Management Group which is a joint committee, albeit that committee is established by legislation which includes statutory membership and powers.

The joint Water Committee would be serviced by GWRC and it would elect its own chairperson and deputy chairperson. The extent of powers delegated to the joint committee would determine how it operates. For example, the joint committee could be directly delegated authority to make decisions regarding the management of Wellington Water in its own right (in other words, exercise the shareholders' power on their behalf).

Each shareholding local authority would retain individual decision making power in relation to specific projects funded through its Service Level Agreement.

There are some complexities to the setting up and on-going management of joint committees. To set up a joint committee, each of the Cities and GWRC would need to formally approve the terms of reference and standing orders. Any further changes (for example, changes to the terms of reference of the committee) would need to be formally approved by each council.

### 7.5.2 Establish a committee of GWRC (preferred option)

This option would have oversight of Wellington Water provided by a committee of GWRC. The Water Committee would be established by GWRC, with membership including representatives from the five local authority shareholders of Wellington Water. The Water Committee would be serviced by, and subject to, the standing orders of GWRC. The Water Committee would be responsible for electing its own chairperson and deputy chairperson. Each local authority would retain the ability to make individual decisions in relation to Wellington Water. Importantly, each local authority would retain, through its Service Level Agreement, control over what services Wellington Water provided to it and at what cost.

The existing Shareholders' Agreement would be replaced with a limited form of Shareholders' Agreement and the committee would provide more direct political oversight of Wellington Water. Some water services issues are of direct concern to the community and there are good reasons for debating them on a regional basis. Because the Water Committee's meetings would be in public, it would also provide a venue for members of the public to express an opinion.

This governance option is similar to the governance arrangements for the Wellington Regional Strategy and Regional Transport Committees - which have proven track records as successful and workable models.

While the Water Committee would not hold any delegated authority as a decision-making entity in its own right, GWRC and the Cities would agree to delegate some of their shareholder powers to their appointed member. This would allow the Water Committee to function and make decisions as a meeting of Wellington Water's shareholders.

At a minimum, each shareholder's power to comment on Wellington Water's draft Statement of Intent would be delegated to its representative on the Water Committee. This would allow the Water Committee to provide comments to Wellington Water in a collective and 'joined-up' way, in an environment that allows for public input/community views. Subject to discussion and agreement with the Cities, it is likely that each shareholder's power to approve the final Statement of Intent or seek a resolution to require the board of Wellington Water to modify its Statement of Intent would also be delegated to its representative on the Water Committee.

## 8. **Employment and resource issues**

There are a number of employment issues to be considered prior to transferring GWRC's water supply functions to a council controlled organisation. This section of this report considers the scenario of staff from GWRC's existing water supply group being transferred to Wellington Water (which would be their new employer), and the transfer provisions of Part 6A of the Employment Relations Act 2000 that would apply.

### **8.1 Vulnerable employees**

There are specific employees who have special statutory protections under the Employment Relations Act 2000. These employees include those who provide cleaning services in the public service or local government sector. There is one cleaner employed in the water supply group who is based at the Wainuiomata Water Treatment Plant.

### **8.2 Other employees**

Other employees, apart from the cleaner, are covered by the employee protection provisions of the Employment Relations Act 2000. Under the Act, all employment agreements must contain an employee protection provision, which is set out in clause 15(1) of GWRC's Collective Employment Agreement.

### **8.3 Employment Relations Act 2000 provision**

The Act states that the employee protection provisions must include:

- A process that GWRC must follow in negotiating with the new employer (i.e. Wellington Water) about the proposed restructuring to the extent that it relates to affected employees; and
- The matters relating to the affected employees' employment that GWRC will negotiate with the new employer, including whether the affected employees will transfer to the new employer on the same terms and conditions of employment; and
- The process to be followed at the time of the restructuring to determine what entitlements, if any, are available for employees who do not transfer to the new employer.

If GWRC arranges for an affected employee to transfer to the new employer in relation to a restructuring, that affected employee may choose whether or not to transfer to the new employer.

### **8.4 Collective Employment Agreement / Individual Employment Agreement provision**

GWRC's contractual obligations in relation to the above statutory requirement (as set out in the Collective Employment Agreement) are as follows:

- Where practical, affected employees must be consulted about any proposal for transfer to Wellington Water before a final decision is made.
- If proceeding with the proposal, GWRC must negotiate with Wellington Water to agree the basis upon which affected employees will be offered the same or similar terms and conditions of employment and recognise service as continuous. Affected employees must be advised of timeframes for such negotiation, including the proposed timeframes for the acceptance of any offer of employment or of any application and interview process, as soon as possible.

- GWRC is not required to pay redundancy if Wellington Water:
  - Offers the affected employees' employment; and
  - Agrees to treat the employee's existing service with GWRC as continuous service; and
  - Offers employment conditions the same as, or no less favourable than the employee's current conditions of employment, including superannuation; and
  - Offers employment in a similar capacity to that which the employee was employed with GWRC.
- If Wellington Water offers employment to an employee on terms and conditions that overall are less favourable and the employee accepts the offer, GWRC must pay compensation to the employee on the basis of one week's base salary payment for each complete year of current continuous service up to a maximum of 20 years.

Under GWRC's contractual provisions, there is an obligation to meet with the unions prior to any "contracting out" to discuss the rights and obligations of employees and to reach an agreement on how to protect staff from being disadvantaged in the case of any contracting out of the business. Although this clause specifically refers to "contracting out" rather than "transferring", it would be prudent to involve the unions at an early stage to discuss how GWRC would protect staff from being disadvantaged.

## **9. Community views**

If further consideration of this proposal proceeds, consultation will take place using the special consultative procedure. This will help ascertain community views so that consideration can be given to them. As noted in part 8 of this report, GWRC will also need to meet the employment obligations it owes to its staff.

## **10. Risks**

Legal advice in the form of a report has been obtained from DLA Phillips Fox and this has previously been provided to Councillors.

There is a considerable amount of detail to be resolved to put the preferred option in place, most of which will require agreement with the Cities.

Some of the other risks to manage as part of the process are discussed below.

### **10.1.1 Continuity of supply**

Continuity of a quality water supply is paramount. Transferring staff from GWRC's water supply group will ensure that systems and knowledge transfer as well, so the risk of reduced performance over a short period is minimal. Some changes in structure may be desirable when the combined resources are considered, but these can be made in small increments within Wellington Water at a later date.

GWRC will retain the ultimate responsibility to ensure the community is provided with quality water at the wholesale level. Delivery will however rest with another organisation. Risks can be lessened by the terms of GWRC's Service Level Agreement, ensuring competent directors are appointed to Wellington Water, having an appropriate Statement of Intent and regular comprehensive reporting. GWRC will still need to allocate the funding to ensure its objectives can be met.

#### 10.1.2 Quality independent advice to governance body

Following the transfer of staff from the water supply group to Wellington Water, GWRC will have limited in-house water supply resource at a technical level to advise on Wellington Water's performance and the long term management of the capital assets owned by GWRC. While Wellington Water will manage the bulk water assets and be under contractual obligation to ensure such services are carried out according to legal requirements, GWRC will retain residual responsibilities, including oversight in relation to health and safety.

#### 10.1.3 Protection of GWRC assets

Governance of the bulk water supply system has traditionally been through a committee of GWRC with the occasional external appointee. Governance at a political level will in future be shared with the Cities. Careful drafting of the Water Committee's terms of reference and the revised Shareholders' Agreement will ensure GWRC can protect its interests, should the need arise. No doubt each of the Cities will want similar provisions. The risks in this area are seen as low. Water supply and waste water systems are at the forefront of public health.

The nature of GWRC's water supply functions and its part of the overall network infrastructure is different from that of the Cities. Any work Wellington Water does for GWRC will therefore be 'new' to some extent; as will the requirements of the Service Level Agreement between GWRC and Water Wellington. Any risks associated with this can be mitigated to some extent by transferring staff from GWRC's water supply group and careful negotiation and drafting of the Service Level Agreement.

#### 10.1.4 Effective oversight and management of existing contracts

The extent to which existing water related works or services contracts held by GWRC can or should be assigned or novated to Wellington Water will need to be considered on a case by case basis. In some instances it may be appropriate for Wellington Water to act as GWRC's agent in those existing arrangements. There is precedent for this in Wellington Water's arrangements with the Cities and, as GWRC staff will be transferring to Wellington Water, there should be a degree of continuity in terms of personnel managing these contracts.

## 11. Financial

This proposal is intended to provide long term financial benefits by the integration of management of the three waters across the metropolitan part of the region, aligning service delivery and asset planning, and promoting cost effectiveness. The total assets of the three waters owned by the four Cities and GWRC amount to over \$2.5 billion with annual operating expenditure over \$105 million. With a significant investment in this critical infrastructure, long term planning and coordination of capital investments is vital.

GWRC and Capacity will incur a range of costs to implement this proposal and (with the Cities) to manage Wellington Water into the future. Offsetting the implementation costs will be long term gains expected to be achieved by operational efficiencies and integrated management of network infrastructure planning.

Estimates of costs that will be incurred are provided below. These costs are preliminary estimates and will be firmed up as the proposal is planned in greater detail.

- Project costs incurred during the development of this proposal which include the costs of legal advice from DLA Phillips Fox and the report prepared by PricewaterhouseCoopers. These costs will be allocated to the GWRC water group and should amount to less than \$100,000.
- Implementation costs which will include transition and first year costs. Both GWRC and Capacity will incur costs to implement the proposed governance changes, including the establishment of the new Water Committee and the other changes proposed to the constitution and the shareholders agreement. There will also be costs associated with the transfer of the GWRC employees, establishing the GWRC service level agreement and the transfer of operational assets to Capacity. Wellington Water is also expected to incur costs in the implementation of new management systems and to rebrand as Wellington Water.
- Capacity, currently have four shareholders with a total of 400 Class B shares valued at \$2 each share. GWRC will be required to invest to purchase an appropriate number of Class B shares. The number of shares and cost will be established prior to the final Council decision. We expect the operational assets required by GWRC to transfer to Wellington Water would, at least partially, fund the cost of the Class B Shares.
- GWRC's ongoing costs will include the cost of administering the new Water Committee, supporting GWRC's elected member on the Water Committee and the cost of monitoring Wellington Water's performance against the Statement of Intent and the service level agreement. This will require some resourcing, most of which will be managed within current staff resources.

All costs allocated to the GWRC water group will be passed on via the water levy to the four Cities. The GWRC water group currently includes in its operating costs, allocated overheads from GWRC Corporate. These costs will need to be reviewed in light of the services provided.

## **12. Consultation**

The Cities have been consulted during the formulation of this proposal<sup>1</sup> and have had the opportunity to formally consider a draft Statement of Proposal.

Resolutions from each City, agreeing to the proposal in principle, are set out in **Attachment 6**.

Final agreements by each of the Cities will need to be negotiated if GWRC decides to proceed. A final proposal will then be put to each council for formal endorsement.

This proposal will also require communication with a range of different stakeholders. The following is a brief outline.

### **12.1 GWRC's staff**

Communications to and consultation with staff will not only keep them informed of the process but also ensure the legislative requirements are met. GWRC management met with staff in the water supply group prior to Christmas to advise them of this proposal and any potential implications in relation to their employment. Discussion will be on-going.

### **12.2 Capacity**

Our understanding is that Capacity staff were similarly informed of the proposal prior to Christmas. Discussion will be on-going.

### **12.3 Public**

Although it is proposed that the public be consulted concurrently with GWRC's Annual Plan process, it is expected that initial messages will be well conveyed before the plan is published.

### **12.4 Iwi**

As part of GWRC's partnership obligations, tangata whenua iwi will be consulted. Direct discussions will be held with Ngati Toa Rangatira and the Port Nicolson Block Settlement Trust.

## **13. The decision-making process and significance**

The subject matter of this report is part of a decision-making process that will lead to the Council making a decision of medium significance within the meaning of the Local Government Act 2002. The decision-making process is explicitly prescribed for by section 56 of the Local Government Act 2002

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<sup>1</sup> Note: this statement has been made ahead of the Cities considering this draft proposal. Once feedback has been received from the Cities the statement will be reviewed



requiring the use of the special consultative procedure before a local authority may become a shareholder in a council controlled organisation.

Section 97 of the Local Government Act 2002 does not apply to this proposal as it will not "alter significantly the intended level of service provision" for bulk water supply, and nor will it "transfer the ownership or control" of GWRC's bulk water supply assets to Capacity. As a consequence, the proposal will not require GWRC's current Long-Term Plan 2012-22 to be amended. However, because the proposal includes GWRC becoming a shareholder in a CCO, s 56 of the Local Government Act 2002 requires it to be adopted in accordance with the special consultative procedure.

Officers have also obtained advice that, aside from the process/decision-making requirements under the Local Government Act 2002, there are no legislative impediments to the proposed arrangement (including under the Wellington Regional Water Board Act 1972).

The proposed decision-making process is that:

- The four Cities will confirm their support in principle for this proposal.
- GWRC consider and adopt a statement of proposal (**Attachment 1**) and summary of information (**Attachment 2**) for consultation.
- Officers from GWRC and the Cities commence negotiating the details of a Water Committee and changes to the shareholders' agreement and constitution of Wellington Water. GWRC officers would commence negotiating a Service Level Agreement with Wellington Water.
- GWRC consult on the proposal using the special consultative procedure.
- Final approval by the four Cities
- GWRC consider submissions and make a final decision.
- GWRC execute the documents required to implement any decision that it makes.

## **14. Next steps**

If GWRC adopts the statement of proposal the special consultative procedure will commence in tandem with GWRC's Annual Plan 2014/15 consultative process. At the same time as consultation is undertaken, a number of documents will need to be developed and agreed with various parties, including:

- Changes to the company constitution for Wellington Water
- A new, or amended, shareholders agreement
- A new service level agreement for GWRC

- Terms of reference for the new water committee
- Proposed delegations to elected members appointed to the water committee
- Schedule of assets and services contracts to be transferred from GWRC
- Process and arrangements for the transfer of staff from GWRC

The start date of the proposed operating model will be determined following completion of the above agreements, the outcome of public consultation, and the development of satisfactory staff transfer arrangements.

## 15. Recommendations

*That the Council:*

1. ***Receives the report.***
2. ***Notes the content of the report.***
3. ***Notes the in principle support of Upper Hutt City Council, Hutt City Council, Wellington City Council and Porirua City Council for the statement of proposal.***
4. ***Adopts the statement of proposal (Attachment 1) and summary of information (Attachment 2) for the purpose of using the special consultative procedure.***
5. ***Delegates to the Chair the authority to make minor editorial changes to the statement of proposal and summary of information before they are published.***

Report prepared by:

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Chief Executive