

Management Case

The management case sets out overall transition management and project governance arrangements for any change, high-level timing and future decision-making requirements.

Summary of the management case

This report identifies that there are benefits in changing the model of service delivery of three waters in Hawke's Bay to an asset owning CCO. However, in doing so it also highlights that identifying the benefits of change is only the first step in the process. Consultation and engagement with the councils, staff and communities is a feature of the change process.

Before a local authority may establish or become a shareholder in a council-controlled organisation, the local authority must undertake consultation in accordance with section 82 of the Local Government Act 2002.

A consultation may be undertaken as part of a long-term plan, however it is the intention of the Councils, should a decision to proceed to consultation be made, that the 2021-31 LTP process be completed before a regional consultation on the formation of a water CCO take place. This is due to the significance of the change and an intent to undertake a regional consultation process.

This means that there will be a considerable gap between the decision to consult (expected in September 2020) and the regional consultation process (expected second half of 2021.)

Some matters that can be determined prior to undertaking consultation should the councils choose to proceed, include:

- Better understanding of Councils' role as an owner and how does that differ from now? This report identifies that documents such as the statement of intent, shareholders agreement, statement of expectations and constitution will be developed to enshrine how and what the CCO does. The Councils will need to see these to understand how they address the concerns raised about their role, impacts on levels of service, community engagement, accountability and impacts on staff.
- Māori and councils will need to enter into a values-based co-design process. This is a key next step and requires early engagement with Māori. The initial focus should be on the process to be used.
- What are each council's and communities' broader priorities and how does the creation of a CCO and the timing of that fit within those? Covid-19 has demonstrated how quickly the needs and priorities of communities can change.
- What would the actual financial impact be on properties connected to one or more of the three waters systems and on those that are not. This report considers the overall regional benefits from change and how these flow to councils by considering the average three waters residential ratepayer, identifies a path to regionalised three water charges and identifies the stranded costs a council will be left with. These costs will need to be smoothed and translated to the actual cost impacts for groups of ratepayers in each council area for meaningful consultation.
- The extent to which the Government is able to support the formation of an asset owning CCO with legislative change. In our view, there is clear evidence presented in this report that the preferred model is the asset owning model. However, unless these legislative changes are made it may be necessary to consider a staged approach to change. The first step would be the formation of a management CCO, then following the appropriate changes to legislation there would be a second transition to an asset owning CCO. This is not the preferred approach.
- The extent to which the Government is able to support the formation of an asset owning CCO.

This section breaks the process for change into two stages. The vast majority of the steps in both stage 1 and 2 are common across both the management CCO option and the asset owning option.

- Stage 1 Consultation and engagement on options
- Stage 2 Transition to a CCO

Stage	Timeframe	Estimated costs
Stage 1 Consultation and engagement on options	18 months	\$2M - \$2.4M
Stage 2 Transition to a CCO	6 - 12 months	\$2.4M of operational costs \$3.5M of capital costs <i>(\$3.5M in ongoing operational costs in the CCO support the transition)</i>

Matters requiring resolution by changes to the Local Government Act 2002

Councils are governed by the Local Government Act (and other legislation) including provisions that dictate the formation and operation of CCOs. There are however a number of provisions within the Local Government Act that enable the effective delivery of three waters services that would not directly apply to a CCO. Key provisions include those that relate to development contributions, taxation, acquisition and disposal of land and liability for damage to the network.

The Local Government Act 2002 Amendment Bill (No 2) was intended to address these and other issues relating to infrastructure CCOs as well as other changes to the Local Government Act. Many of these aspects were removed from the bill before it was passed but some aspects of the changes introduced to the Local Government Act are directly relevant for the purposes of this study and have been incorporated.

- Shareholding councils can now prepare statements of expectation which specify how the CCO is to conduct its relationship with the shareholding councils, its communities, iwi, hapū and other Māori organisations and require the CCO to act consistently with statutory requirements of the Councils and any agreements with third parties (including Māori). We note that it had always been envisaged by the Councils that statutory obligations, including Treaty of Waitangi obligations, would be imposed on any regional water CCO. However, the ability to specify how a relationship is to be conducted allows the councils a greater level of control than previously.
- A requirement that local authorities, when identifying the skills, knowledge and experience required of directors of CCOs, specifically consider whether knowledge of tikanga Māori may be relevant to the governance of the CCO. Even at this first stage of the review, it is clear that this would be relevant to appointments made to any regional water CCO in Hawke’s Bay.
- CCOs must now take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna and other taonga before making decisions that may significantly affect land or a body of water. There is a lot of alignment between this new statutory requirement and the principles developed through engagement with the Māori committees about what was required from a three waters service delivery model. It is interesting that this requirement and the requirement to consider whether knowledge of tikanga is required are in addition to the statutory obligations that sit on councils and can be passed through to CCOs.
- The statement of intent of a CCO that provides three waters services (as is proposed in this report) must now state any performance measures specific in rules made under the powers of the Local Government Act and the performance target/s of the CCO for each rule.

While these changes are a welcome strengthening of aspects of the relationship between councils and their CCOs there are other aspects that were in the Amendment Bill (No 2) that were not proceeded with along with other amendments to the Local Government Act necessary to give a regional water CCO the same powers, duties, rights and liabilities as a Council in relation to three waters service delivery. There have been some indications that if Hawke's Bay were to form a regional water CCO these aspects could form part of a new bill.

In summary those key provisions should

- allow the regional water CCO to prepare policies then set and charge development contributions. Included within the proposed amendments are protections to ensure that there can be no duplication of charges by a council and a CCO, obligations for how the policy can be developed and provision to transfer previously collected development contributions across to a newly formed CCO
- treat a regional water CCO the same as a Council for income tax purposes, provided they meet certain conditions i.e. wholly owned by local authorities and performing core local government services
- include a regional water CCO as one of the bodies that can exercise powers under the Public Works Act to compulsorily acquire land. Equally it would impose the same obligations on a regional water CCO as a council if disposing of land that was compulsorily acquired
- provide a regional water CCO with the same protections as a council from wilful or negligent damage to the networks and obtain the same liability from anyone who does damage to the network.

We also note that there are provisions of the Amendment Bill (No2) which were not passed into legislation that we have used as the basis of the regional water CCO as in our view they are best practice for joint CCOs. Specifically, they are:

- the formation of a joint committee to provide oversight of the CCO
- development of a shareholders' agreement that establishes the basis of the partnership between the shareholding councils and Māori.

It is worth highlighting that Part 5 of the Local Government (Auckland Council) Act 2009 appears to apply a broader range of Council powers, rights, duties and liabilities to Watercare than what the amendment bill proposed to do. In our view any future change in legislation should provide a regional water CCO, whether in Hawkes's Bay or anywhere in the country, with the same powers, rights, duties and liabilities as Watercare.

Option to transition from one model to the next

In our view there is clear evidence presented in this report that the preferred model is the asset owning model. A management CCO only addresses part of the challenges. In order to address the affordability issue the management option would need to be tied to a regional funding approach. However, as highlighted earlier, we believe that this would create an overly complicated financial structure involving the four district councils, the Regional Council and the CCO in a system where accountability, responsibility and funding are spread across all five organisations all the time. This contrasts with the asset owning model which would achieve the same outcome with only one organisation being responsible.

There are however, as noted in this section, particular aspects of legislation which need to be changed for the asset owning model to be effective. Unless the government can move at the same speed as the Councils with making such change then it may be necessary to consider a staged approach to change. The first step would be the formation of a management CCO then, following the appropriate changes to legislation, there would be a second transition to an asset owning CCO.

This would allow some benefits of regionalisation to be achieved through the management CCO being established. It would need the establishment of an agreed pathway to move to the asset owning CCO so that the second step in the process would take place as soon as the enabling legislation is passed.

Emergency repair of essential infrastructure

Following an emergency, subject to Cabinet approval, the Government funds 60 percent of eligible costs (above the local authority's threshold) to rebuild or repair damaged essential infrastructure, river management systems and community assets in accordance with Section 33 of the Guide to the National CDEM Plan.

Essential infrastructure assets include sewerage, water supply, storm water, electrical and gas facilities and other structures such as retaining walls and tunnels upon which essential services depend. To be eligible for the 60 percent government contribution, rebuild or repair work, the asset must be local authority-owned and damaged as the result of an emergency.

We note that 60 percent is under review. However, regardless of the outcome of that, and prior to formation, we would expect the Government to confirm that a regional water CCO and its assets would come within the definition of local authority owned, allowing a Hawke's Bay regional water CCO to be treated as if it were the council in an emergency.

Process for change

Stage 1 Consultation and engagement on options

Stage 1 covers the period between now and any decision by the Councils to proceed with the formation of a CCO.

1. Create joint project control group (or similar) to guide the future work with appropriate representation from across the Councils to which the Councils' project manager would report
 - a. Key council staff
 - b. Councillor representation
 - c. Independent chair
 - d. Māori representation.
2. Develop workstreams, appoint workstream leads and working groups which would be responsible for key aspects of the process
 - a. Overall project management (manages workstream leads, project timeframe and budget)
 - b. Finance and assets
 - c. People (including staff engagement and all employment related matters)
 - d. Māori Responsiveness Plan
 - e. Governance (including model design, shareholders matters)
 - f. Communications and engagement (including internal, external and with Councils, staff and communities)

Workstream leads would be responsible for developing project plans that cover Stage 1 with an emphasis on only doing the work required in Stage 1 to get to the point of

- providing for informed decision making by Councils
- having informed consultation with the community
- providing clear communication for all staff.

Some of the key steps for each workstream are set out below.

3. Finance and Assets

- a. Undertake common
 - i. asset valuation
 - ii. condition assessments
- b. Review stranded costs and identify any opportunities to reduce or adjust
- c. Consider each council's financial strategies and map out high-level separation of reserves, working capital and debt
- d. Consider how to align council transport services and stormwater where managed by separate water CCOs
- e. Outline how regional prioritisation of growth planning and three waters delivery could recognise local priorities
- f. Consider whether Hawke's Bay Regional Council drainage and flood protection assets should be within scope of the CCO
- g. Seek tax advice as required and adjust the structures as required.

4. People

A comprehensive programme of work would be undertaken in relation to employment processes and requirements. This would include engaging with staff and unions, outlining the intended process and timelines, and developing a comprehensive consultation process. Formal consultation with staff would take place in stage 2 and only if the Council or Councils decide to form a CCO.

- a. Review implications for staff
- b. Further develop draft functional structure
- c. Further develop draft organisational design principles
- d. Engagement with unions
- e. Engagement with potentially affected staff
- f. Decision on whether City Services transfers to the CCO or stays with Napier if a CCO is formed
- g. Develop change management processes and plans.

5. Māori Responsiveness Plan

- a. Develop *Māori* responsiveness plan
- b. Develop co-design approach and protocols
- c. Develop Cultural Performance Indicators (CPIs) to guide Key Performance Indicators (KPIs)
- d. Develop Māori engagement strategy
- e. Develop cultural excellence reporting mechanism.

6. Co governance

- a. Work with government on amendments to the Local Government Act
- b. Develop co-design approach and protocols.

- c. Develop drafts of key documents
 - i. Shareholders agreement
 - ii. Statement of intent
 - iii. Statement of expectations
 - iv. Constitution.
7. Develop an initial statement of proposal for formation of a CCO for the initial approvals of Councils.
8. Communications and engagement
 - a. Develop communications strategy
 - b. Develop key messages
 - c. Ongoing engagement to ensure that both progress and delays are understood
 - d. Develop final proposal
 - e. Jointly undertake public consultation.
9. Combined reporting to each council on results of public consultation
10. Each council approves the formation of CCO.

Timing for stage 1

An outline program is set out below that would see the Councils undertake a stand-alone consultation exercise for the formation of a three waters CCO. This was the approach used in the Waikato (unsuccessfully) and with South Wairarapa District Council (successfully).

This timetable is based on our understanding that should a decision be made to consult with the community, the Councils will complete the process of consultation and adoption of the 2021-31 LTPs before embarking on a consultation process for formation of a three waters CCO.

Actions	Provisional timing
Communications <ul style="list-style-type: none"> - Initial key messages for councils, staff and communities based on process 	June 20 – September 20
Joint working group <ul style="list-style-type: none"> - Established to oversee process and, if agreed, implementation 	October 20 – Early 2022
Analysis of key issues <ul style="list-style-type: none"> - Model, structure - roles and responsibilities - Develop co-design approach and implement - Draft statement of intent, state of expectations, constitution and shareholders agreements - Ongoing engagement and informing councils and staff - Ongoing process to inform communities - Update analysis as any new data/information is available - Legal advice (structure and employment) - Tax advice 	October 20 – June 21
Community consultation process for formation of CCO <ul style="list-style-type: none"> - Prepare consultation documents including statement of proposal - Community meetings, media, advertising, communications, events etc (i.e. reaching communities) - Receive, analyse and report 	October 20 – May 21 July 21 – Dec 21 Early 2022

Costs of change for stage 1

It is estimated that the costs of completing are in the order of \$1.6 – 2.0 million depending on how the project is resourced.

The estimated costs include allowance for council staff time including incurring costs for back-filling positions if key council staff are unable to perform their usual role due to being focussed on this process, and external costs for other aspects including communications, consultants, tax and legal advice, supporting Māori involvement in a co-design process and an independent chair of the working group.

In January 2020, the Government announced funding of \$1.55M in a co-funding arrangement to support delivery of the three waters review from inception, through consultation, and to the point of any formal decision being made by Councils. We note that the funding is to be provided in stages and contingent on Council decisions to proceed at various hold points. It includes an allowance for costs already incurred by the Councils.

The financial projections included within this report do not assume that any amount of government funding will be provided unless explicitly stated.

Stage 2 Transition to a CCO

This is the period following the agreement of the Councils to form a CCO until Day 1 of operations. Should the councils confirm the proposal to establish a CCO then there are future steps required to implement that change.

1. Establish project control group to oversee and implement the transition.
While Councils could modify the scope of the PCG from Stage 1, it is suggested it would be necessary to review the employees involved so that those directly affected by the transition are not involved. Once the joint shareholders committee is in place then oversight and implementation of the transition should transfer to them.
2. Appoint overall transition manager/project lead. They will develop transition workstreams, appoint transition workstream leads and transition working groups which would be responsible for key aspects of the process including developing until they transfer responsibility to the organisation as it is formed and the leadership appointed six months prior to the start of the CCO
 Some of the key steps for each workstream are set out below.
3. Overall transition project management
 - a. Develop transition plan and confirm budget/funding
 - b. Manage transition workstreams and report to PCG.
4. People
 - a. Each council begin staff consultation process
 - i. Consultation with affected staff
 - ii. Consultation with unions
 - b. Confirm operation model, develop structure of CCO, including preparation of a draft organisational chart detailing the number and type of positions, position descriptions and any specialised skill sets required
 - c. Develop position description for CEO

- d. Develop position descriptions for Tier 2 roles
 - e. Appoint CEO
 - f. Appoint Tier 2 roles.
5. Co-governance
- a. Finalise shareholder agreements between Councils and Māori
 - b. Establish joint committee, membership including Māori and independent chair, appropriate terms of reference and delegations
 - c. Develop a letter of expectation or similar detailing specific directives, required service levels, pricing principles and KPIs and CPIs for the CCO
 - d. Update/finalise the draft CCO statement of intent and statement of expectations to engage with new board members on
 - e. Each council develops its own internal function to act in the role of owner
 - f. Finalise constitution and create company
 - g. Appoint chair and then directors
 - h. Final approval to implement from all councils including transfer of all responsibilities
6. Communications and engagement
- a. Develop communications strategy
 - b. Develop key messages for councils, staff and communities
 - c. Ongoing engagement to ensure that the timeliness is understood, and progress regularly reported and updated.
7. Finance and Assets
- a. Confirm banking arrangements and debt facilities
 - b. Start-up costs and an agreed amount of working capital transferred by all four councils
 - c. All assets and liabilities transfer from the Councils including contracts (where possible).
8. Operations
- Workstream established with the appointment of the CEO and second tier six months prior to the start and increasingly takes responsibility for CCO activities and requirements*
- a. Finalise organisational structure, position descriptions, KPIs (incorporating Cultural Performance Indicators)
 - b. Identify location of offices and make arrangements for future occupation including fit out and ways of working
 - c. Fill any vacant positions through advertising having complied with all councils' employment policies. Existing three waters staff from all four councils transfer and others may apply for additional roles, and any external applicants if appropriate
 - d. New positions offered and employed
 - e. Take responsibility for existing workstreams
 - f. Systems and processes implemented.

Timing for stage 2

The timing and length of the transition would be developed as part of stage 1. We have assumed a six – twelve month process for the purposes of the analysis with the CCO starting to take responsibility once its own resources and staff are appointed.

Costs of change for stage 2

It is estimated that the costs of stage 2 would be \$3.5m (capital) and \$2.4m (operational). The detail of the assumptions for these costs is set out in **Appendix C**.

In addition to this allowance, there are ongoing annual additional resources allowed for within the CCO model that would initially support the transition including administration, governance and overhead costs of \$3.5m per annum.

Risks of change

There are many and varied risks with implementing any change. The establishment of CCOs and water supply are two of the most politically sensitive issues that councils face. Combining the two of them increases the interest and will require sufficient resources and time to be dedicated to managing any process for change.

The traditional approach to three waters service delivery is still perceived to be that Council is the service provider, yet over half of New Zealand’s population is currently serviced by a separate, council-owned water entity. While there are risks and challenges with change, they are not insurmountable.

Table 49 below identifies the risks for stage 1 and 2, along with the likelihood of the risk occurring and any future mitigation measures that may be required.

Table 49 Identification of transitional risks

Risk	Likelihood (high/medium/low)	Future mitigation / management measures
Political		
Change takes longer and is harder than expected	High	Councils continue to dedicate enough and sufficiently skilled resources to planning, programming and delivering the change process.
Government is unable/unwilling to pass the enabling legislation for asset owning CCOs	Medium	If changes cannot be made that suits the Council’s timetable, then a staged approach would need to be adopted providing for change to a management CCO option before progressing to asset owning CCO option when appropriate.
Issues unrelated to the service delivery model dominate the discussion with the community e.g. water meters and chlorination	High	Communications and engagement strategy developed which focuses on key issues and benefits of change. Councils collectively stay on message. Use independent chair of working group to facilitate any hearings that are part of the engagement process to de-politicise the discussions.
Changing priorities of the Councils takes emphasis off three waters e.g. Covid-19 response	High	Communications and engagement strategy developed which focuses on key issues and benefits of change. Ongoing engagement process with Councils. Joint working group involves all councils and is independently chaired. All councils continue to stay involved in all aspects with regular briefings to all councils. The risk materialising is in part a demonstration of the benefits of an alternative model and the need for change
Government forces widespread change overtaking the Hawke’s Bay process	High	An early and combined approach from the Hawke’s Bay has the opportunity to influence any government led change
Public concern over future privatisation	High	Government reform program has explicitly rejected privatisation as an option.

Risk	Likelihood (high/medium/low)	Future mitigation / management measures
		<p>This report assumes the same position.</p> <p>Statement of intent would prevent sale of any CCO and/or its assets, other than return to local authority.</p>
<p>The complexity of a CCO co-design and co-governance model with Māori takes significantly more time with relative impact on cost/resourcing</p>	<p>High</p>	<p>(Māori) Earliest engagement with Māori Resources and funding to support Māori participation in co-design and co-governance process provided for in next steps</p> <p>(Other) Defining critical success factors, learnings from other co-governance models in operation across NZ Board director specification includes mandatory level of cultural competency</p> <p>(Local Govt) Leveraging best practice collateral (Māori Partnership Teams) from region's five councils</p>
<p>One or more councils choose not to proceed with change and others wish to continue. Impact depends on which, if any, Councils do not proceed.</p>	<p>Medium</p>	<p>Demonstrate benefits to each council of change and regional approach. Ongoing engagement process with Councils. Joint project control group involves all councils and is independently chaired. All councils continue to stay involved in all aspects with regular briefings to all councils.</p>
<p>Local government elections changes priorities</p>	<p>Medium</p>	<p>Communications and engagement strategy developed which focuses on key issues and benefits of change. Ongoing engagement process with Councils. Joint project control group involves all councils and is independently chaired. All councils continue to stay involved in all aspects with regular briefings to all councils.</p>
<p>One or more councils choose to exit a CCO if established and others wish to continue</p>	<p>Medium</p>	<p>Benefits of option are documented and clearly articulated on regular basis. However, should the situation arise then the shareholders agreement, Statement of Intent and Constitution would provide a mechanism for Councils to exit and enter the CCO.</p>
<p>Councils cannot agree on key terms of Shareholders Agreement and/or Statement of Intent</p>	<p>Medium</p>	<p>Joint working group involves all councils and is independently chaired. All councils continue to stay involved in all aspects with regular briefings to all councils.</p>
<p>Community or some communities do not support change</p>	<p>Medium</p>	<p>Communications and engagement strategy developed which focuses on key issues and benefits of change. Councils will need to evaluate the advantages and disadvantages of the CCO option and make the decision.</p>
<p>Operational</p>		
<p>Operational risks to three waters services arising from change</p>	<p>Medium</p>	<p>Change management process includes managed transition of services. Existing staff transition to any water CCO.</p>
<p>Assets are in a different condition than expected</p>	<p>Medium</p>	<p>Regional asset valuation and condition alignment study undertaken by WSP and included within the business case. Sensitivity analysis provides different scenarios which cover assets in different condition/valuation</p> <p>Approach and the principles established through this business case don't change even if the underlying information does. Equitable regionalisation calculation can be adjusted to allow for changes as information becomes available.</p>

Risk	Likelihood (high/medium/low)	Future mitigation / management measures
Change takes longer and is harder than expected	High	Councils continue to dedicate enough and sufficiently skilled resources to planning, programming and delivering the change process.
Process becomes drawn out affecting staff morale	Medium	<p>Communications strategy and messaging is targeted at staff and provides transparency around process and timeframes.</p> <p>Ensure that staff understand that the creation of a CCO will increase jobs, and that roles in rural communities will be protected.</p>
Uncertainty from the process makes it hard to attract and retain key staff	High	<p>Communications strategy and messaging is targeted at staff and provides transparency around process and timeframes.</p> <p>Ensure that staff understand that the creation of a CCO will increase jobs, and that roles in rural communities will be protected.</p>
Process negatively impacts existing projects and initiatives	Medium	Councils agree that existing projects and initiatives (within three waters and more broadly) should continue unless good reasons for placing on hold. Look to make projects regional (within three waters) where practicable.
Operationalise co-design and co-governance	Medium	<p>Defining critical success factors, learnings from other co-governance models in operation across NZ</p> <p>Leveraging best practice collateral (Māori Partnership Teams) from region's five councils</p>
Financial		
Future capital expenditure is much greater than allowed for	High	Sensitivity analysis has addressed potential for this. Note that the asset owning CCO option is best placed to deal with this risk should it arise through regionalising costs.
Costs of change increase beyond what has been estimated	High	Sensitivity analysis has addressed potential for this. Long term benefits are not sufficiently sensitive to increased costs of change so benefits will still arise.
Financial savings are less than what has been estimated	Medium	Sensitivity analysis has addressed potential for this. Projected financial savings have been conservative but benefits of change are not just financial. Assessment of costs and benefit options do not rely solely on achieving the stated financial benefits.
Government financial support does not materialise	Low	<p>Some financial support has been provided already.</p> <p>Continue to engage with government and maintain momentum for change. Use public pressure to get government attention.</p>
Three waters services become unaffordable for some communities	High	<p>A change in model can help addresses this risk.</p> <p>For some communities doing nothing is not an option.</p>