

## **5. Three Waters Reform Proposal – Council Feedback**

Author	<i>Toni Durham; Strategy &amp; Policy Manager</i>
Activity manager	<i>Neil McCann; GM Infrastructure Services</i>
Group Manager	<i>Hamish Riach; Chief Executive</i>

### **Summary**

The purpose of this report is to update Council 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 for Council;
- feedback from the community on the reform proposals from a brief survey conducted throughout September 2021; and
- next steps (including uncertainties).

### **Recommendation**

**That** Council:

1. **notes** the Government's 30 June and 15 July 2021 Three Waters Reform announcements;
2. **notes** officer's advice on the accuracy of the information provided to Council in June and July 2021 as a result of the RFI and WICS modelling processes;
3. **notes** that a decision to either 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;
4. **notes** that Council cannot make a formal decision on the Government's proposed reform for three waters service delivery without doing a Long Term Plan (LTP) amendment and ensuring it meets section 130 of the LGA;
5. **notes** that the Government intends to make further decisions about the three waters service delivery model after 30 September 2021;

**Cont'd**

- 6. requests** the CEO to seek guidance on and/or give feedback to the Government on
- a. the following areas of the Government's proposal that Council needs more information on:
    - i. How can Council have guaranteed influence over the direction of the WSE, given the complicated and multi-layered proposed governance structure?
    - ii. What further work is planned on alternative ways of achieving balance sheet separation than the current multi-layered structure of the Representative Governance Group and the Independent Selection Panel?
    - iii. How can the community have guaranteed influence, given the size and scale of the entities?
    - iv. How can Council be guaranteed that the District's three waters investment priorities will be met?
    - v. How will Council have visibility of future pricing proposals of the WSE?
    - vi. Will the proposed economic regulator regulate all private supplies and WSEs, and if not, where is the cut-off point for not being regulated?
    - vii. What work was done on the realities of stormwater being included in the reform proposals?
    - viii. How will charging for stormwater work, noting the private and public benefit of stormwater?
    - ix. How will decisions be reached on which stormwater infrastructure transfers to the WSE and which remains with the Ashburton District Council?
    - x. How can Council have a guarantee as to how the WSE will follow Council's planning and land development ambitions and not be an inhibitor to development in the Ashburton District?
    - xi. How will WSEs be compelled to contribute meaningfully to Ashburton District civil defence emergency planning and management?
    - xii. How does the three waters reform integrate meaningfully with the broader local government reform that is currently underway, most notably the reform of the RMA and the Review into the Future for Local Government?
    - xiii. Has Government considered the impact of the reforms on local body governance?
    - xiv. How will rural schemes that are primarily supplying stockwater be treated?
    - xv. How will Government resource the workforce required for the reforms to be successful?
    - xvi. How will the maintenance contract between Ashburton DC and contractor Ashburton Contracting Ltd be treated on transfer (presumably 1 July 2024), including the protection of their workforce?
  - b. the following changes to the Government's proposal/process:
    - i. The Governance Structure to be altered to enable direct Council involvement in Board and Director performance, accountability, appointments etc;
    - ii. Ensure all information is available before asking Councils to consult their communities and make a decision on the reforms – including all those matters raised in a. above.

**Cont'd**

- c. The following feedback from the Community survey conducted by the Ashburton District Council be fed back to DIA/Government:
- i. 504 responses were received from our community
  - ii. 97% of respondents felt it was important for the community to be able to have its say on how three water services are provided
  - iii. 64% of our respondents believe that the continued improvement of health and environmental standards in three waters from what is currently provided is important
  - iv. 27% of respondents are prepared to pay more for higher standards, with a further 21% happy to do so if the improvements are localised, justified and/or decided upon by local representation
  - v. Other feedback included concern with the:
    - the community wants to make the decision to opt in /out of the reform - risk of the reform being made mandatory
    - loss of local assets, representation and control
    - complexity of the three water structure
    - speed of the process to date
    - governance arrangements, including iwi representation
7. **notes** that the CEO will report back further once further information and guidance has been received from Government on what the next steps look like and how these should be managed
8. **in noting the above, agrees** Council has given consideration to sections 76, 77, 78, and 79 of the Local Government Act 2002 and in its judgment considers it 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).

## Summary

**Appendix 1** Three waters reform feedback

**Appendix 2** Community survey result

## Background

### Current situation

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).
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.
3. The Government's stated direction of travel has been for publicly-owned multi-regional entities with local authority ownership. The Department of Internal Affairs (DIA), 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.
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.
5. 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.
6. While the Government and LGNZ consider that national case for change has been made, each of the 67 councils in NZ will need to make a decision based on its local context if the process to join one of the proposed entities remains voluntary.

### Government's June and July 2021 announcements and information releases

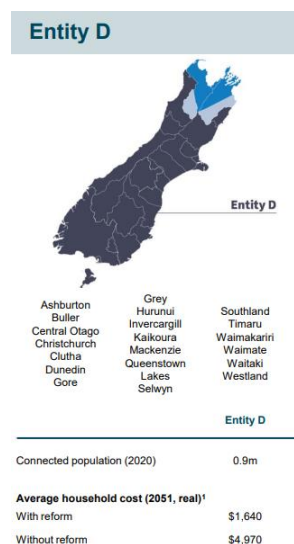
7. In June 2021 a suite of information was released by Government that covered estimated potential investment requirements for New Zealand, scope for efficiency gains from transformation of the three waters service and the potential economic (efficiency) impacts of various aggregation scenarios<sup>1</sup>.
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 and \$23b in Nett Present Value (NPV) terms over 30 years were also forecast.

---

<sup>1</sup> [Transforming the system for delivering three waters services \(dia.govt.nz\)](https://www.dia.govt.nz/transforming-the-system-for-delivering-three-waters-services)

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 each entity;
- 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; and
- develop an industry transformation strategy.

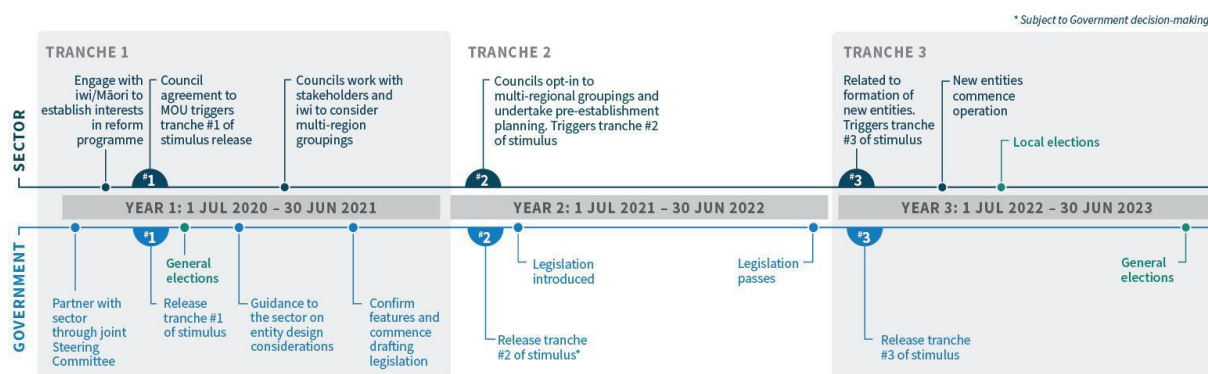


10. Ashburton District Council has been placed in Water Services Entity D, although the precise boundaries at the top of the South Island are still up for discussion.
11. On 15 July, in partnership with LGNZ under a Heads of Agreement<sup>2</sup>, the Government announced a package of \$2.5 billion to support councils to transition to the new water entities and to invest in community wellbeing. 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.
12. Council's funding allocation is \$16.8m. Conditions associated with the package of funding have yet to be worked through.
13. In addition to the funding announcements, the Government has committed to further discussions with local government and iwi/Māori over August – September 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 (e.g. chlorine-free water);
  - ensuring there is appropriate integration between the needs, planning and priorities of local authorities and those of the Water Service Entities; and
  - how to strengthen the accountability of the Water Service Entities to the communities that they serve, for example through a water ombudsman.

---

<sup>2</sup> [https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/\\$file/heads-of-agreement-partnering-commitment-to-support-three-waters-service-delivery-reform.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/$file/heads-of-agreement-partnering-commitment-to-support-three-waters-service-delivery-reform.pdf)

14. As a result, the original timetable for implementing the reform (shown below) for councils to consult on a decision to opt-in (or not), no longer applies.

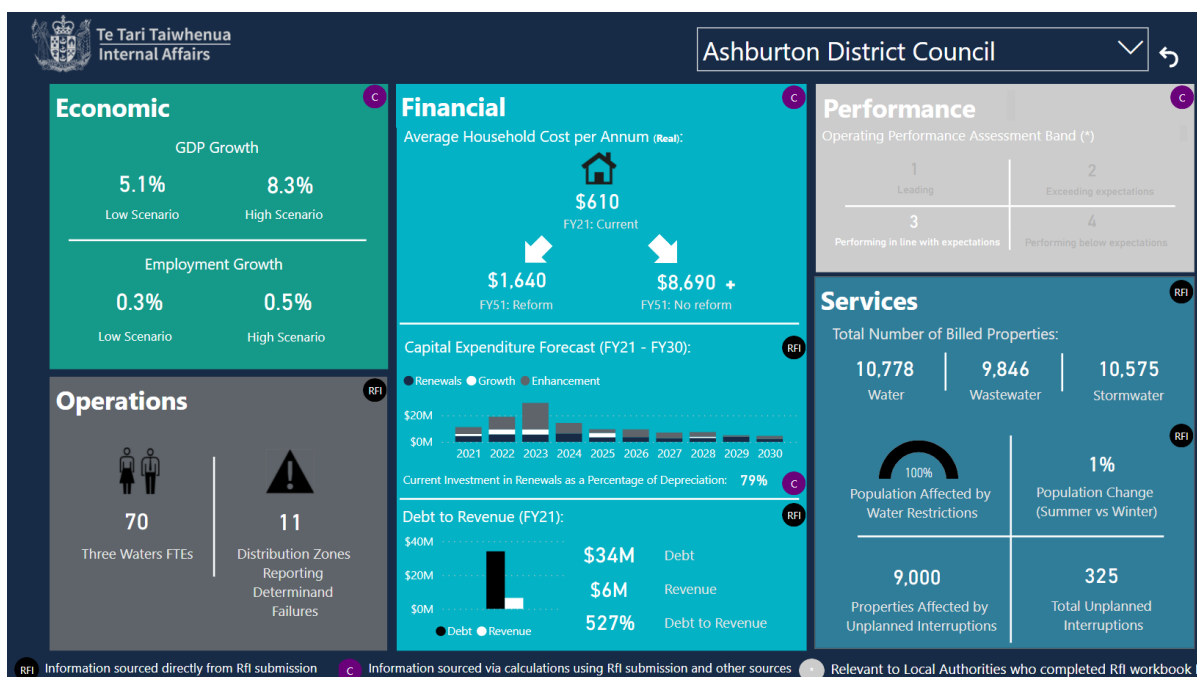


15. Next steps are expected to be announced after 30 September 2021, which would include the timeframes and responsibilities for any community or public consultation.
16. It is also important to note that the Government has not ruled out legislating for an “all-in” approach to reform to realise the national interest benefits of the reform.
17. In the interim the DIA and LGNZ continue to engage with Council elected members and 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 to a new WSE.
18. On the assumption that the reform goes ahead, it is anticipated that councils will continue to deliver water services until 30 June 2024, and council involvement in transition will be required throughout.

### Council specific information and analysis

19. While the Government and LGNZ consider that national case for change has been made, each council will ultimately need to make a decision based on its local context.
20. 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), to provide opportunities for Māori to contribute to their decision-making processes, to 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 to take a sustainable development approach.
21. Council currently delivers three waters as a mix of in-house and contracted out professional services and contracted out operational services.

22. Our dashboard looks like this:



23. The key aspects Council should note are detailed below.

#### 24. **Average cost per household**

- the DIA (based on several assumptions) states for Entity D it is \$1,368; our council based on the 2021/22 Long-Term Plan is \$610
- DIA's reform (Entity D) projects \$1,640 by 2051; and claims that without reform it would be \$8,690<sup>3</sup> for Ashburton District households.

#### 25. **Debt**

- Our Long-Term Plan 2021-31 shows our debt levels peaking in 2026/27 at \$161million (from a capacity to borrow of \$249 million), of which \$70million is for three waters infrastructure. The headroom for other borrowing at this time of planned peak debt is \$88million.
- Officers have estimated that the removal of three waters would mean a reduction in our capacity to borrow to \$205 million and a peak debt in 2026/27 of \$91million. This leaves a headroom to borrow of \$114million.
- Should the proposed three waters reform proceed, Council would therefore increase its headroom by an estimated \$26million.

<sup>3</sup> It should be noted that the "no reform" figure was capped at \$8,690. The cap was applied due to the uncertainty of the model at extremes of the range.

## 26. **Capital Expenditure Forecast**

- The DIA are forecasting \$491 million of new capital and \$117 million of renewal expenditure for the district (2021-31). This has been calculated using population, area, and population density (as a standard calculation for the country) and is based on the WICS experiences/observations in UK.
- This is not reflective of the Council's own position and our LTP 2021-31 shows a capital expenditure programme of \$73.4 million for new capital and \$39 million for renewals. Council developed the Long-Term Plan from the ground up and believes it represents our best response based on what we know now. The programme represents a significant lift on historic levels, but uncertainty remains on the impact of the new water quality regulator (Taumata Arowai)'s approach.

## 27. Our asset condition, performance (and confidence) levels for

- water are medium
- wastewater are medium
- stormwater are medium

## 28. We believe our maintenance budgets in the LTP 2021 – 31 are adequate.

## 29. There is also the potential for Council to have to work with and possibly take over the private water supplies if they are unable to meet quality standards and regulatory requirements. The impact of this is impossible to quantify, but does represent a real risk to Council.

## 30. While prepared at the national level, the DIA data has been peer reviewed by Farrierswier and Beca to ensure that both the modelling and underlying assumptions are reasonable in the New Zealand context. Both concluded WICS approach was reasonable, and if anything may have understated the investment gap. Morrison Low concluded that the numbers may be overstated, but the general conclusions reached by the WICS data were likely to be sound.

## 31. The data therefore likely provides a reasonable indication of the “order of magnitude”<sup>4</sup> of the gains that can be delivered through the new system, and the level of future investment Council is likely to need to make over the next 30 years.

## 32. At this stage it is not possible to fully test the projections as the standards for New Zealand out to 2051 are not known, although it is reasonable to assume that there will be greater community and mana whenua expectations around environmental performance and quality, tougher standards to meet for water quality (drinking and receiving environment) and that monitoring, compliance and enforcement will be greater than it is now. This affects both operational and capital expenditure (costs will go up), including the number of staff (or contractors) that council will need to ensure Council outcomes for water and community and legal requirements are met.

---

<sup>4</sup> Page iv, 2021, Farrierswier, Three Waters Reform, Review of methodology and assumptions underpinning economic analysis of aggregation available at [https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/\\$file/farrierswier-three-waters-reform-programme-review-of-wics-methodology-and-assumptions-underpinning-economic-analysis-of-aggregation-released-june-2021.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/$file/farrierswier-three-waters-reform-programme-review-of-wics-methodology-and-assumptions-underpinning-economic-analysis-of-aggregation-released-june-2021.pdf)



33. There is always a level of uncertainty and therefore risk around assumptions and forecasts, whether prepared by us for our LTPs or by others such as Government, to facilitate policy decisions, such as the current Three Waters Reform process. Officers consider that it would not be a good use of Council's limited resources to spend time and money on a detailed review of the assumptions and modelling.
34. To assess whether the proposed better off and no worse off funding to Council [\$16.8m] is sufficient Council needs further information on the conditions that will be associated with that funding.

### **Te Tiriti/Treaty of Waitangi and involvement of Māori in decision making considerations**

35. The issues covered in this paper are important for Māori. The Crown is currently leading the engagement with iwi/Māori, mana whenua. Council has discussed the proposals briefly with Te Rūnanga o Arowhenua, but given there is no decision to opt-in or out at this stage, these discussions have not been detailed.
36. The Council has been involved in more detailed discussions with Ngai Tahu through the Canterbury Mayoral Forum, and through several Entity D fora (involving Ngai Tahu and those councils potentially included in Entity D).

### **What is required of Council right now?**

37. The law currently prohibits Council's deciding to opt-in to the current proposal (given section 130 of the Local Government Act 2002 and what we know about this option at present). Current decision-making requirements, including the need to take account of community views and strategic nature of the assets involved, would also preclude Council deciding to opt-out at this time without consultation.
38. Similar requirements apply if the council wishes to consider alternative arrangements that involve asset transfers, divestment, change in ownership, and/or the setting up of a Council Controlled Organisation (CCO) to deliver water services in the future.
39. There are a number of issues, concerns and uncertainties for the Government and councils to work through before a robust Council decision (and decision-making process) can be produced, including whether legislative change will enable or require the Water Services Entity or CCO approach to be adopted. Therefore, there is no expectation that councils will make a decision to opt-in (or out) or commence formal community engagement or consultation over the eight-week period.
40. Councils have been specifically asked to provide solutions to three outstanding issues during the next eight weeks:
  - ensuring all communities have both a voice in the system and influence over local decisions;
  - effective representation on the new water service entities' oversight boards, including preventing future privatisation; and
  - ensuring integration between urban growth planning and water services planning.

41. 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.
42. Government decisions on entity boundaries, governance and transition and implementation arrangements will occur after the eight week-process ends (30 September 2021).
43. On the assumption that the reform goes ahead, it is anticipated that councils will continue to deliver water services until 30 June 2024 and council involvement in transition will be required throughout.
44. Excluding the Government proposal, Council bears the risk of meeting the new water standards, environmental requirements and achieving compliance. There are also implications and challenges for non-Council supplies to meet water quality requirements, with the risk that these supplies might default to Council in the future.
45. Other Government reforms (Resource Management Act, Future for Local Government) pose opportunities and challenges for the 3 waters reform proposal.
46. Managing transition risks to the Government's proposed model are likely to pose a significant challenge for all Councils, including the Ashburton District Council. Assuming the Government's proposals were to proceed, effective management of the transition by Council, Government and partners will be critical.
47. That said, transition away from the status quo to any other option, carries inherent risks, with potential mitigations to reduce both impact and likelihood and therefore residual risk and sticking with the status quo may not be sustainable in the short, medium or long term.

## Options Analysis

### **Option one – Do nothing**

48. This is not the recommended option. Council may decide to stay silent and not provide feedback on the Proposed Three Waters Reform. This would result in Council missing an opportunity to advocate on behalf of the district and would be perceived poorly by the community.

### **Option two – Approve the feedback as attached in Appendix One (recommended option)**

49. This option would see Council officers lodge the appended submission with the Department of Internal Affairs.

### **Option three – Approve amended feedback**

50. This option would see Council approve an amended version of the feedback currently appended, and submit that document to the Department of Internal Affairs. Additional discussion and Elected Member input may well enhance the submission.

## Legal/policy implications

### Legislation

51. 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 including the reasons for the proposal and the reasonably practicable options.
52. In particular, 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.
53. Section 77 states that councils must seek to identify all reasonably practicable options and then assess the advantages and disadvantages of each option.
54. 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.
55. 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, i.e. the council did not act within the law).
56. 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).
57. 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.
58. 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.<sup>5</sup>
59. 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.
60. 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

---

<sup>5</sup> See sections 43 to 47 of the LGA.



- 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.

61. A Government Bill to progress the reforms could address the issues raised above, for example removing the section 130 requirements has explicitly been raised.
62. 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 making a decision on the Government's proposal.
63. It is recommended that the Council therefore notes the options canvassed in this report, the [high-level] analysis of them and the information and decisions that are yet to be made.
64. If reform is not made mandatory, to ensure sufficient information is available to meet the moral and legal requirements of Council decision-making staff will further 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.

## Financial implications

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

Requirement	Explanation
What is the cost?	The costs of Council being involved in the three waters reform process to date have been met from within existing budgets.
Is there budget available in LTP / AP?	Yes
Where is the funding coming from?	Funding comes from a number of cost centres including for the Chief Executive, Service Delivery, Finance and Strategy & Policy Teams.
Are there any future budget implications?	Possibly, depending on the next stages of the proposed reform.
Reviewed by Finance	No

## Significance and engagement assessment

66. The future of water services delivery is a significant issue. This report however does not commit 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 medium – not significant.
67. Council is not required to consult at this time. Further advice regarding any future consultation requirements will be provided after September 2021.
68. In the interim Council has received an analysis report from Morrison Low, held a workshop with presentations from staff and Morrison Low, discussed the reform proposal with DIA representatives and LGNZ representatives separately, attended a number of virtual webinars and virtual meetings arranged by LGNZ, posted a video chat between the Mayor and CEO discussing some aspects of the reform and dispelling some of the commonly heard myths of the reform programme, put a summary of the reform proposals on our web-site and a link to the DIA's Three Waters web-site, had a range of meetings with other Councils in Canterbury and the wider South Island and Ngai Tahu in relation to the structure of the proposed Entity D, and conducted a community feedback survey via survey monkey.
69. The survey showed:
  - 504 responses were received from our community;
  - 97% of respondents felt it was important for the community to be able to have its say on how three water services are provided;
  - 64% of our respondents believe that the continued improvement of health and environmental standards in three waters from what is currently provided is important;
  - 27% of respondents are prepared to pay more for higher standards, with a further 21% happy to do so if the improvements are localised, justified and/or decided upon by local representation;
  - Other feedback included concern with :
    - the community wants to make the decision to opt in /out of the reform - risk of the reform being made mandatory;
    - the loss of local assets, representation and control;
    - the complexity of the three water structure;
    - the speed of the process to date;
    - the governance arrangements, including iwi representation

Requirement	Explanation
Is the matter considered <i>significant</i> ?	No
Level of significance	Medium – not significant
Level of <i>engagement</i> selected	Comment – Informal two-way communication
Rationale for selecting level of engagement	The rationale for selecting the comment level of engagement was to recognise that the community are interested and have varied views and concerns with the Government's proposals.
Reviewed by Strategy & Policy	Toni Durham; Strategy & Policy Manager

## Next steps

70. 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.
71. It also provides an opportunity for Council to understand its potential options, including the financial, workforce and sustainability impacts for Council and the wider economic, social and cultural implications of each option, using the guidance that has been issued. It also provides an opportunity to engage in discussions with other councils in its entity grouping, share information and ask questions and propose solutions to issues it sees to Government and LGNZ.
72. All of this information will be useful to inform future decision making by both council and Government and consultation and engagement with mana whenua and communities.