



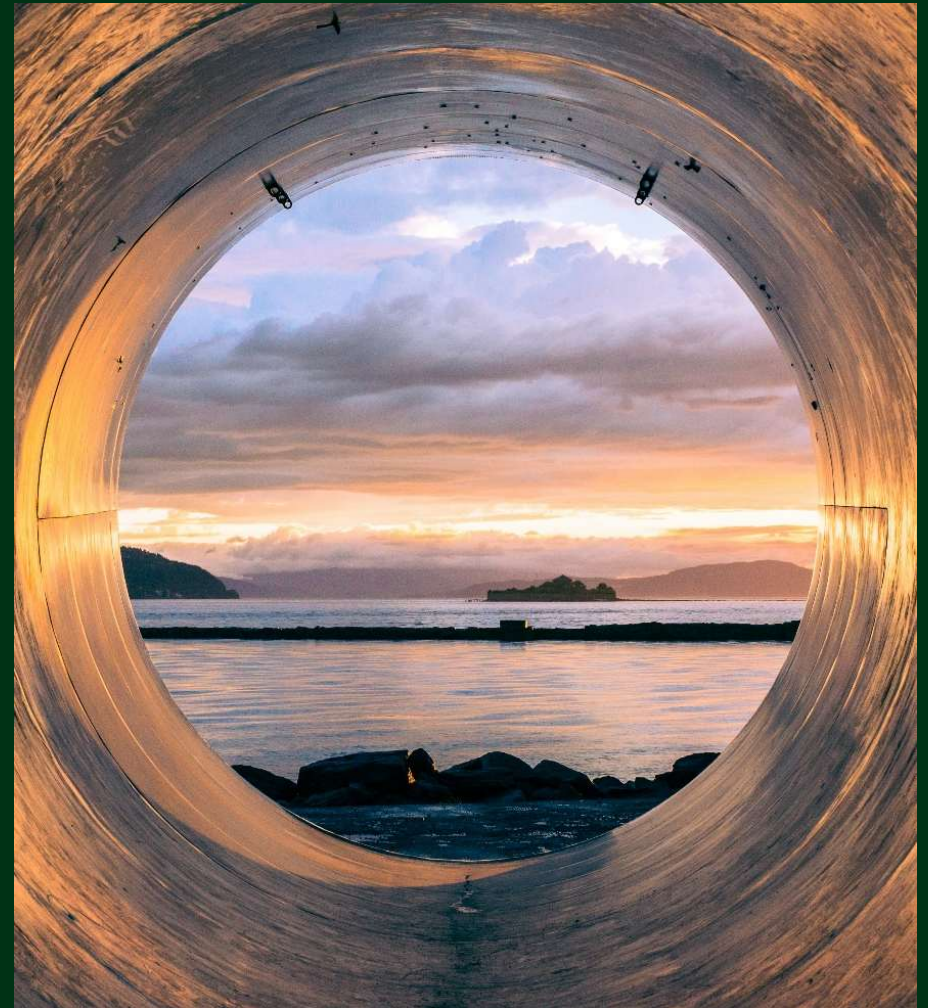
# Presentation to Kāpiti Coast District Council

**Water Services Delivery Plans: the process, future requirements, timing and practical considerations**

Mike Wakefield | November 2024

# Contents

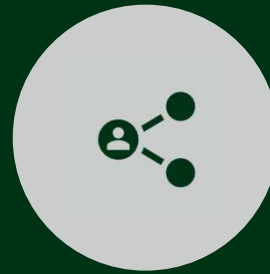
1. WSDP – process requirements
2. Future requirements for water service delivery
3. Possible delivery models
4. WSDP – key considerations
5. Upcoming decisions and timing



## Quick recap: Local Water Done Well



Preliminary Arrangements Act – enacted on 2 September 2024



Key shift – introduction of WSDPs, *transitional* documents



Timing: WSDPs to be submitted to Secretary – 3 September 2025



3<sup>rd</sup> Bill – Local Government Water Services Bill – to be introduced in December 2024

PART ONE

# WSDPs – process requirements

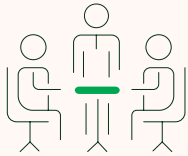


# What are the *alternative requirements*?

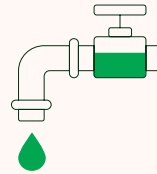
In summary:

- A **simplified process**, to assist with the preparation, consultation and adoption of a WSDP
- A **relaxation of the usual requirements** for option identification and assessment, and a consequential streamlining for consultation
- However, consultation is **mandatory** on the proposed model or arrangement for water service delivery
- Consultation on the balance of a WSDP is **optional**

# When can/should the *alternative requirements* be used



**May** be used when deciding whether to establish, join or amend a Water Services CCO (WSCCO) or joint arrangement



**Must** be used when consulting or deciding on an anticipated or proposed model or arrangement for delivering water services



**Must** be used for any other consultation on a WSDP

## The legal stuff - a quick comparison

| LGA               |                                                                                                                | Preliminary Arrangements Act |                                                                                                                                                                                                    |
|-------------------|----------------------------------------------------------------------------------------------------------------|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| s76               | Establishes decision-making requirements                                                                       | s60                          | Dispenses with s76, where alternative requirements are relied on                                                                                                                                   |
| s77(1)(a) and (b) | “seek to identify, and assess the advantages and disadvantages of, <b>all reasonably practicable options</b> ” | s61                          | For establishing a CCO or deciding on the proposed model, “must identify both of the following 2 options for delivering water services”, being the existing model and a WSCCO or joint arrangement |
| S56(1)            | Consultation required before CCO established                                                                   | s62                          | No further consultation required beyond that required by s62                                                                                                                                       |
| s78               | Consider <b>views and preferences</b> of interested and affected persons                                       | s62                          | No change, but only required to consult once                                                                                                                                                       |
| s82/82A           | Consultation principles, information principles                                                                | s64                          | Specific information requirements for the “proposal”                                                                                                                                               |
| s93 and s97(2)(b) | Requirement to use SCP when amending LTP, or dealing with strategic assets                                     | s63                          | No requirement to consult on the proposal, in certain cases                                                                                                                                        |



# The approach to consultation

Context: WSDP **must include** anticipated or proposed model for delivering water services: section 13(1)(k)

## Requirements

- **Mandatory consultation** on the part of WSDP outlining service delivery model
- Consultation on balance of WSDP is **optional**
- Decisions on whether to consult on WSDPs are made in the normal way (but alternative requirements *must* be relied on)
- Consultation is on the proposal: **not** inviting responses on *any* delivery model



## Option identification

- Must include two options:
  - remaining with the existing model (status quo\*)
  - establishing, joining or amending a WSCCO or joint arrangement
- One of those will be the proposal
- No need to identify *all reasonably practicable options*, but allowed to identify additional options (beyond two)
- Must assess advantages and disadvantages of all options identified
- For a joint WSDP, must identify parties to the arrangement and what services (drinking water, wastewater, stormwater) are subject to joint arrangement

PART TWO

# Future requirements for water service delivery



# Minimum requirements for all delivery models



# Economic, environmental and water quality regulation

- Information disclosure starts with WSDP (due 3 September 2025)
- Commerce Commission to make determinations requiring TAs and water services CCOs to disclose information

| Section 44                                                                                              | Section 45                                                                                                                                                  |
|---------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Determination can cover prices, contracts, pricing methodologies, quality performance measures and more | Determinations in relation to specified entities, where compliance with section 44 or requirement to prepare standalone financial statements is in question |
| Consultation on determinations likely to start in early 2025                                            |                                                                                                                                                             |

# New planning and accountability framework

## What's required?

- Statement of expectations, water services strategy (WSS) and water services annual report
- Standalone financial statements for all water services (drinking water, wastewater, stormwater, and aggregated water services)
- Linked to ringfencing of water services revenue, which must be tagged and tracked
- Borrowing for water services needs to be separately reported
- Performance of TAs and water services CCOs can / will be compared

# Water services providers must be financially sustainable

- WSDP must show commitment to deliver water services in a way that is financially sustainable for the territorial authority
- WSDP must be “given effect to”
- 3<sup>rd</sup> Bill will include objective for water services providers to be financially sustainable
- 3<sup>rd</sup> Bill likely to cover issues related to:
  - Ring-fencing of water services
  - revenue sufficiency
  - accommodating maintenance, renewals and growth

# Requirement to act consistently with statutory objectives

- 3<sup>rd</sup> Bill will:
  - state objectives for all water service providers
  - set additional objectives for water organisations (water services CCOs and consumer-trust owned organisations)
- Section 9 of the Water Services Entities Act 2022 provides a model – even if optics and politics require something different
- Question: how much room will the statutory objectives leave to set objectives locally, or through statement of expectations and the WSS?
- The words “act consistently” allows some wiggle room

# Restrictions against privatisation

- 3<sup>rd</sup> Bill will:
  - include prohibitions on losing control, selling, or disposing of significant infrastructure
  - prohibit using water services assets as security
- Wording of policy announcements largely follows section 130, LGA (obligation to maintain water services)
- Only councils and consumer trusts can hold shares in a water organisation
- Will exception be made for transferring water services to another council or water organisation, as in section 130(4)?

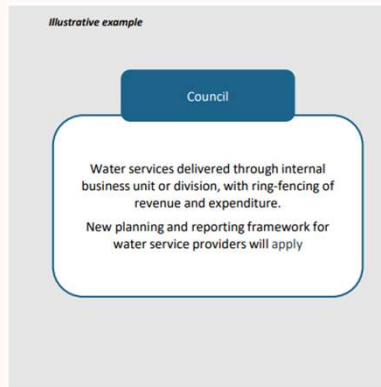
PART THREE

# Possible delivery models

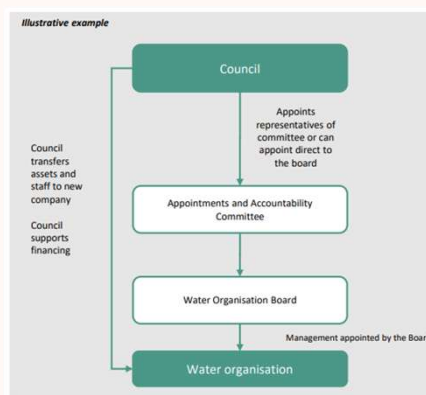


# Overview of delivery models

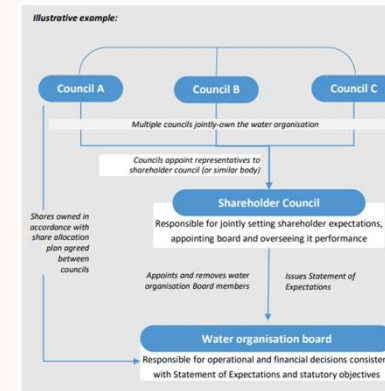
## Internal business unit or division of council



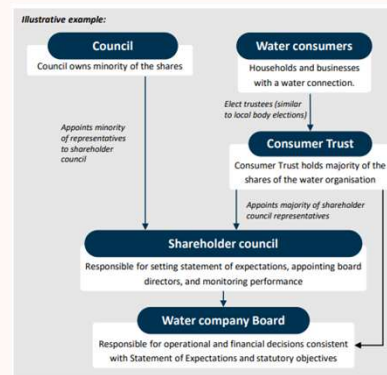
## Single council CCO



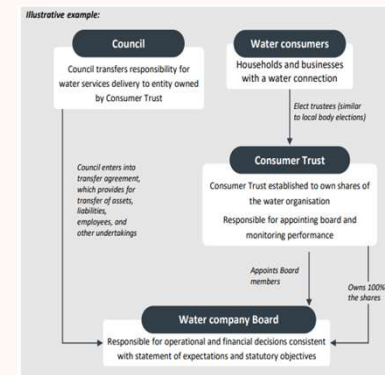
## Multi-council CCO



## Mixed council/consumer trust owned water organisation

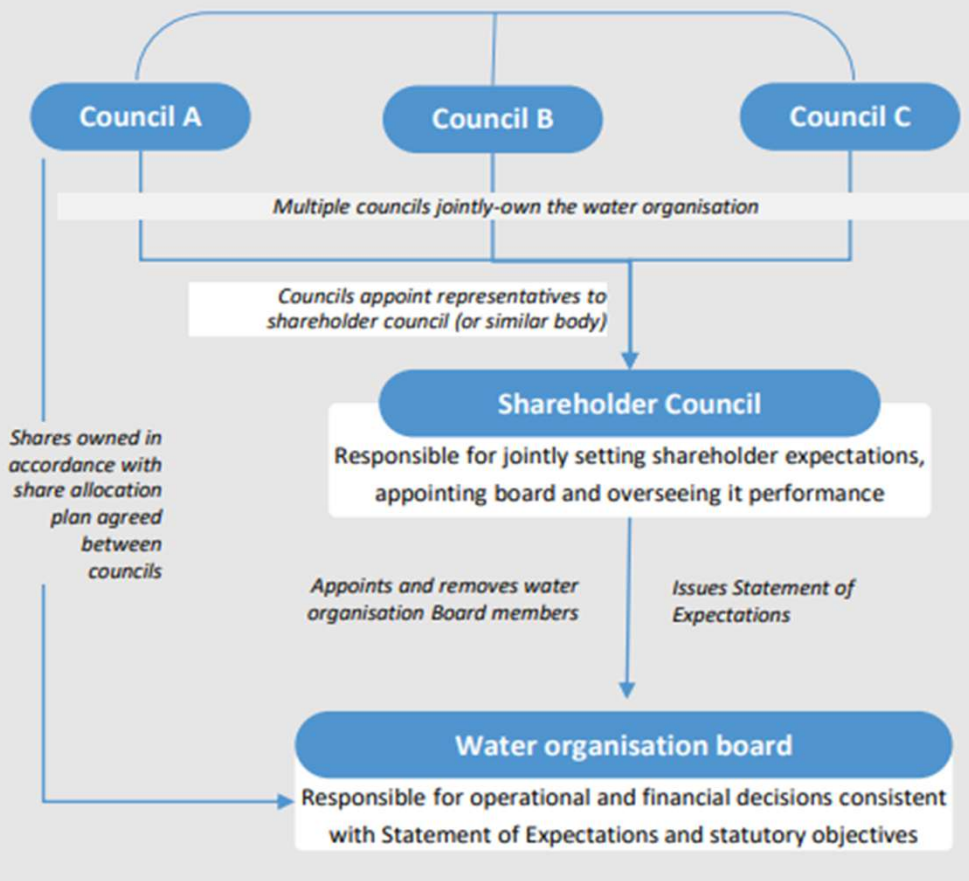


## Consumer trust owned water organisation



# Multi-council CCO

## Illustrative example:



- Could be asset owning, or not (e.g. Wellington Water)
- Must give effect to statement of expectations (if consistent with CCO's purpose and statutory objectives) but otherwise shielded from "political interference"
- Multi-council ownership could complicate development of statement of expectations
- Increased scale, potentially covering entire regions, may attract higher quality directors and staff (e.g. Watercare)

## Corporate structure and governance:

- Sets direction and oversees delivery of water services
- Competency-based board comprising professional directors
- Appointments committee ensures relevant perspectives (including mana whenua) brought to director appointment process
- Directors' duties (including under Companies Act 1993) apply

## Accountability to:

- Council shareholders, via regular reporting and annual reporting
- Consumers for service delivery potentially blurred if CCO not asset-owning

# Joint Arrangements

| Structure / model                                                                                                                          | Other considerations                                                                                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Joint arrangements</b> with other councils may, but need not, require structural changes                                                | Stormwater services (in whole or in part) can be included                                                                                        |
| <b>Management CCO:</b> operates networks for Councils A, B and C, or only wastewater or water supply networks                              | Increased scale of joint arrangements may attract higher quality directors and staff                                                             |
| <b>Contractual model:</b> business unit of Council A operates networks of Councils A, B and C, or only wastewater or water supply networks | Councils retaining ownership may discourage integrated management of entire network, and could complicate investment / strategic decision-making |

# How will new water CCOs differ from existing CCOs?

| Existing CCOs                                                                                                                 | New Water CCOs                                                                                  |
|-------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| Subject to Part 5 LGA, including s59 (principal objective of CCO)                                                             | Not subject to Part 5 LGA                                                                       |
| Objectives set by shareholder(s) through statement of intent (SOI)                                                            | Objectives set by Bill #3: CCO will be required to “act consistently” with them                 |
| Statement of expectation (SOE) is guidance document with no requirement to follow                                             | Requirement to give effect to SOE unless inconsistent with statutory objectives                 |
| SOI is key direction setting document                                                                                         | Water services strategy (WSS) will be key direction setting document                            |
| Shareholder can comment on draft SOI and has power to modify                                                                  | Shareholder can comment on draft WSS but will have no power to modify                           |
| Generally, no requirement for financial sustainability or to ringfence revenue, debt                                          | Statutory requirement to be financial sustainable and to ring-fence revenue, debt               |
| LGA has general requirement for directors to have skills, knowledge and experience; but no prohibition on member appointments | Specific prohibitions on appointing members as directors; appointments must be competency based |

PART FOUR

# WSDP – key considerations for decision-making



# Assessment of options / information requirements

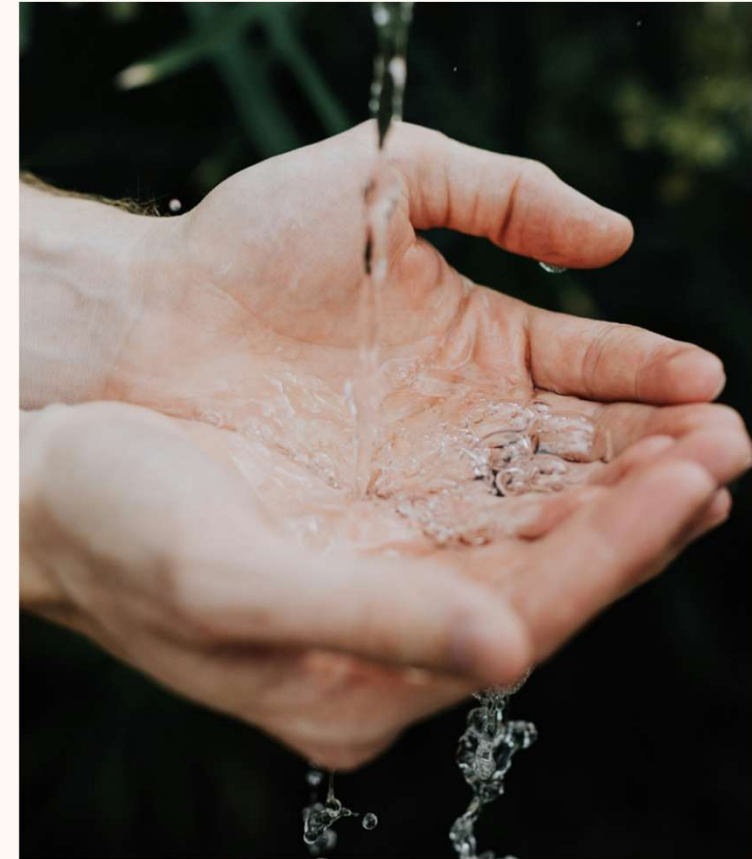
- The information **must include** the *proposal* (reasons, etc), options analysis (advantages and disadvantages), and allow the following to be considered:
  - rates, debt, levels of service and water services charges under the two options
  - for joint WSCCOs / arrangements: community implications and accountability arrangements
- These info requirements reflect the underlying policy that councils must consider potential scale benefits of either approach – although no scale benefit from a single council CCO
- A single council CCO may be only alternative to existing model for some councils (“orphans”)

# Assessing advantages and disadvantages

- Advantages/disadvantages of any delivery model will depend on how various factors are viewed, including:
  - economies of scope/scale
  - control and governance
  - mana whenua support for different models
  - structural and operational complexity
  - access to expertise
  - access to finance
  - scope for joint arrangements (now or later, scalability)
  - relative financial and asset position of potential “dance-partners”
- Given complexity of exercise, it makes sense to use Act’s alternative requirements (as opposed to LGA requirements)

# Specific matters for joint arrangements

- For joint arrangements, public information required on:
  - Implications for communities throughout the joint service area
- **Decision-making** considerations include:
  - Impacts on communities in the joint service area, along with information on how the proposal will impact on TAs separately
  - Community views relative to joint area, as well as within TAs
  - Views of other TAs - whether parties, or considering joining
- Joint arrangements can be identified, assessed, recommended and consulted on through the use of **joint committees**



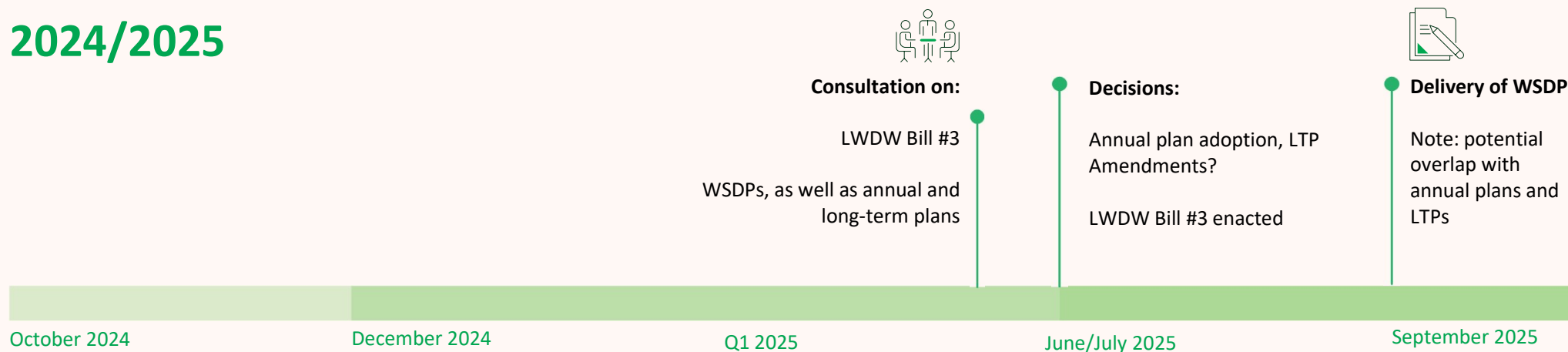
PART FIVE

# Upcoming decisions, timing



# The road ahead

## 2024/2025



## 2025/2026



## Timing, standing order 9.16

- Requires a referendum of electors before certain decisions are made
- Referendum held:
  - At the time of adopting the WSDP; or
  - At the time the Council decides to establish / join a water services CCO (incl. a joint CCO) or a joint arrangement.
- Referendum would be in addition to consultation required by the PA Act = inefficient, and not legally required
- **Issues:** additional time required (up to 4 months) – could create pressure on statutory deadlines, delay to adoption and implementation (including for other councils), increased cost, potential legal risk
- Possible solutions available



Questions?



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