Attachment 5 to Report 14.32

Regionalising Water Services

Discussion paper
December 2013

pwc

The Chief Executives
Greater Wellington Regional Council
Hutt City Council
Porirua City Council
Upper Hutt City Council
Wellington City Council

16 December 2013

Gentlemen

This discussion paper has been prepared to present options for amalgamating delivery of water services in the Wellington Region. It has been prepared in accordance with our engagement letter and should be read in conjunction with the important notice in Appendix A.

The case for change is primarily a function of qualitative benefits that will lead to direct and indirect financial benefits. These benefits will arise over the medium to long term, reflecting the long lived nature of the assets and the long term implications of decisions and actions today. The fact that the four retail water networks in the region are now being managed jointly is evidence that these long term benefits are worth pursuing.

The recommendation in this paper is that the bulk water supply business is amalgamated with the retail businesses within a company form. A new company could be formed or Capacity could be used. Using Capacity has the benefit of not disrupting current contractual arrangements. A new company could be used. There will be administrative issues to deal with but these are not insurmountable.

The other key recommendation is that the Councils form a governance group to exercise their shareholder rights and discharge their obligations in a coordinated and perhaps publicly transparent manner. This could be a committee of some form (a joint committee or a committee of the Greater Wellington Regional Council) or a "contractual form", for example the shareholders' advisory group under the existing Capacity shareholders' agreement. We would expect that this group would have the similar membership and consistent functions regardless of how it is constituted.

Please do not hesitate to contact us if you require further information or have any questions.

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Context
Integrated management of water operations

The issue

The region's potable water network is not managed on a regional basis

- Ownership of potable water assets is distributed among the region's councils. But the potable water collection and distribution system is one large physically integrated network
- The form of the network reflects geography and the location of supply and demand. The allocation of the assets among the councils reflects historical boundaries, among other things
- The region's "retail" water assets are now all being managed by Capacity
  - PCC has entered into a service level agreement with Capacity
  - PCC and UHCC have joined HCC and WCC as shareholders in Capacity
- The missing component to deliver regional management of water services is GWRC's bulk (wholesale) network
- GWRC out-sources lab testing and certain physical works (in particular new build developments). Most asset management functions are undertaken in-house

What level of integration is envisaged?

Management of services and assets on behalf of GWRC (the Council)

- The model of integration will involve the amalgamation of the operation, maintenance and management of assets
- The Council will continue to own the bulk water network assets
  - Ancillary assets such as motor vehicles might be transferred
- Existing funding arrangements for the bulk water services will remain in place
  - The Council will continue to collect the bulk water levy from the four city councils
  - The component of the levy used to fund operating, maintenance and management of the bulk water assets will be paid to the regional water business rather than expended directly by the Council
  - Capital expenditure will be managed by the regional water business on behalf of the Council
- The Council will determine the standard of service to be provided by the regional water business. This will be incorporated into a “service level agreement”
  - The regional water business will be a service provider to the Council, delivering services under contractual terms

Why is integrated management of the water operations worth pursuing?

- The 2011 Region Wide Governance Review noted the opportunity to:
  - Develop a coherent regional strategy for the future direction of the Three Waters.
  - Consider the case for integrating water and wastewater delivery regionally.
- The concept of water regionalisation is not new:
  - Considered as part of the local government reorganisation in the late 1980s
  - The subject of a major study undertaken in 1997
  - Capacity was the product of the post 1997 process
- The case for incorporating GWRC's bulk water services into a regional water entity is not a consequence of any urgent need to make a change:
  - There is no immediate imperative for changing the way water services are delivered
  - The status quo could continue
- Regionalisation is about enhancing performance rather than fixing a problem

Why is integrated management of the water operations worth pursuing?

- There will be a range of benefits from full regionalisation:
  - Co-ordination of supply, transmission and distribution:
    - Coordinated approach to capital projects
    - Common assets specifications
    - Common asset management to optimise water quality and service etc.
  - Removing duplicated costs
    - Duplicated costs are primarily people related and other variable administration costs
    - But removing duplicated costs is unlikely to be the key driver of change
  - Removing duplicated costs assumes:
    - There are similar functions being carried out within the amalgamating entities
    - The duplication can be removed by absorbing costs within existing resources

Why is integrated management of the water operations worth pursuing?

- Economies of scale
  - Important but not all scale benefits are easily quantifiable and some will arise over the long term.
  - Scale benefits will include:
    - Critical mass of expertise
    - Critical mass of resource
    - Purchasing benefits
- Best practice
  - Opportunity to extract good work practices and systems from the individual operations and apply them across all of the networks

Why is integrated management of the water operations worth pursuing?

- Efficiency benefits over and above the status quo can be expected in terms of:
  - Close co-ordination of demand analysis and management for the retail and bulk water systems
  - Network planning, development and management
  - Integration of maintenance cycles.
- There will be financial benefits that will flow from the qualitative benefits over the medium to long term:
  - We suggest that the direct short term savings in amalgamating the GWRC bulk water services with the retail services are unlikely to be compelling in themselves (not least because of the overhead restructuring the Council will have to undertake).
  - Savings in operating, maintaining and developing the networks or providing enhanced service given current costs are likely to accrue over the longer term.

Achieving integration
What is required – form of the water entity

What practical steps are required to achieve integration?

An entity to "house" the regional water business and an acceptable governance arrangement

- The regional water business needs a legal form to transact its business. It needs to:
  - Employ personnel
  - Engage consultants
  - Enter into contracts for capital works and maintenance
  - Enter into service level agreements with its council customers
- The entity will require a governance structure that:
  - Provides all councils with the appropriate level of oversight given their:
    - Stewardship responsibilities for the investment (historical and future) in their networks
    - Statutory obligations to supply potable water and provide waste water and storm water services
  - Is effective and efficient for the water entity
  - Is aligned with and reinforces the multiple roles of the councils
  - Recognises and respects the distinction between governance and management

Options for the water entity

Three common structures for council activities

Public Entity	*Company*	*Trust*
Part of a council. Operated as a business unit. Not a separate legal entity but can enter into contracts	A separate legal entity from its owners (shareholders)	Legal title of property passed to a trustee(s). Can enter into contracts
No limitation on liability for council "owner"	Shareholder's liability limited to contributed capital	The trustee is liable for the obligations of the trust.
Funded by rates, charges to customers and/or debt	Able to raise debt or equity capital	Able to raise debt but limited ability to raise equity
Other Councils will not have a direct ownership interest in the Water Business. "Ownership" of water business not freely tradable. Accountability to council that "owns" business unit	Able to differentiate rights of different shareholders. Shareholders able to sell part or all of their interest in the Company. But ownership changes can be regulated by the shareholders	Beneficiaries are not able to readily exit the trust and do not necessarily have direct control over the assets of the trust
Governance exercised through council management structure through to Councillors	Company governed by a board of directors. Have a duty to act in good faith and in best interests of the company. **But** a director may, if expressly permitted to do so by the constitution, act in a manner which is in the best interests of a shareholder, even though it may not be in the best interests of the company	Governed by appointed trustees. Must exercise the powers of a trustee in the best interests of all present and future beneficiaries of the trust. Councils can appoint trustees but are unlikely to have direct influence over the trust
Local Government Act requirements will apply. Likely to have public service as an important objective but can also have operating in a business-like manner as an important driver of performance	Must comply with the Companies Act 1993 Operating in a business-like manner likely to be a primary objective	Must comply with the Trustee Act Trustee Act has a number of requirements that trustees must have regard to when investing or managing interests under their control
Tax efficient	Tax treatment: • Assessable income taxed at rate of 28% • No flow through of tax losses to shareholders	Tax treatment: • Income not distributed within 6 months of balance date is taxed at Trustee level (33%) • No flow through of tax losses to beneficiaries; • NZ resident beneficiary income taxed at marginal tax rate.

Options for the water entity

- Council business unit provides direct accountability to Councillors and the public
- But:
  - Cost effective management and delivery of water services requires a business-like approach. Doesn't mean profit maximisation but it does mean applying business disciplines to the relationships with all stakeholders. Also means a business-like approach to governance
  - Debatable whether a council business unit is the best form to achieve a business-like approach
  - A council business unit will not allow multiple Councils to have an ownership interest in the Water Business.
- A company will allow all Councils to have an ownership interest
  - The ownership stake (shares) is legally defined
  - Conditions can be imposed on transfers of shares – can be structured to ensure that the company and its operations will remain in public ownership
  - Identified and separate ownership interests will allow clear recognition that each council has a stake in the water entity
- A company form is conducive to clear and transparent governance and accountability and is an effective form for achieving a business like focus
- A company has a different accountability structure to a council business unit. Doesn't mean accountability can't be transparent and effective
- The level and effectiveness of the accountability of a company is controlled by the councils, given that they will
  - Own it
  - Determine how its board is appointed
  - Set the overarching financial performance standards though the statement of intent
  - Determine the monitoring regime
  - Perhaps most importantly, determine the service outcomes they want from the company and monitor the company's performance in achieving the required outcomes
- A disadvantage of a trust is that operations and assets transferred to the trust will be "alienated" from the Councils.
- The Councils can appoint trustees but the trustees are required by law to consider the position of all beneficiaries of the trust in the context of the trust deed
- In essence, a trust will be less flexible than a company and council business unit in terms of control

Capacity as an option for the water business

- If a company form is acceptable, there are at least two options:
  - Establish a new company
  - Use Capacity
- Establishing a new company ("NewCo") would/could involve:
  - GWRC subscribing for shares in exchange for some combination of ancillary assets to be transferred to NewCo and cash
  - Capacity transferring its assets, contracts and business to NewCo in return for shares or cash
  - Capacity being liquidated and distributing the NewCo shares or cash to the Capacity shareholders. If it is a cash transaction then HCC, PCC, UHCC and WCC will have to subscribe for shares in NewCo
  - Establishing a new constitution and shareholders agreement
  - GWRC agreeing to and entering into a service level agreement with NewCo (will be required under any option)

Capacity as an option for the water business

- Using Capacity would involve:
  - GWRC undertaking due diligence on Capacity
    - Sufficient to ensure there are no undue risks to GWRC in investing in Capacity
  - GWRC agreeing to the constitution and participating in the shareholders agreement
  - GWRC subscribing for shares in exchange for some combination of ancillary assets to be transferred to NewCo and cash – whether there will need to be a wider change to the capital structure will need to be determined
  - GWRC agreeing to and entering into a service level agreement (will be required under any option)
- The direct technical/administrative costs of setting up a new company to house the regional water business will likely cost more than using Capacity
- Capacity exists, has systems in place and is party to supplier contracts, has a workforce etc.

Changes to Capacity's business model

The changes have moved Capacity closer to being a regional water "business"

- There have been important changes to Capacity's ownership, governance and service level agreements recently
- This has moved the Capacity closer to being a business with an appropriate level of decision making autonomy, although it still subject to some constraints
- Appendix B provides a summary of Capacity's:
  - Shares and shareholding structure
  - Constitution
  - Shareholders agreement
  - Service level agreement

Achieving integration
What is required – governance arrangements

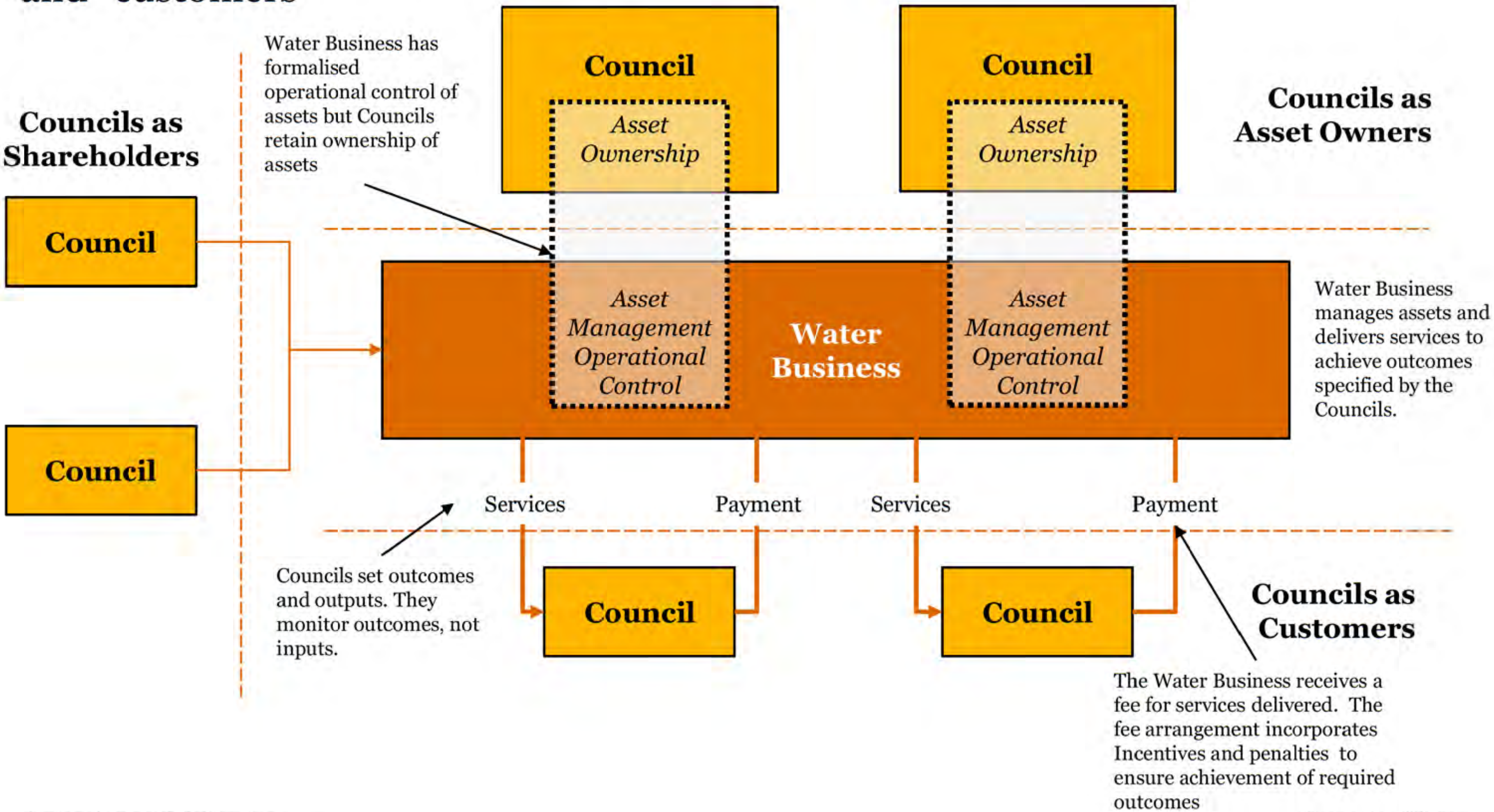
Governance arrangements

What governance arrangements for the water entity will best meet the Councils requirements?

- The existing governance arrangements for Capacity are:
  - Board of directors:
    - The council shareholders are entitled to appoint one director each and jointly appoint independent directors
    - Minimum of 4 and maximum of 8 directors (can be varied by Special Resolution)
    - Must be at least as many independent directors as non-independent directors
  - Shareholder Advisory Group established under the shareholders' agreement to:
    - Assist the shareholders fulfil their obligations under the Shareholders' Agreement
    - Coordinate shareholder accountability and assurance activities to reduce the workload for the Company
- These governance arrangements reflect the ownership relationship between the councils and Capacity

Council relationships with the water business

Three relationships with the water entity: asset (network) owners, shareholders and "customers"



Governance arrangements

- The most critical relationship is the customer (service level agreement) relationship
- The Councils specify the quality of service through the standards and KPIs in the service level agreements (SLA)
- The SLA also embodies the agreed work programme – this is part of the mechanism that ensures that assets are maintained to the standard set out in the agreed asset management plan
- Monitoring the achievement of the outcomes required under the SLAs is a critical function that each council will undertake individually in their role as customers of the water business
- The shareholder relationship is focussed on the councils exercising their shareholder rights and discharging their shareholder obligations under the constitution
- If the Councils exercise their rights as customers through the SLAs, the key governance issue to address is how best to structure the shareholder governance arrangements

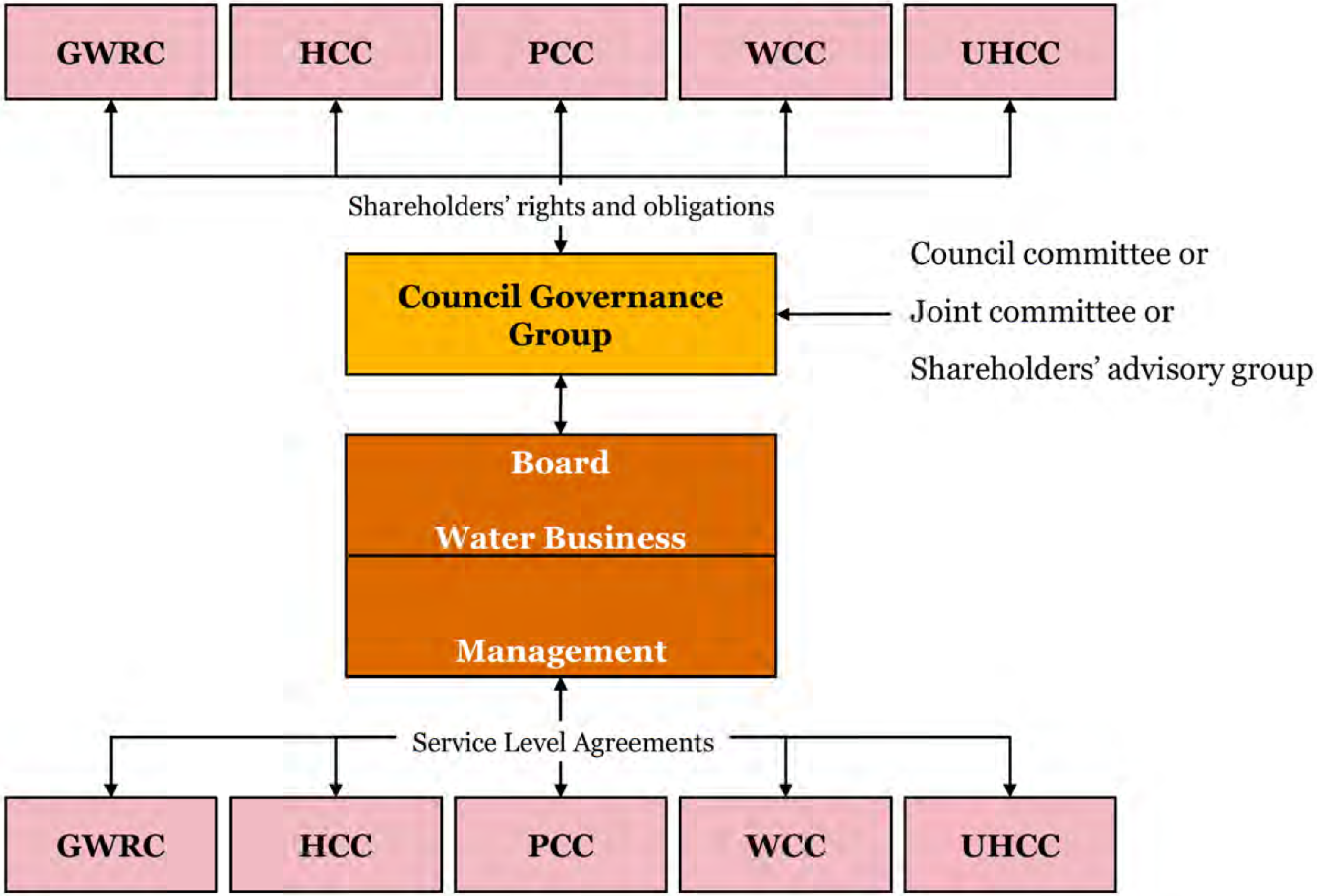
Governance arrangements

- Two high level approaches to exercising shareholder rights:
  - The Council's act individually and do not formally work in a coordinated manner to comment on the SOI and appoint directors etc.
  - The Councils come together under a formal arrangement to exercise their rights and discharge their obligations in a coordinated manner
- Both approaches are legitimate but the latter is recommended:
  - Encourages the shareholders to act regionally
  - Provides a body that can be the focus of public accountability
  - Creates an element of increased independence between the shareholders and the Board – more effective accountability
  - A single channel for communication between the shareholders and the Board
  - Does not preclude shareholders from disagreeing or exercising individual rights
  - Common practice for shareholders in a private company to govern the relationship between themselves and with the company through a formal arrangement (typically a shareholders' agreement)

Options for governance

- Formalisation of the council governance group arrangement will ensure legitimacy and effectiveness
  - An informal arrangement among shareholders, i.e. agree to work together, is likely to be ineffective over time
- Options for organising the council governance group:
  1. Use the concept of the Shareholders' Advisory Group included in Capacity's existing constitution i.e. the Shareholders' Advisory Group becomes the council governance group
  2. "Constitute" it formally as part of a council:
     - A committee of GWRC akin to the Regional Transport Committee and the Wellington Regional Strategy Committee
  3. Constitute its a joint committee of the councils not part of any particular council

Options for governance



Options for governance

- The governance options should not necessarily be distinguished by:
  - Their membership
    - The members can be the same whether the form used is the Shareholders' Advisory Group or a committee
    - The councils as shareholders can determine the membership
  - The role of the group
    - The role of the council governance group should be to exercise shareholder rights and discharge shareholder responsibilities regardless of the form:
      - › Discuss and agree the SOI
      - › Deal with director appointments
      - › Receive and monitor reports and papers from the directors on performance

Options for governance

The options can be distinguished by the basis on which they are constituted and their powers

	Shareholders advisory group	Committee of a council	Joint Committee
Legal basis	Shareholders' agreement	LGA	LGA – deemed to be a committee of each council
Decision making powers	Retained by each shareholder (council). The Shareholders' Advisory Group has no powers as an entity in its own right. It is a forum for the councils to discuss matters of mutual interest in their roles as shareholders	Retained by each member – powers of one council cannot be delegated to a committee of another council. Individual members of the committee can be delegated powers by the council they are representing but those powers will be exercised individually by those members, not by the committee in its own right	Can be delegated to the joint committee – joint committee can make decisions in its own right. The Councils can determine the extent of powers they want to delegate to the committee
Decision making process • Approval of SOI • Appointment of directors	Each shareholder to individually approve/agree	Each shareholder to individually approve/agree but these powers could be exercised at the committee level	Joint committee can approve/agree if delegated the appropriate powers to do so

Options for governance

Assessment against criteria

	Shareholders advisory group	Committee of a council	Joint Committee
Encourages the shareholders to act regionally	✓	✓	✓✓ Depending on powers delegated to the committee
Provides a body that can be the focus of public accountability	✗	✓✓	✓✓
Encourages increased independence between the shareholders and the Board	✓	✓✓	✓✓
A single channel for communication between the shareholders and the Board	✓ Individual approval of SOI and directors	✓ Individual approval of SOI and directors, although voting on appointment of directors, for example, can occur as a meeting of the committee	✓ or ✓✓ Depends on powers delegated to the committee
Allows the Councils to individually agree to the SOI and director appointments	✓✓	✓✓	✓✓ or ✗ Depends on powers delegated to the committee

Options for governance

- The Shareholders Advisory Group is the least preferred option
- The difference between the two committee options is less distinct
  - A committee of a council cannot be delegated powers held by another council
  - Individual members of a committee of a council can hold delegated powers from the council they represent. But they will exercise these powers as individuals. The committee does not have the powers in its own right.
  - A joint committee can have delegated powers in its own right.
    - The councils can choose whether to delegate powers to the joint committee in its own right or delegate powers to the individual committee members
    - In the latter case the joint committee will be very similar to a committee of one council
- The choice of a committee of one council or a joint committee will be a function of factors other than purely analytical issues

Options for governance

- An administrative issue is how the group will be serviced – their will need to be a "secretariat" to organise meetings, produce correspondence with company etc.
  - Arrangements will need to be made to service a Shareholder Advisory Group and a joint committee
    - A single council contracted to provide services
    - Rotated among councils
  - A committee of the GWRC could be serviced by the GWRC

Possible financial benefits
Previous estimates of possible cost savings

Water regionalisation and financial benefits

- In 2011/12 a business case was prepared to support:
  - Changes to the Capacity business model to move it to a "water services" business
  - Porirua City Council becoming a Capacity customer
  - Porirua City and Upper Hutt City Councils becoming shareholders in Capacity
- The business case included a high level assessment by Capacity of the possible financial benefits of:
  - Moving to the new operating model
  - Inclusion of Porirua City Council as a customer
- Consideration was given to the possibility of GWRC joining Capacity but it was assumed, at that time, that if it were to occur it would be at a later date
- Nevertheless, the financial benefits assessment included a scenario of full integration
  - The water services of all Councils including GWRC being delivered by a single entity (Capacity)

Water regionalisation and financial benefits

- The financial benefits were based on information of varying detail and accuracy
- The quantified benefits were "informed estimates" rather than accurate forecasts
- The factors contributing to the financial benefits included:
  - Amalgamation of asset management systems
  - "Stranded costs", being Council controlled overheads:
    - Overheads historically allocated by each council to its water services business unit
    - Transferring services to Capacity means that, in theory, the overheads could be "saved"
  - Operating cost savings through removing duplicated costs, achieving operational efficiencies etc.
  - Capital cost savings through streamlining, rationalising and consolidating capital works programmes

Water regionalisation and financial benefits

- The ability to remove (i.e. save) stranded overheads is by no means certain
- Conservative not to count this benefit, at least in the first instance
- Capacity's 2011/12 estimate of possible cost savings from GWRC amalgamating its water services with the four city councils was as follows (excl stranded overheads):

Annual real cost savings	**$000**
Efficiencies from asset management integration	300
Rationalisation of vehicle use	8
Rationalisation of IT systems and software licences	164
Rationalisation of personnel costs	150
Operation and maintenance contract: extend the performance regime in Capacity's contract with its O&M service provider	75
Total	697

- The savings assumed full integration of the five councils' water services businesses

Appendix A
Important notice

Important notice

This paper has been prepared solely for the purposes stated herein and should not be relied upon for any other purpose.

This paper is strictly confidential and (save to the extent required by applicable law and/or regulation) must not be released to any third party without our express written consent which is at our sole discretion.

To the fullest extent permitted by law, PwC accepts no duty of care to any third party in connection with the provision of this paper and/or any related information or explanation (together, the "Information"). Accordingly, regardless of the form of action, whether in contract, tort (including without limitation, negligence) or otherwise, and to the extent permitted by applicable law, PwC accepts no liability of any kind to any third party and disclaims all responsibility for the consequences of any third party acting or refraining to act in reliance on the Information.

We have not independently verified the accuracy of information provided to us, and have not conducted any form of audit in respect of the Councils. Accordingly, we express no opinion on the reliability, accuracy, or completeness of the information provided to us and upon which we have relied.

Business attached thereto.

The statements and opinions expressed herein have been made in good faith, and on the basis that all information relied upon is true and accurate in all material respects, and not misleading by reason of omission or otherwise.

The statements and opinions expressed in this paper are based on information available as at the date of the paper.

We reserve the right, but will be under no obligation, to review or amend our paper, if any additional information, which was in existence on the date of this paper was not brought to our attention, or subsequently comes to light.

This paper is issued pursuant to the terms and conditions set out in our engagement letter and the Terms of

Appendix B
Recent changes to Capacity's ownership, governance and service level agreements

Changes to Capacity's business model

There have been important changes in the Capacity's business model and ownership structure

- Changes in Capacity's service level agreements with its customers and constitution and of a shareholders' agreement have been/are being implemented
- Prior to the recent changes, Capacity:
  - Managed contracts for operating and capital works on behalf of its Council customers – it did not have authority to enter into contracts in its own name
  - Was subject to scrutiny and monitoring by the Council customers to varying degrees
  - It terms of its own costs, operated, in effect, on a cost recovery basis
  - Had insignificant capital and operated to breakeven – it wasn't able to build up any significant retained earnings. Consequently, it has had little capital to invest in its business
  - Wasn't rewarded for efficient performance
  - Had two shareholders but three customers
  - Managed only part of the Wellington region's water operations (HCC, UHCC and WCC)
  - Managed each customers network on a separate, individual basis reflecting each customers requirements and standards
- As a consequence of the recent changes, Capacity:
  - Can enter into operating related contracts in its own name
  - Can enter into contracts for Capital Works up to specified values
  - Must deliver outputs against a range of key performance indicators
  - Will receive an agreed monthly amount for delivery of a work programme agreed with each Council. Capacity must manage its own costs and consultants within this cost.
    - It will be entitled to retain any surplus where actual costs are less than the monthly payment
    - [how are deficits funded]
  - Will receive an incentive payment if its performance is [ ]
  - Has four customers and four shareholders
  - Now manages all of the "retail" water operations in the Wellington Region
  - Has received an injection of capital as a consequence of the shareholder changes
- Capacity's four shareholders have entered into a shareholders agreement and, under this agreement, have formed a Shareholders' Advisory Group to coordinate their shareholder activities and shareholder communications with the Company

Shareholdings and shareholder rights

- Recent important changes in Capacity's ownership, governance and operating framework:
  - PCC and UHCC have taken an ownership stake
  - Injection of capital
  - New constitution
  - Shareholders' agreement
  - New service level agreement
- New shareholdings are presented in the following table
- Two classes of shares
  - Class A: voting shares
  - Class B: distribution shares

- Class A
  - Appoint or remove a director or auditor
  - Adopt a constitution
  - Alter the company's constitution, if it has one
  - Approve a major transaction
  - Approve an amalgamation of the company under section 221
  - Put the company into liquidation
- Class B
  - Right to equal share in dividends.
  - Right to equal share in distributions of the surplus assets

	Class A No	%	Class B No	%	Class B $000
HCC	150	25	100	25	200
PCC	150	25	60	15	120
UHCC	150	25	40	10	80
WCC	150	25	200	50	400
	600	100	400	100	800

Service level agreements
Important terms

- Services:
  - Planning and advice, including provision of AMPs
  - Inputs to Annual Plan and Long Term Plan to assist Councils determine annual and long term work to maintain, renew and as necessary expand their Networks
  - Manage all necessary operating and renewable work per the Annual Work Programme and the Annual and Long Term Plans
  - Manage all capital works per the Annual Work Programme and the Council's Annual and Long Term Plans
  - Strategic and policy advice to ensure that the Water Services are delivered by Council on an affordable and sustainable basis.
  - Manage the application of necessary resource consents
  - Performance measured against set of KPI with individual targets
- Contracts
  - Existing contracts for works or supply of assets in place at Commencement Date: Capacity acts as the principal's rep
  - Future contracts for operations and maintenance works or for supply of assets: Capacity will be the principal.
  - Future capital works projects: entered into in the name of the Council unless below stated thresholds ($ value) in which case they can be in the name of Capacity
- Payments to Capacity
  - Standard Monthly Charge for providing the Management Services per the agreed annual work programme
    - Includes Capacity's costs and consultancy charges (operational and capital activities)
    - Capacity must manage within the Standard Monthly Charge – no "top-up" for overruns
    - Work outside annual work programme paid for separately
  - Councils must make payments to Capacity in accordance with specified timetable (minimises Capacity's working capital requirements).
  - Capacity entitled to an annual performance payment subject to meeting certain KPIs
- Contract expiry: 30 June 2021
- Capacity has no statutory powers other than under statute or expressly by the Councils in the contract or by separate formal delegation.
- Services to be provided in the best interests of the Council, recognising Council obligations to its variou stakeholders.
- Capacity entitled to access Council's assets and infrastructure to provide the services but must safeguard the assets from damage, loss and destruction and keep the assets in good condition and repair (fair wear and tear excepted)
- Capacity and the Council relationship will be characterised by the "partnering" style of relationship.

Constitution
Important terms

- Shares cannot be issued or transferred to any person other than a Local Authority or a CCO
- New shares must be offered to existing shareholders pro rata to maintain the existing voting and/or distribution rights.
- Transfer of existing shares;
  - Requires a Special Resolution (75% majority)
  - Recipient or transferee must be a Local Authority or a CCO approved by all other shareholders
  - Directors may refuse to register a transfer if, among other things, they consider it would not be in the best interests of the Company
  - Directors must refuse to register a transfer if it has not been approved by Special Resolution or transferee not a Local Authority or a CCO
- CEOs are to be the representative of each Class A shareholder.
- Any resolution passed by Class A shareholders relating to the management of the Company is not binding on the Board if it is not specifically set out in the Constitution or Shareholders' Agreement.
- Quorum for shareholders' meeting is a majority of Class A shares
- Each Class A shareholder entitled to appoint one director
- Class A shareholders jointly appoint Independent Directors
- The Class A shareholder can remove its appointed director
- Directors:
  - Minimum: 4; Maximum : 8 (can be varied by Special Resolution)
  - Must be at least as many Independent Directors as non-Independent Directors
  - One vote per director at meetings. A resolution of the Board is passed if a majority of the votes cast on it are in favour of it
- Chairperson:
  - Must be one of the Independent Directors
  - Elected by all directors
  - Does not have a casting vote.
- The role of a Director is to assist the Company to meet its objectives and any other requirements in the Company's Statement of Intent.
- The business and affairs of the Company must be managed by, or under the direction of, the Board.
- The Board may authorise payment of dividends if it is satisfied that the Company will satisfy the solvency test.

Shareholders' Agreement
Important terms

- Establishes a Shareholders' Advisory Group (SAG) to:
  - Assist the shareholders fulfil their obligations under the Shareholders' Agreement
  - Coordinate shareholder accountability and assurance activities to reduce workload for the Company
- CEO's of each shareholder are the representatives on the SAG. Others may attend as observers from time to time.
- Meets not less than twice a year.
- Each shareholder has one vote
- SAG members appoint its chairman
- Role of SAG is to provide advice to shareholders and coordinate shareholder feedback to the Company. It particular it will:
  - Coordinate feedback on letters of expectations, draft and final SOI, quarterly papers
  - Coordinate feedback on Directors Fees
  - Discuss shareholder proposals to the board
  - Coordinate appointments to the Board
  - Coordinate views on changes to the Constitution or SA
  - Discuss major transactions or other decisions requiring shareholder approval
- SAG not to agree or implement operational or management decisions that are the responsibility of the Company and its Board
- Each shareholder entitled to nominate independent director candidates
- SAG to discuss feedback on director nominations for independent directors
- Individual shareholders must each approve the appointment of an independent director
- Shareholders to
  - Act in a spirit of cooperation and collaboration, acting together to communicate effectively with the Company
  - Operate on a no surprises basis
- Shareholders' Agreement continues until:
  - One shareholder owns all shares
  - It is terminated.
- Matters requiring unanimous approval include: changes to the constitution, increases in share capital, buy backs, changes to rights, privileges or conditions attaching to shares, major transactions
- Matters requiring special resolution include: material change to the nature of the business, granting of an indemnity or guarantee, borrowing in excess of $2 million other than in the ordinary course of business, new SLAs, acquiring a business