

Local government position statement on three waters

“...we extend the opportunity to central government to work together with local government to establish a robust regulatory framework that cost effectively delivers the three waters infrastructure and services that our communities deserve.”



**We are.
LGNZ.**

Te Kāhui Kaunihera o Aotearoa.

Introduction

< Local government knows that high quality drinking water, wastewater and stormwater services and infrastructure are critical to the ongoing health and success of our communities and the environment they live in.>

As stewards of the three waters, local government has long known that population pressures – particularly ageing and shrinking populations – pose a significant challenge to our ability to provide water services in the future. Intensive land changes are also testing local government’s ability to maintain the quality of freshwater bodies in some places. We have worked hard over a number of years to put an evidence-based foundation in place, upon which we can build a regulatory framework to meet these challenges and deliver the high quality of water our communities demand.

This position paper encapsulates that evidence and the sector’s deep experience to set out the key principles that we, as owners and providers of the three waters infrastructure and services, see as critical and necessary in reforming the three waters regulatory framework.

It is essential that we get these principles right from the start as central government begins to undertake a programme of work to reform the water rules in the wake of the Havelock North contamination incident. We welcome the urgency, but also recognise that decisions made in haste can have far reaching and unforeseen consequences.

Principle 1: Fix drinking water first

Of the three waters, drinking water regulation is most in need of reform to protect the health of communities and policy work should focussed on this area. The Havelock North incident identified two key weakness with the current drinking water regulations. The first was weak drinking water quality standards, with councils assessed on their plans to meet these standards, not on the standards themselves. This regulatory design flaw was compounded by affordability exemptions introduced into the Health Act in 2007. The second weakness was lax regulatory oversight by the Ministry of Health in monitoring compliance.

To fix these problems with the regulations, local government supports reforms that establish hard line drinking water standards, and the legislative requirement for all councils to meet these standards, with no affordability exemptions. These new standards should be outcome-based to encourage innovation and avoid, as far as possible, prescribing inputs, such as chlorination. We also advocate for a strong role for the drinking water regulator to ensure councils meet new minimum quality standards, be it the Ministry of Health or a new independent regulator.

< Local government is definitely not against change.>

LGNZ’s Three Waters work

In 2014 LGNZ identified an information gap about three waters infrastructure. LGNZ conducted a National Information Framework Survey which collected detailed data on the three waters assets and services from a total of 70 councils. This data formed the basis of our 3 Waters Issues Paper, which identified the core issues for the sector:

- Investing to replace and renew existing assets;
- Investing to meet rising standards and increasing expectations; and
- Providing end-users with the right incentives to use water infrastructure and services efficiently.

This formed the basis of LGNZ’s 3 Waters Position Paper in 2015. The position paper argued for a refresh of our regulatory framework to ensure delivery of quality potable and wastewater services and outlined what stronger performance in the three waters sector would look like:

- Put in place effective management and investment in the physical assets;
- Understand customer needs and expectations;
- Have accessible and accurate data on performance; and
- Acknowledge the diverse range of customers.

Principle 2: Let existing regulations run their course

Wastewater and stormwater infrastructure can directly influence the quality of the natural environment, particularly where they discharge into freshwater and marine environments. These are also long-lived assets, and it takes many years of planning and investment to meet new quality standards.

The 2017 amendments to the National Policy Statement for Freshwater Management (NPSFM) introduced new requirements and regional councils are required to give effect to the NPSFM by no later 2025*. This has a flow on effect to infrastructure providers and much of the planning and investment work is already underway and on track to meet these higher standards in regional plans.

Local government advocates for letting this work run its course before introducing new quality measures, noting that the NPS for Freshwater Management has been amended twice since being introduced in 2011. Constantly shifting the goal posts is likely to have the unintended consequence of delaying work already underway to meet the already stringent standards.

* Councils may request a five year extension provided they meet certain technical criteria.

Principle 3: Take mandatory aggregation off the table

An output-focussed and risk-based approach is a hallmark of innovative and adaptable policy making. Any meaningful reform of the three waters legislation needs to be built on these foundations. To this end, we would strongly urge the government to avoid setting input requirements, particularly mandatory aggregation.

This is because New Zealand's three waters assets are owned by their respective communities, not central government. It is these communities who are best placed to make decisions about how they structure their assets, and community buy-in is a vital and necessary part of any form of local government restructure.

Secondly, international experience shows that aggregation of water infrastructure is not a policy silver bullet, and produces diseconomies of scale as often as it produces economies of scale. That aggregation has worked in Scotland does not necessarily mean it will work in New Zealand. Local government is not opposed to aggregation, and recognises that this model can deliver significant benefits. However, it should only be applied on a case-by-case basis to ensure it makes economic sense, and with the consent of the asset owners. What we oppose is one-size-fits-all policy-making that is likely to determine the makeup of the aggregated water service providers based on geographic and political lines, and closes the door on other forms of water service provision, such as shared services, franchising, and contracted service provision.

Principle 4: Incentives matter

Strong quality standards across all three waters, coupled with rigorous enforcement, create a strong incentive to lift performance in a way that encourages innovation and places the least cost burden on communities. These incentives will also likely shape the structure of delivery and, where possible, should be left to run their course. If economic regulation is considered necessary to ensure these services are provided in a cost effective manner, local government supports the establishment of a co-regulatory regime, similar to that employed in the gas industry. This model will bring together the information held by central government policy makers with the knowledge of local issues held by local government, and the technical insights of suppliers and assessors to improve over time service delivery to water users.

Local government recognises that under the principles outlined above, there may be a small number of cases where councils will be unable to meet the standards or restructure their operations to meet them, particularly among small rural councils. We believe this builds the case for targeted financial support from central government, which previously occurred under the drinking water assistance programme which was abolished in 2015, and the sanitary works subsidy scheme in 2013 (although some projects were still running their course after this date).

Conclusion

Local government plays a vital role as the interface between central government and its desire for all New Zealanders to enjoy quality infrastructure, and communities and their ability to pay for this infrastructure. By adopting the principles above as core pillars of the three waters reform process we are confident that we can strike a balance that best satisfies both considerations and get the best outcomes.

We accept the need to embrace change in the face of mounting population pressures, and we extend the opportunity to central government to work together with local government to establish a robust regulatory framework that cost effectively delivers the three waters infrastructure and services that our communities deserve.

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Questions and Answers

1. Is the water system broken?

No. With respect to drinking water, millions of New Zealanders would be sick from consuming contaminated water if it was.

2. Does this mean that there aren't problems with the drinking water system, or related challenges with waste and stormwater?

No. As the Havelock North incident showed there are critical weaknesses with the drinking water system that need to be addressed. But it is a very long stretch to look at Havelock North and conclude that the entire water system is broken. This is clear in the data.

DIA's BECA report shows that there are a number of water treatment plants that do not meet the current Drinking Water Standards. But these plants only make up a small part of the broader system, servicing 16.5 per cent of the country's population. That is still too high, but is hardly an indicator of widespread system failure. Furthermore, these plants service over 865,000 people but this does not mean 865,000 people get sick from water contamination a year. The Havelock North Inquiry could only definitively point to about 35,000 cases of water contamination a year, or four per cent of the population serviced by non-compliant water treatment plants.

Figures show that non-compliant plants only account for a small portion of all water treatment plants, and the number is falling. It is also worthwhile considering what non-compliant means. Does it include total failure or a missed test? If a drinking water treatment plant passes the test on 29 days and fails on the 30th, does it comply or fail? There is no clarity on this. There is no such thing as risk-free infrastructure, but there is such a thing as clarity of risk.

3. What will the costs be to upgrade plants to achieve compliance?

The BECA report also estimated that it would cost between \$308 million and \$573 million in capex for these plants to gain compliance, and between \$11.3 million and \$20.9 million in opex every year to make all plants compliant. From a local government perspective, where we plan in ten year cycles, these costs are serviceable. Our research shows these figures at their highest range are equivalent to just 0.1 per cent of the asset base.

There are acute affordability issues in some areas, particularly among smaller councils with aging populations, and this is an argument for targeted intervention, not wholesale consolidation in the sector.

Using the Government's own data, it is hard to argue that there is widespread system failure. New Zealand's drinking water system is not broken, but there are areas in need of improvement, and urgently so in some cases if we are to prevent a repeat of the Havelock North incident. With the right regulatory framework, these are well within the local government sector's ability to

address. The same approach will yield results with wastewater and stormwater.

4. Are the policy fixes being put forward likely to address the problems with New Zealand's water system?

Mostly yes, and a no.

The Havelock North Inquiry and the Government's Three Waters Review identified clear weaknesses in the current drinking water regulatory system and large variation in performance across different council providers. We concur with these findings.

We agree with many of the policy fixes put forward for drinking water recommended by the Havelock North Inquiry, especially setting clear quality standards and the monitoring of performance against these standards by an independent regulator.

We don't agree that the entire water sector should be rationalised into a handful of regional water monopolies to fix the current problems in the drinking water space.

There is no concrete problem definition that supports aggregation. The Havelock North Inquiry correctly identified problems with the provision of drinking water, and that is where we should focus our attention. Further, there is no consistent evidence that these monopolies will be more cost efficient than the current arrangements.

5. Are LGNZ and local government against change?

Local government is not arguing against change. However, any mandate for change must be built on hard data, and evidence-based policy proposals, and it must be an open and collaborative discussion to find the best way forward.

LGNZ's 3 Waters Position Paper outlines that we can fix most, if not all, of the current problems with a regulatory overhaul.

We are not against aggregation either; only the mandatory part. Wellington Water, which is jointly owned by Greater Wellington Regional Council and the Hutt, Porirua, Upper Hutt and Wellington city councils, shows that the sector is capable of independently consolidating services and infrastructure where it makes sense to do so.

What we are calling for is for local government and central government to have an evidence-based discussion on our water system. Only then can we have the confidence to talk about innovative policy solutions that strike a better balance between health, sustainability, and affordability outcomes.

This is what local government has been asking for over the last five years; a collaborative forum that gets central government and local government working collaboratively on these most challenging of issues.

[Te Tari Taiwhenua | Department of Internal Affairs](#)

Building a safe, prosperous and respected nation

Questions and Answers: the new water regulator as a Crown entity

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The regulator

Q: Why do we need a new drinking water regulator?

A: As recommended by the Havelock North Drinking Water Inquiry, an independent drinking water regulator is necessary to oversee the entire drinking water system, help prevent tragedies such as the Havelock North campylobacter outbreak and ensure New Zealand communities have access to safe and acceptable drinking water.

Q: Why has the Government chosen to create a new Crown entity as the water regulator?

A: A standalone Crown entity will enable a dedicated focus on drinking water quality through an entity with an organisational structure that relates solely to water. Its statutory independence will also give confidence in its regulatory activities to all parties in the sector.

Q: What will it do?

A: The regulator will have a range of statutory objectives relating to:

- protecting and promoting public health outcomes and drinking water safety;
- administering the drinking water regulatory system;
- building capability among drinking water suppliers, and across the wider water industry, including by promoting collaboration, education and training; and,
- Te Mana o te Wai.

Q: Will the regulator be for drinking water only or for wastewater and stormwater as well?

A: The Ministry for the Environment is reviewing national standards for wastewater and stormwater. The new regulator is primarily a drinking water regulator, but with a remit for

some centralised wastewater and stormwater regulatory functions to allow it to contribute to improved environmental outcomes for fresh water. These functions include:

- providing oversight and advice relating to implementation of national standards for wastewater and stormwater;
 - monitoring and reporting on the performance of wastewater and stormwater networks; and
 - preparing and promoting national guidelines and good practices relating to the design and management of wastewater and stormwater networks.

Q: What will be the role of regional councils when the new regulator is in place?

A: Regional councils will remain the primary regulators of discharges from wastewater and stormwater networks, but there will be stronger central oversight of wastewater and stormwater regulation through the new regulator.

Q: When will a new regulator come into being?

A: Work to establish the regulator will begin immediately through a unit within the Department of Internal Affairs. A regulator will also require new legislation, which will be introduced in the coming months and is expected to be passed in 2020.

Costs

Q: Will the regulator's work add to the costs faced by local authorities/communities?

A: It is acknowledged that it may be challenging for some suppliers to comply with their regulatory obligations, and this will be managed by allowing for assistance and time to achieve compliance, in a way that is proportionate to supplier capability and the complexity and risks of their water supply systems.

In late 2019, Cabinet will consider advice on the wider funding and capability issues associated with water service delivery, and how we might address them.

In addition, the Productivity Commission's inquiry into local government funding and financing is looking into the wider financial challenges across local government.

Q: What level of costs are councils likely to face to upgrade their drinking water infrastructure to meet new regulatory requirements?

A: The estimated capital costs for larger drinking water suppliers (serving more than 500 people) to comply with new regulatory requirements may range from \$277 million to \$286 million. It's assumed that council drinking water suppliers, which are already regulated, are likely to have already included costs in their long-term plans, but some may need to bring planned expenditure forward.

The cost implications for smaller suppliers (serving fewer than 500 people) are less certain, and may range from an estimated \$150 million to \$400 million in capital expenditure. That's

why the reforms are being phased in over five years, so that the regulator can work with the smaller suppliers to help them achieve compliance.

Q: How will councils be able to meet these costs?

A: The challenge we face is that some of our smaller councils and communities, and many non-council drinking water suppliers (including marae), are not well-positioned to meet the costs of upgrading their three waters infrastructure.

We need to ensure all communities can receive safe, reliable, culturally-acceptable three waters services in an affordable way. This may include thinking differently about how these services are paid for.

We want to help councils that are discussing their own collaborative approaches to improving drinking water delivery for their areas.

To help remove financial barriers, this Government has agreed to consider, on a case-by-case basis, proposals from regions for funding to support collaborative water service delivery efforts. For eligible funding applications, we will co-invest with local government up to 50 per cent of the costs associated with investigating collaborative approaches to water service delivery.

Waste and stormwater

Q: Are there going to be minimum standards for wastewater and stormwater discharges?

A: There will be targeted reforms to improve performance monitoring of our wastewater and stormwater systems. The reforms also include a proposed new national environmental standard for wastewater discharges and overflows. The Government is consulting on this proposed new standard as part of the Action for Healthy Waterways discussion document, which sets out proposals on the national direction for our essential fresh water.

As relatively little data exists about how stormwater systems impact our environment, we are not looking at setting stormwater standards right now. Instead we will focus first on collecting information on performance and promoting best practice.

Q: Why are some of the environmental regulations being progressed through a different process to drinking water?

A: Due to their environmental focus, it is appropriate for some of the targeted wastewater and stormwater initiatives to be progressed in tandem with the Essential Freshwater programme and given effect to through regulations under the Resource Management Act 1991 (RMA) or other legislation.

Iwi/Māori

Q: Will marae and papakāinga have to comply with the drinking water requirements?

A: Yes. All drinking water suppliers (except domestic self-suppliers) will be required to comply with the new regulatory requirements for drinking water.

Q: Will the government provide financial or other assistance to help them comply?

A: Advice will be provided later this year on funding arrangements, which will include whether and what assistance might be provided. It may be challenging for some suppliers to comply with their obligations, and this will be managed by allowing for assistance and time to achieve compliance, in a way that is proportionate to supplier capability and the complexity and risks of their water supply systems.

Q: How long will they have to transition to the new regime?

A: Further work is needed to determine the most practicable approach to bringing suppliers not currently covered into the regulatory system, particularly very small suppliers. It is expected that the regulator would work with marae and papakāinga that are supplying drinking water to transition them into the regulatory system within five years following enactment of the new Water Services Bill.

Q. How is it proposed that the drinking water regulator reflect and protect Treaty of Waitangi and Māori interests?

A: There are several elements that have been agreed to which it is considered collectively reflect and protect Treaty of Waitangi and Māori interests. These include legislation specifying the regulator will support Te Mana o te Wai. The legislation will also specify that the operating principles of the regulator will include the need to engage early with Māori; and that it will need to understand, support, and enable mātauranga Māori and tikanga Māori and kaitiakitanga to be exercised.

A Māori Advisory Group will be established to advise the regulator on these matters.

Q: What consultation have you done with Iwi/Māori over this?

A: Targeted consultation with iwi/Māori representative groups helped inform the advice and decisions recently considered by Cabinet.

- Return to [Three Waters Review](#)