

**AGENDA FOR AN ORDINARY MEETING OF THE COUNCIL TO BE HELD IN THE
CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,
ON WEDNESDAY, 18 AUGUST 2004 COMMENCING AT 9.30 AM**

TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1	APOLOGIES	1
2	OWNERSHIP OPTIONS FOR WATERCARE SERVICES LIMITED	1
3	REVIEW OF THE AUCKLAND REGION'S WATER AND WASTEWATER OPERATING POWERS	4

**AGENDA FOR AN ORDINARY MEETING OF THE COUNCIL TO BE HELD IN THE
CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,
ON WEDNESDAY, 18 AUGUST 2004 COMMENCING AT 9.30 AM**

1 APOLOGIES



2 OWNERSHIP OPTIONS FOR WATERCARE SERVICES LIMITED

PURPOSE OF THE REPORT

This report foreshadows a government review of ownership options for Watercare Services and presents recommendations with regard to Council's position on Watercare's ownership.

BACKGROUND

On 16 April 2004, at the Chief Executive Officers' recommendation, the Shareholders Representative Group wrote to the Prime Minister seeking clarification of:

- the timing of the government's (Auckland water and wastewater industry) legislation review; and
- the government's intentions for the ownership of Watercare.

On 18 May 2004 the Shareholders Representative Group received correspondence from Hon Chris Carter, Minister of Local Government, clarifying the timing of a legislative review. However, Minister Carter's correspondence is silent on the issue of ownership of Watercare.

Unofficially two views are currently being debated:

- a) continuing to vest ownership of Watercare in its current shareholding councils; and
- b) transferring ownership of Watercare to the Auckland Regional Council.

This debate has not yet been formalised as part of any official review undertaken by a government department. However, officials from the Department of Internal Affairs have foreshadowed that a review of the ownership and governance of Watercare may commence as part of the review of the Auckland specific legislative provisions.

STRATEGIC CONTEXT

The Council's strategic goal of sustainable management of the three waters, water supply, and wastewater and stormwater is integral to its relationship with Watercare and to its role on the Shareholders Representative Group.

The Council has two major roles in connection with Watercare – one as shareholder/owner, the other as customer. The extent to which this Council can add strategic input to the governance of Watercare, through its ownership and governance role, heavily influences the extent to which it can supply retail services to the City's ratepayers that meet the Council's own strategic goals, and at the most efficient price possible.

ISSUES

At the Finance and Operational Performance Committee Meeting on 5 April 2004 the Committee resolved to work with other councils in the region and the Shareholders Group to send a common message to Government that sustainable management is a primary objective and any proposed governance structure should ensure that local authorities will have enough influence to facilitate that objective.

Watercare is a regional asset, which operates for the benefit of the region, rather than one city or district in particular. The division of shares between the six shareholding councils reflects Watercare's status as a regional asset.

Through the Shareholders Representative Group, Watercare's six shareholding councils can collectively monitor and report on Watercare's performance, including its compliance with a quadruple bottom-line approach, which must apply to all aspects of Watercare's business.

The relationship between the Board and Management of Watercare Services and the Shareholders Group has improved considerably over the past few years.

For example, the Shareholders Group has:

- encouraged Watercare to accelerate negotiations of bulk water and wastewater agreements. Those agreements contributed to stability in wholesale pricing;
- encouraged Watercare to work with Local Network Operators to develop an Auckland Water Management Plan;
- negotiated a water savings rebate scheme;
- negotiated a price discount mechanism so that Watercare returns the benefits of over-performance to customers. This year Watercare returned \$15.7 million to its customers;
- undertaken a cost efficiency review. The review includes an officers' report on regional initiatives and service standards and a consultant's assessment of capital and operating expenditures.

More recently, as a result of the review of Watercare's draft Statement of Corporate Intent and subsequent recommendations from Waitakere and North Shore City Councils, the Shareholders Representative Group has adopted a new annual process. The new process is designed to improve the quality of communication between the Shareholders Representative Group and Watercare and increase the opportunity for council input, and coordination of this input, in the annual review of the Draft Statement of Corporate Intent.

The process will also be beneficial for the Shareholder Representative Group-Watercare board relationship in terms of communicating Shareholder Representative Group priorities, and will increase the effectiveness of the Statement of Corporate Intent as a direction-setting tool.

The new process will be structured so that Council representatives can log social, cultural, economic and environmental issues for discussion at Shareholder Representative Group meetings. In particular, the issues log and priority setting process will provide a mechanism for this Council to articulate its views on the sustainable management of water.

It is recommended elsewhere on this meeting's agenda (see the Review of the Auckland region's water and wastewater operating powers) that the Council approve the following principles:

"Auckland's local authorities should have broad powers in order to plan for the delivery of their wastewater services, consistent with those powers vested in local authorities throughout New Zealand, together with any special powers necessary to preserve Watercare's ability to operate effectively."

"That the law require Watercare to retain ownership of assets needed to supply water and wastewater services to the region, to be retained in joint ownership by the territorial authorities in the region and to minimise prices consistent with the need to maintain and develop infrastructure to meet future needs and a sustainable future business which delivers a first class service".

These principles reflect the reality of Watercare's shareholding councils having the industry knowledge, experience and expertise necessary to be effective owners and stewards of Watercare and add value to the company's activities from a governance perspective. These principles also assume that the shareholding councils will be able to maintain ownership of their water services, consistent with the ownership of water services by local authorities throughout New Zealand.

Waitakere City Council's strategic goal of sustainable management of the three waters, water supply, and wastewater and stormwater is integral to its relationship with Watercare and to its role on the Shareholders Representative Group. This Council's ability to influence regional attitudes towards the management of water may be severely compromised if the governance role is removed and its relationship with Watercare is limited to that of customer-provider only.

Furthermore, there is no assurance from central government that any proposed governance structure will ensure that local authorities will have enough influence to facilitate the sustainable management of water.

CONCLUSION

This report foreshadows a government review of the ownership and governance of Watercare.

The government review may identify that there are two possible options for consideration - (a) continuing to vest ownership of Watercare in its current shareholding councils, and (b) transferring ownership of Watercare to the Auckland Regional Council.

Over the past few years a more constructive relationship has developed between the shareholding councils and Watercare. This relationship has enhanced the strategic direction of Watercare since 1998. A new annual process has been designed to improve the quality of communication between the Shareholders Representative Group and Watercare and increase the opportunity for council input, and coordination of this input, in the annual review of the Draft Statement of Corporate Intent.

There has been no assurance from central government that any proposed new Watercare ownership structure (including the possible transference to Auckland Regional Council) will ensure that local authorities will have enough influence to continue to facilitate the sustainable management of water.

Given the current level of influence that shareholding councils have over Watercare's strategic direction and potential for continued improvement, no compelling reason has been made to change the current ownership structure.

RECOMMENDATIONS

1. That the Ownership Options For Watercare Services Limited report be received.
2. That Waitakere City Council supports the retention of its shareholding in Watercare Services Limited and opposes any move by the Government or any local authority to transfer the ownership and governance of Watercare to the Auckland Regional Council.
3. That the Council directs its two Watercare Shareholder's Representative Group members to articulate Waitakere City Council's desire to retain its shareholding in Watercare Services Limited and to oppose any move to transfer the ownership and governance of Watercare Services Limited to the Auckland Regional Council.

Report prepared by: Annika Lane, Senior Analyst, Governance and Infrastructure.



3 REVIEW OF THE AUCKLAND REGION'S WATER AND WASTEWATER OPERATING POWERS

PURPOSE OF THE REPORT

This report asks the Council to develop a position on the upcoming governmental review of the Watercare legislative provisions. The Council's position will guide the Council's Shareholders Representative Group members and staff participating in the review process.

BACKGROUND

On 18 May 2004, the Watercare Shareholders Representative Group received correspondence from the Hon Chris Carter, Minister of Local Government, indicating that his officials have begun work on the review of the remaining Auckland specific provisions of the Local Government Act 1974, including those relating to Watercare Services Limited. Officials have commenced work on Terms of Reference for the review, with policy decisions expected by the end of the year.

The Officers Working Group, supporting the Watercare Shareholders Representative Group, has undertaken an initial review, which included consultation with senior managers of six Local Network Operators, Watercare, and a representative of the Employers and Manufacturers Association.

The Officers' Review identified support for the general principle that Auckland's local authorities should have broad powers to plan for the delivery of their wastewater services, consistent with those powers vested in local authorities throughout New Zealand, together with any special powers necessary to preserve Watercare's ability to operate effectively. This principle reflects a desire to move away from inflexible prescriptive statutes, which regulate Auckland's wastewater industry, while retaining legislation only to regulate the most essential arrangements.

The Officers' review has identified a range of legislative issues. These issues, relating to Watercare, are:

- Watercare as a regionally-owned council-controlled organisation;
- The prohibition on a dividend payment;
- Watercare's reporting requirements and other obligations.
- The Region's wastewater network; including:
 - Watercare's sole right to construct, maintain and manage all main sewers and drains;
 - Watercare's power to enter premises for the purpose of inspection - to enforce the Auckland Metropolitan Drainage Act 1960 and any bylaw;
 - Watercare's sole right to manage trade waste through its sewers;
 - Whether the Auckland Regional Council Trade Waste Bylaw 1991 is appropriate;
 - Whether the Auckland Metropolitan Drainage Act 1960 should be repealed;
 - Repealing the monopoly provisions of the North Shore Drainage Act.

STRATEGIC CONTEXT

The Council's strategic goal of sustainable management of the three waters, water supply, and wastewater and stormwater is integral to its relationship with Watercare and to its role on the Shareholders Representative Group.

The Council has two major roles in connection with Watercare - one as shareholder/owner, the other as customer. The extent to which this Council can add strategic input to the governance of Watercare, through its ownership and governance role, heavily influences the extent to which it can supply retail services to the City's ratepayers that meet the Council's own strategic goals, and at the most efficient price possible.

ISSUES

Watercare as a Council-Controlled Organisation

The Local Government Act 1974 provisions relating to Watercare were not transferred to the Local Government Act 2002. Under the Local Government Act 1974, Watercare remains legally defined as a Local Authority Trading Enterprise and continues to prepare and complete its Statement of Corporate Intent in accordance with Local Government Act 1974 requirements. The requirement to prepare and complete its Statement of Corporate Intent is also set out in Watercare's constitution

Watercare meets the definition of a council organisation under the Local Government Act 2002 although that Act specifically excludes Watercare and its subsidiary from the definition of a Council Controlled Organisation. A council organisation is held or controlled by one or more local authorities, or one or more local authorities have the right, directly or indirectly, to appoint one or more of the directors of the organisation.

The Local Government Act 2002 is silent on the requirement for a council organisation to produce a Statement of Corporate Intent. The only reporting requirement is for local authorities to regularly undertake performance monitoring of the council organisation.

It is recommended that Watercare be statutorily defined as a Council Controlled Organisation. The implications of this include:

- a) Watercare would be statutorily required to produce a Statement of Intent that focuses on non-commercial objectives as well as commercial, and exhibits social and environmental objectives;
- b) Watercare would be able to take ownership of water services from a local authority or other local government organisation; and
- c) Watercare would be obliged, as a local government organisation, to consult in respect of any proposal to enter a partnership or joint venture to provide water and wastewater services.

If Watercare were to be recognised as a regionally-owned Council Controlled Organisation, it would be appropriate to support a 'Watercare-specific' statutory provision, set out in the Local Government Act 2002, which codifies that no member(s) or employee(s) of any local authority shall be appointed to the Board of Watercare. This restriction reflects the need for Watercare to operate with an independent, regional focus. It would be similar to the prohibition on a member of a local authority concurrently serving on a regional authority.

Prohibition on the payment of a dividend

The Local Government Act 1974 prohibits Watercare from paying any dividend or distributing any surplus in any way, directly or indirectly, to its owners or any shareholder.

Watercare is the only company in New Zealand statutorily prevented from paying any dividend or distributing any surplus to its shareholders. In a normal commercial environment, a dividend policy is negotiated between the shareholders and the board.

Officers and Shareholder Representatives from the various councils have expressed the following arguments for and against the prohibition of the payment of a dividend. Each shareholding council will be considering these arguments in August and September 2004 and directing their shareholder representatives on which position to take to the next Shareholders Representative Group meeting.

Arguments for the payment of a dividend

- a) If Auckland's local authorities are to have broad powers in order to plan for the delivery of the region's wastewater services, then Watercare's shareholding councils should at least have the ability to negotiate the payment of a dividend and have that requirement set out in the Statement of Intent. This arrangement would be consistent with the powers vested in the shareholders of any other company in New Zealand.
- b) Watercare's ability to pay a dividend would enable that company to have greater control over its capital structure (debt and equity levels). This would enable the Watercare Shareholders Representative Group to put further pressure on Watercare to ensure that its balance sheet is appropriately structured.

Arguments against the payment of a dividend

- a) Although this brings Watercare into line with normal local government practice, especially council controlled trading organisations and commercial practice, this is likely to be a highly contentious political issue and the arguments given for and against paying a dividend tend to be philosophical and broad-brush. For example one benefit given for providing dividends is 'to put pressure on Watercare to ensure that its balance sheet is appropriately structured'. There needs to be more detailed analysis to prove this assertion.

- b) It is difficult to determine the appropriate level of dividend with no market forces or regulatory framework operating - therefore, further work is required on this issue before a final recommendation can be made.
- c) The ability to pay a dividend may lead to pricing to consumers being driven by commercial objectives rather than public good objectives. The question is whether or not shareholding councils should be empowered to make that decision or have it enshrined in legislation.
- d) A legislative restriction on paying a dividend confirms for the public Watercare's cost minimising focus. Excess profits can be passed on via rebates.

Watercare's reporting requirements

The legislative review provides an opportunity to consider Watercare's reporting requirements under the Local Government Act 1974.

Section 707ZZZR (Vesting of shares in Watercare Services Limited) codifies the:

- ownership of Watercare;
- the division of shares between the shareholder councils;
- the requirement for a Shareholders' Agreement.
- the requirement that any subsequent shares must be issued so that their shareholdings are in the same proportions as the shareholdings specified that section.

Watercare has argued in favour of retaining the above provisions relating to the vesting of shares. However, in the Officers' view these legislative provisions are unnecessary because provisions pertaining to the division of shares and the division of any subsequent shares can be set out in Watercare's constitution and the shareholders' agreement, rather than prescribed in statute.

Furthermore, share protection is provided under the Local Government Act 2002, which prevents a local government organisation from divesting its ownership or other interest in a water service (except to another local government organisation); or losing control of, selling, or otherwise disposing of, the significant infrastructure necessary for providing water services in its region or district (unless it retains its capacity to meet its obligations).

Section 707ZZZS (Water services) codifies the:

- requirement for Watercare to manage its business and maintain its assets;
- authority of Watercare to apply the provisions of the Auckland Regional Council Trade Waste Bylaw 1991 (dealt with elsewhere in this report);
- authority of Watercare to apply the provisions of the Auckland Metropolitan Drainage Act; and
- prepare and supply an asset management plan, funding plan, and Statement of Corporate Intent.

Watercare has argued for the retention of s707ZZZS(1)(a):

"Notwithstanding anything in this Act or any other Act, Watercare Services Limited –

- (a) *Must manage its business efficiently with a view to maintaining prices for water and wastewater services at the minimum levels consistent with effective conduct of that business and the maintenance of the long-term integrity of its assets"*

Section 707ZZZS(1)(a) is unique to the Auckland region. No similar statutory provision regulates the activities of any other (wholesale and/or retail) provider of water and wastewater services in New Zealand.

If the Committee considers that Auckland's local authorities should have broad powers in order to plan for the delivery of their wastewater services, consistent with those powers vested in local authorities throughout New Zealand then the provisos set out in s707ZZZS can instead be set out in other documents such as –

- the constitution (requirement to prepare and supply an asset management plan and funding plan);
- the Statement of Intent (the requirement for Watercare to manage its business efficiently could be expanded to include sustainable management, with reference to the four wellbeings); and
- other parts of the Local Government Act 2002 (assuming that Watercare becomes a Council Controlled Organisation, its reporting requirements as a Council Controlled Organisation would be set out in the Local Government Act 2002).

However, the Council should consider whether it wishes issues such as this to be prescribed by legislation or left to the discretion of the shareholding Councils.

Auckland's Wastewater Network

The legislative provisions which regulate the ownership and operation of the Auckland region's wastewater services, limit the role of local authorities in planning and managing those services. This situation is inconsistent with the ability of local authorities outside Auckland to plan and deliver wastewater services for their particular communities.

The Auckland legislative provisions are inconsistent with s12(2) of the Local Government Act 2002, which gives local authorities broader powers in order to work more flexibly and be more responsive to the needs of their community. Subject to the provisions of the Local Government Act 2002, any other enactment, and general law, local councils now have full capacity to carry on or undertake any activity or business.

Officers have identified the following principles continuum for the future statutory framework governing the Auckland Region's wastewater network.

Prescriptive statutory regulation (status quo)	Opportunities for compromise (possible option for the future)	Light-handed regulation (possible option for the future)
Statutes used to regulate every aspect of the Auckland region's wastewater services.	Statutes are necessary to provide some regulator oversight. But local authorities should have the right to negotiate the prohibitions and obligations with wastewater service providers in the region as an alternative to prescriptive statutes.	Statutes should be kept to a minimum. Local authorities should have the ability to negotiate arrangements that are more responsive to the needs of their individual communities.

Key areas for consideration are set out below.

Watercare's powers under the Auckland Metropolitan Drainage Act (excluding trade waste) to manage the main wastewater network and access premises for inspection purposes.

The Auckland Metropolitan Drainage Act 1960 provides the following:

- a) Watercare has the sole right to construct, maintain and manage all main sewers and drains, all main pump stations, all storage tanks and outfalls, and treatment works for sewage and all other main sewerage works. This sole right enables Watercare to effectively plan for the treatment of the region's (excluding North Shore) wastewater at the Mangere Wastewater Treatment Plant or other plants within the district.
- b) Allows for Watercare's main sewage works (including pipes, pump stations, tunnels, and ancillary works) to occupy any land; and
- c) Allows for Watercare to have access to the land to ensure the efficient construction, operation and maintenance of these works.

To provide an efficient wastewater service throughout the region, Watercare's wastewater network has been geographically optimised to maximise the use of gravity and to minimise the need for pumping. Watercare does not hold easements for its wastewater network. Approximately 210km of wastewater pipes cross over more than 5,000 individual private parcels of land. The cost to retrospectively obtain easements has been estimated at \$230 million.

Officers recommend that the powers vested in Watercare relating to the construction, maintenance and management of *existing and future* wastewater infrastructure should be preserved and set out in the Local Government 2002, including its right to enter land to access the main sewerage system, and to construct new main sewerage and treatment works.

Officers received legal advice, indicating that it is prudent to maintain these provisions of the Auckland Metropolitan Drainage Act in the Local Government Act 2002 in order to enable it to carry out its functions as a wholesale provider of wastewater services. In the absence of a statutory reference preserving Watercare's right to maintain, manage and protect its existing main sewerage system and treatment works, Watercare would need to obtain agreement with at least five Local Network Operators in order to ensure efficient regional planning of wastewater services. This outcome, while desirable, could be difficult to achieve. Therefore it is appropriate that these provisions continue to be set out in statute.

Analysis of statutes indicates that Watercare's power to enter premises for the purpose of inspection is similar to electricity and telecommunications network operators. Those powers are statutorily codified in order to a) protect that operator's assets, and b) undertake regular maintenance of those assets.

However, since the Mangere Wastewater Treatment Plant has been established Watercare does not need to be a *statutory* monopoly. It is therefore recommended that current Auckland Metropolitan Drainage Act provisions relating to Watercare's sole right to maintain, manage and protect *all* main sewerage systems be repealed. This would prevent Watercare from effectively being able to prevent local authorities from establishing small scale wastewater treatment options if those local authorities consider that it is uneconomic to reticulate wastewater to the Mangere Wastewater Treatment Plant.

Auckland Metropolitan Drainage Board

There are clearly references in the Auckland Metropolitan Drainage Act that no longer apply, such as the statutory provisions that constitute the Auckland Metropolitan Drainage Board, which is now disbanded.

Trade Waste: Watercare's powers to control trade waste through its sewers

Auckland Metropolitan Drainage Act

Both Watercare and the Local Network Operators have a significant interest in the control and management of trade waste in the sewerage network.

The current legislative framework under the Auckland Metropolitan Drainage Act provides Watercare with the sole right to control trade waste. Arguments in support of the continuation of the status quo and its codification in the Local Government Act 2002 include:

- The region's (excluding North Shore) trade waste discharges would continue to be managed by a single service provider, responsible for treatment and maintaining the standards of trade waste discharge.
- Watercare would continue to be required to manage the risk of potential damage to the main sewers and the Mangere Wastewater Treatment Plant, resulting from trade waste discharges.
- Watercare would continue to manage the risk (and impact) of potential trade waste overflow on natural ecosystems such as the Manukau Harbour.
- Watercare would continue to manage trade waste to ensure that the health and safety of those personnel is not compromised.

Watercare has developed a strong working relationship with trade waste customers. This in turn has contributed to a high level of industry compliance with the trade waste discharge consents.

Several of the Local Network Operators presented arguments against Watercare having the sole right to control trade waste through its sewers. Several Local Network Operators (but not all) felt that Watercare's statutory monopoly was inflexible because it –

- Prevented different treatment options such as the Local Network Operators running their own trade waste treatment, even for part of the city or district;
- Does not recognise that the Local Network Operators carry some of the risk associated with managing trade waste (such as the degradation of the Local Network Operators' assets and the potential trade waste overflow through manhole space entry); and
- The potential for Watercare to focus on heavy metals and chemical discharges, but overlook trade waste customers who dispose of other trade waste such as grease and fats (which block the Local Network Operator pipes).

The risk burden, of damage to Local Network Operator pipes, can be dealt with via contractual arrangements between Local Network Operators and Watercare. A Trade Waste Letter was drawn up last year. Watercare considers this document to be a statement of intent, which reflects the principles upon which the operators will operate their respective sewerage systems.

There is significant benefit in continuing with the current statutory framework that results in a single service provider. That provider is responsible for treatment as well as maintaining environmentally sound standards of trade waste discharge. In line with the principle that prescriptive statutes should be used to regulate only the essential provider arrangements, officers consider that the need for environmental protection and maintenance of quality standards means that it is necessary for Watercare's powers under the Auckland Metropolitan Drainage Act, in relation to trade waste, should be preserved and set out in the Local Government Act 2002.

Auckland Regional Council Trade Waste Bylaw 1991

Watercare will continue to administer the Auckland Regional Council Trade Waste Bylaw 1991 for as long as that bylaw continues to apply. This is a useful means of efficiently managing the treatment of trade waste.

The bylaw itself allows for a consultative approach between Watercare and representatives of trade waste customers, with respect to pricing and the discharge of trade waste.

Several Local Network Operators indicated a desire to have a direct relationship with the trade waste customers. Those Local Network Operators felt that as the retailers of water and wastewater services, they rather than Watercare, should have the primary interface with trade waste customers. Those Local Network Operators also pointed out that they transport trade waste directly from the discharger to the Watercare system.

Officers consulted the Employers and Manufacturers Association, with respect to a) Watercare's management of trade waste, and b) the Local Network Operators proposal to have the primary interface with trade waste customers. Feedback provided by the Employers and Manufacturers Association indicates that trade waste customers regard Watercare's management of trade waste as appropriate and effective in terms of meeting the needs and expectations of those customers.

Watercare's ability to manage trade waste enables it to better manage the variability of influent through discharge consents and pricing. This in turn enables Watercare to enhance the treatment process (e.g. treatment time) at the Mangere Wastewater Treatment Plant.

By focussing on surveillance and enforcement of the provisions of the bylaw, Watercare has placed a significant emphasis on reducing the incidence of heavy metals present in biosolids. Quantitative analysis provided by Watercare indicates a significant reduction in the concentration of arsenic, chromium, copper and zinc present in dewatered biosolids over the period from 1998 to October 2003. This reduction reflects changes in manufacturing processes on the part of trade waste customers as well as Watercare's focus on reducing contaminant load over time.

North Shore Drainage Act 1963

The North Shore Drainage Act 1963 allowed the North Shore Drainage Board to plan and manage North Shore's wastewater and trade waste. The North Shore Drainage Act has remained in force despite the North Shore Drainage Board being disestablished. Some of the provisions of the North Shore Drainage Act continue to be applied.

The North Shore Drainage Act is largely redundant and could be repealed on the proviso that several important sections (such as the requirement under s35 to protect drains from damage) are saved and incorporated in other legislation. North Shore City does not require the sole right in Section 27(8) and parts of Section 28-31 of the North Shore Drainage Act to construct and run trunk sewers and North Shore's wastewater treatment plant.

The North Shore Drainage Act is primarily an issue for North Shore City to consider. However this review provides an opportunity to rationalise the current regulatory framework governing wastewater and (where possible) bring both Watercare's and North Shore's enabling legislation back under the regulatory framework of the Local Government Act 2002, consistent with the enabling provisions that govern water and wastewater service providers throughout New Zealand.

CONCLUSIONS

This report provides the Council with a series of recommendations, which have been developed following an officer review of the Auckland legislative provisions relating to water and wastewater.

The recommendations will assist the Shareholders Representative Group to formulate a regional position and to inform an upcoming governmental review of Auckland's water and wastewater governance and operating structure.

It is recommended that the Council approve a set of general principles and approve the removal of prescriptive statutes, which regulate the provisions of water and wastewater and wastewater services in the Auckland region. The report also recommends the retention of extraordinary powers necessary to preserve Watercare's ability to operate effectively.

The removal of prescriptive statutes would be consistent with the current provisions set out in the Local Government Act 2002 and with the water and wastewater regulatory framework that applies in other regions.

RECOMMENDATIONS

1. That the Review Of The Auckland Region's Water And Wastewater Operating Powers report be received.
2. That the Council approve the following general principles:
 - i) That Auckland's local authorities should have broad powers in order to plan for the delivery of their wastewater services, consistent with those powers vested in local authorities throughout New Zealand, together with any special powers necessary to preserve Watercare's ability to operate effectively.
 - ii) That Watercare's governance and reporting arrangements should be consistent with other council-controlled organisations, with the proviso that any special powers necessary to preserve Watercare's ability to operate effectively, be retained.
 - (iii) That the law require Watercare to retain ownership of assets needed to supply water and wastewater services to the region, to be retained in joint ownership by the territorial authorities in the region and to minimise prices consistent with the need to maintain and develop infrastructure to meet future needs and a sustainable future business which delivers a first class service.

3. That as a consequence of the above general principles the Council further resolves:
- i. That Watercare be constituted as a regionally owned council-controlled organisation, with the proviso that members or employees of a local authority should be statutorily prohibited from appointment to the Board of Watercare, given the regional focus and nature of the entity.
 - ii. That the statutory prohibition on Watercare paying a dividend to its shareholders should be removed, noting that removing that prohibition would give Watercare and the Shareholders Representative Group the opportunity to negotiate a dividend policy.
 - iii. That the following statutory functions, currently set out in the Auckland Metropolitan Drainage Act 1960, should be preserved and set out in the Local Government Act 2002:
 - (a) allowing Watercare to maintain, manage and protect its existing main sewerage system and treatment works.
 - (b) allowing Watercare to maintain its power to carry out its wastewater functions, including the power to enter land to access the main sewerage system and to construct new main sewerage works.
 - (c) allowing Watercare to construct, maintain and manage future main sewerage systems and treatment works.
 - (d) giving Watercare sole right to control trade waste within its wastewater treatment plant catchments.
 - iv. That the following statutory functions, currently set out in the Auckland Metropolitan Drainage Act are no longer required and should be repealed:
 - (a) provisions constituting the Auckland Metropolitan Drainage Board.
 - (b) references to Watercare's sole right to construct, maintain and manage all sewers and drains.
 - v. That Watercare continue to administer the Auckland Regional Council Trade Waste Bylaw 1991 for as long as that bylaw continues to apply, and agree that this is a useful means of efficiently managing the treatment of trade waste.
 - vi. That Watercare's reporting requirements be transferred, currently set out in s707ZZZS of the Local Government Act 1974, to (where appropriate):
 - (a) the constitution.
 - (b) the Statement of Intent.
 - (c) the Local Government Act 2002.
4. That the Council supports the repeal of provisions contained in the North Shore Drainage Act 1963, which are deemed to be unnecessary.

Report prepared by: Annika Lane, Senior Analyst, Governance and Infrastructure.

