

16.2 RECOMMENDATION FROM AUDIT AND RISK COMMITTEE: IMPACT OF GOVERNMENT REFORM ON HUMAN RESOURCES

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Attachments: Nil

PURPOSE

1. As requested by Council's Audit and Risk Committee on Tuesday 14 March 2023, this report highlights the issues of operational risk, performance and employee personal stress and anxiety due to Government reform.
2. To draw Council's attention to the very serious concerns that we have with respect of the pace of the Three Waters Reform, its unintended consequences on councils and lack of clarity.

BACKGROUND

3. The Government has promoted and legislated reform where Council-run water, wastewater and stormwater services will be transferred to four major entities as part of its Three Waters Reform Programme. The Water Services Entities Act received Royal assent on 14 December 2022. It establishes the four water service entities (WSEs) and sets out provisions relating to representation, governance, and accountability arrangements, as well as powers over councils for the transition period, referred to in the Act as the "establishment period".
4. The establishment period will run until 1 July 2024, after which time the WSEs are expected to be fully operational. This is in line with its push for greater centralisation of public services like health, the Resource Management Act, and polytechnics. Waimate District Council is part of a 20 South Island council Entity, Entity D. These entities once established will become the largest service providers in New Zealand.
5. Duties have been imposed on Council to co-operate with the Department of Internal Affairs (DIA) and WSEs during the establishment period, to facilitate the water services reform. This includes matters such as complying with reasonable requests for information or for secondment of employees to the WSE or DIA. There is also a specific requirement on me as Chief Executive to ensure that certain decisions are confirmed by the DIA in writing. This relates specifically to matters where the decision may, directly or because of its consequences, significantly prejudice water services reform; significantly constrain the powers or capacity of the WSE following reform; or have a significant negative impact on the assets, liabilities or other matters that are transferred to the WSE as a result of reform.
6. The legislation to establish and resource the Water Entities has a disastrous blind-spot, and that is any real duty-of-care to the viability and relevance of local councils or the people within councils. Several provisions within the legislation address employment positions that may be altered during the establishment period. For employees of a local government organisation that provide water services, a review of their position will be undertaken by the chief executive of the DIA.
7. Following this, employees whose roles primarily relates to; or primarily supports delivery of water services may, if the employee agrees, transfer their work to the WSEs, subject to other relevant factors, such as the guarantee that the employee remains working in the same locality, prior to the transfer, or if not, compensation for the commute required (DIA advice states the offered position is to be substantially the same general locality; and within a reasonable commuting distance (to be decided in consultation with the staff member).
8. It is no longer a requirement to invite staff to join the staff room using a consent and registration process. The Water Services Entities Act (passed December 2022) states that if the DIA makes a reasonable request for personal information which relates to employment

matters, then the relevant LGO will be required to comply - clause 17 of schedule 1 of the Water Services Entities Act 2022.

9. There are three pathways for transitioning employees:
 - a. **Legislated job guarantee** – where the position is solely or primarily relates to or supports the delivery of water services, and the position is not a senior manager (as per the definition under the proposed staff transition guidelines)
 - b. **Offer guarantee** – where the position solely or primarily relates to or supports the delivery of water services, and the position is a senior manager, and
 - c. **Preferential consideration** – if some of the position relates to or supports the delivery of water services, but the position is not covered by the other two pathways.
10. The consultation process is expected to run from late February 2023 through to end April (in batches) with the majority of staff completed by end of April, but where pathways are unclear there may be some further consultation needed past that date.
11. A prioritisation is given to councils who have a high number of senior managers due to uncertainty and the fact that these roles are contestable and publicly advertised. This will be a major issue for larger councils with multiple senior managers that, post transition, will be employed by their council within a function and possibly face redundancy.
12. Staff with less than 30% responsibilities for three waters activities may have an alternative process and be consulted by council or the NTU.
13. The NTU states that most Entity positions will be ring-fenced in the first instance for expressions of interest from affected council staff. All Tier 1 (chief executive) and Tier 2 (executive leadership team) roles will be fully contestable, which means that anyone can apply for the position, and they will be advertised publicly. The Entity chief executives may decide to make other positions fully contestable if they are new or are substantially changed from existing positions.
14. Where a workplace transfers to the Entity and these are defined through the Transfer Principles in the Waters Services Legislation Bill, for example, If the workplace wholly relates to or supports the provision of water services, the ownership or lease will transfer to the Entity. For example, water intakes, water treatment plants, trunk mains and dedicated workshops, office facilities, depots, laboratories, effluent discharge site's (like Council's McNamaras Road land and Knottingley Park settlement ponds) and office accommodation.
15. The NTU talks about Council acting in good faith, however, the truth is that councils have no choice, the reform is mandatory. The NTU talks about employees having a choice to transfer to the Entities, however, with the water assets being expropriated from councils into the Water Entities, the staff know they have very limited option and that their jobs are tightly connected to the transferring assets.
16. Council has been notified by the NTU that the Communications Position Review and Pathway Consultation process will commence on the 5 April 2023. To date information received states, "when the NTU come to visit on 5 April we would like to complete the following:
 - a. Staff briefing for all staff who are over 30% water responsibilities or supporting water
 - b. A catch up with the HR Manager and Asset Group Manager to review the current work programme, ensure Council is clear (as things do evolve rapidly) and answer any questions they may have
 - c. 1:1 with water managers, if they would like to see a member of the NTU and ask any questions about their transition
 - d. The NTU does not have to meet with those staff who are less than 30% active in the three waters space.

17. The consultation process lacks sufficient detail and clarity as per legal formalities for this type of process, for example we (Council) as the employer has no definitive information on job matching from where the employee is now (within Council) to a position within the new Entity, the process only establishes which transition pathway each employee can take. The video [Three Waters Position Review and Pathway Staff Video 170223 - YouTube](#) talks about this.
18. It is important to understand that the only employees that are guaranteed a position are those that are assessed as being **primarily relating to three waters function**, the other two pathway processes are supported by guidelines only (non-legislative). As outlined in the above video (at timeline 6:27) should an employee not be given a position and their ongoing “position with Council is changed significantly, or there is a risk the position could be made redundant by your Council” this is where, amongst other transition actions, the stress, anxiety, and confusion of our workforce arises.
19. As an employer, Council is duty bound to ensure our employees, however many may be affected, are fully informed about significant changes to their employment. Council also has contractual obligations to our employees in this same respect. In addition, we are duty bound to our community to ensure as that as their local Council, we are ready for change and able to continue to provide them with the services they pay for. We believe we require and in fact are legally entitled to, comprehensive details of what positions have been job-matched for offer and when from the Department of Internal Affairs, so that we can honour our obligation to the community. Therefore, it is appropriate to request from Elected Members that we are given a mandate to disengage with from DIA’s People and Workforce Stream until we have the detail and clarity of engagement that we as Council require.
20. The process is geared solely for the establishment of the Entities and provides the gateway for the government to cherry-pick the staff they want and leave councils to clean up the mess afterwards. This process is highly stressful for the council as a whole, employees are suffering from work-stress due to:
 - a. additional workload imposed by the reform process;
 - b. lack of clarity around future employment; and
 - c. the relevance and viability of the ongoing Council post 1 July 2024.

Collateral Damage

21. The Government’s argument for its three Waters reform proposals rests very much on the claimed benefits for communities - state-of-the-art three waters infrastructure at an affordable cost. It’s an argument based solely on comparing, based on the Government’s figures, the financial implications of staying with the status quo versus moving to the new four Crown entities approach.
22. Missing from the debate is the likely impact on communities of the withdrawal of function and people from every small to medium sized council and from most communities.
23. The Government’s view is very much in the Roger Douglas tradition expressed in his December 1988 economic statement that “As a fundamental principle it is agreed that local or regional government should be selected only where the net benefits of such an option exceed all other institutional arrangements.” The context of the statement made it very clear that the net benefits were to be assessed in financial terms, with relative costs seen as a proxy for efficiency. It’s a purely instrumental view of the role of councils and misses the reality that, in many communities, especially New Zealand’s rural and provincial communities, the council and its presence is a major contributor not just through the formal activities of the Council, but to a very wide range of essential community activities and outcomes. This seems to be a very important matter missing from the Governments “case-for-change” evidence, but not surprising when we witnessed the advertisements for the Entity Chief Executive Officer positions during the select committee hearings.

24. The current initiative being led by the Department of Internal Affairs to identify those council staff members who should transfer to a water services entity as part of building up its staffing requirement presents a very serious threat to the viability and relevance of many councils; a threat which has clearly not been given any consideration by Government or our association LGNZ.
25. The new entities will need people with a wide range of skills associated with the development and management of three waters infrastructure. It's not just engineering staff; it's IT staff, revenue staff with a familiarity with local government rating and other revenue systems, administrative staff, policy staff familiar with the local government context and relevant legislation and practice. It's not just technical expertise, it's also the institutional knowledge base - an awareness of the local environment, of what's actually happening especially with stormwater and resilience planning given the severe impact of Cyclone Gabrielle.
26. This becomes a particular problem if, as may happen, the ownership and management of stormwater infrastructure is excluded from transfer to a water services entity because the management of stormwater is so intimately intertwined with so much else of what happens within a district. Stormwater management is normally led by the very engineers who would be transferred to a three waters entity, removing from councils the institutional knowledge required at the very time when everyone agrees planning for resilience is now a major priority.
27. It's not just a stormwater problem though; the staff likely to be taken from councils if government pursues its current approach contribute to a very wide range of other council activities so that their loss would literally cripple much of what councils currently do (and much larger councils than WDC) - you can't rip the heart out of an organisation without doing major (made worse by the lack of an available skilled workforce in New Zealand) damage to its ability to deliver, collateral damage which has clearly not been recognised or, even worse, been recognised but ignored.
28. There is absolutely no way most councils could replace the lost capability if staff are transferred to the three waters entities. It's not just that New Zealand currently has a very tight labour market; it's the practical reality that the labour market for people familiar with what's involved in managing water services is essentially a Local Government labour market. Take people out of councils and there is no other pool to draw from. There is every possibility that many council services will become non-viable with no practical means available for restoring viability - there simply aren't the people!
29. And don't be reassured by statements that people won't be required to shift, with the implication local knowledge will still stay in the community. The practical implications of managing a three waters entity will necessarily drive centralisation of staff, taking all their experience and knowledge with them.
30. The collateral damage goes well beyond this; rural and provincial councils are typically among the most important institutions in their district. They belong to - are anchored - in their communities. They are a powerful although currently underutilised resource by Central Government for enabling communities themselves to take control of their futures. Disabling councils means disabling the communities' ability to help shape their futures.
31. It's much more than this. Because of the nature of their responsibilities, councils are significant employers of highly qualified professional, technical and other skilled people who normally have a commitment not just to the council as their employer, but to the community in which they live. Not only that, if they are partnered their partners also normally have skills which are of real value and contribute significantly to community well-being and generally join community organisations or become part of the volunteer fire and emergency service.
32. Often partners will be active in services such as education, health, social services, finance. They can represent a significant portion of a community's skill base, in place by virtue of the existence of the council as a major employer.

In Conclusion

33. In 35 years of Local Government employment and having been an integral part of four amalgamations and one de-amalgamation (in Australia) I have never experienced a process of reform and transition like the Three Waters Reform. To draft legislation that gives Government public servants the authority to enter into the existing council premises and negotiate directly with Council employees is highly destructive and irresponsible.
34. A normal process would be that the Government and the affected organisations (in this case the Local Government sector) would develop clear rules of engagement (for New Zealand this may have been nullified by LGNZ's signing the Heads of Agreement with Central Government without member authority) and once the process, employment conditions, job guarantees and redundancy provisions are agreed, the employer for either side of the process would negotiate and support the health and well-being of the affected employees, and oversee the job-matching and transfer activities.
35. One of the key risks to Council is the possible poaching of more than the 'core' three waters staff, for example, we have an estimated 13 'core' three waters related employees. Should other staff be influenced over to the water entities, and with the severe lack of available skilled workers in New Zealand, like Waimate District Council, councils across the country will struggle to fill these vacancies which may have a catastrophic impact on operations.
36. Further, Government has made no progress to inform councils what's functions may be available to the continuing councils to replace three waters activities once removed, and this is all occurring in advance of the report to Government in 2024 by the Future for Local Government Panel.

OPTIONS

37. Continue to oppose the reforms, and advocate for a pause to the reform process until after the 14 October 2023 elections.
38. Restrict DIA's People and Workforce officers to only have access to the core three waters staff (employees that have responsibility of 50% and above relating to three waters services) as determined by Council.
39. Ensure Council has adequate human resources to manage the additional workflow and disruption caused by the reforms.
40. Ensure our staff are competitively remunerated.
41. Keep our community well informed about the real impact of these reforms.

ASSESSMENT OF SIGNIFICANCE

42. The assessment of significance is very high.

Risk

43. Extreme

FINANCIAL

44. Management is currently developing a draft budget and exploring all opportunities to fund elevated costs and mitigate rates increases.

RECOMMENDATION

That Council consider the report requested by the Audit and Risk Committee.