**QLDC Council**
**16 December 2021**

**Report for Agenda Item | Rīpoata moto e Rāraki take : 7**

**Department: Property & Infrastructure**

**Title | Taitara Adopt Acquisition and Vesting of Private 3-Waters Schemes Policy**

## PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

The purpose of this report is to introduce the policy, the risks it aims to address, its implications, the options to manage the risks, and a recommended way forward via adoption of the new Acquisition and Vesting of Private 3-Waters Schemes Policy.

## RECOMMENDATION | NGĀ TŪTOHUNGA

That Council:

1. **Note** the contents of this report;

2. **Agree** the amendments to the draft version of the proposed Vesting and Acquisition of 3-Waters Private Schemes Policy and update to adopt as final;

3. **Adopt** final version of the proposed Vesting and Acquisition of 3-Waters Private Schemes Policy;

4. **Note** that it is proposed to fund the increased budget from additional borrowing which will be re-paid over time by a combination of both development contributions and targeted rates for the acquired schemes.

| Prepared by: | Reviewed and Authorised by: |
|---|---|
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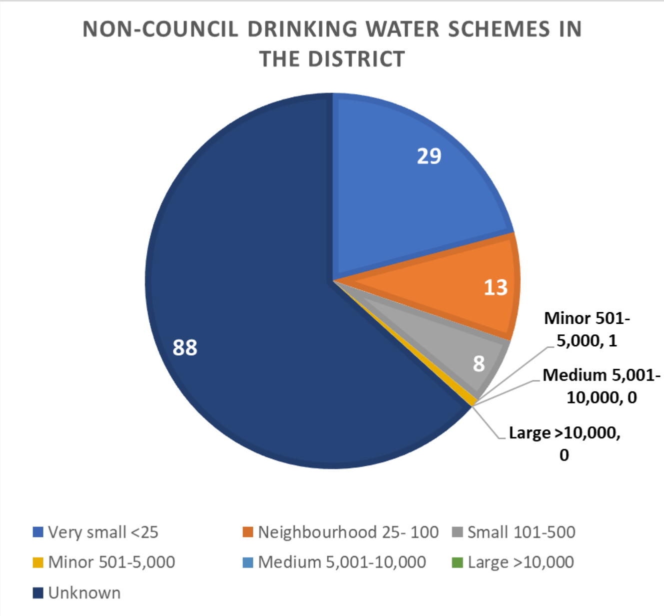
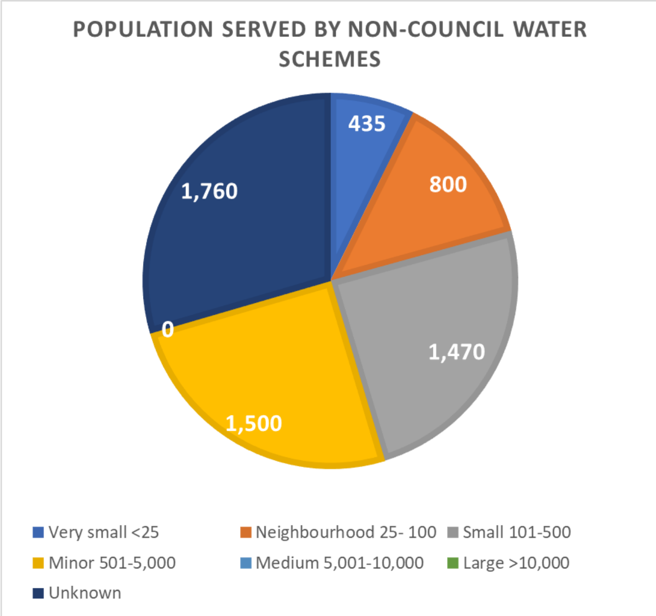
## CONTEXT | HOROPAKI

1 Private water, wastewater and stormwater schemes (3-waters) are commonplace in New Zealand.

2 Upon enactment of the Water Services Act 2021 Taumata Arowai became fully operational on 15 November 2021 as the dedicated water services regulator for Aotearoa New Zealand. With greater regulation of non-compliance many private schemes may require increased investment and more thorough management to comply.




3 There is a likelihood that many of the private 3-waters schemes may not have the capacity or capability to comply with more aggressively enforced health and environmental standards. Scheme owners may choose to divest their schemes into Councils to reduce their health and environmental risks and/or to avoid the increasing operational costs and liabilities under the new regulatory framework. This may be partially mitigated by extended timelines for compliance of unregistered schemes – 4-7 years to register and prepare a Water Safety Plan.

4 Property and Infrastructure have received several requests for minor schemes with operational problems, to be vested in Council.

5 Furthermore, there are some existing private schemes that present strategic opportunities to QLDC to supply communities with legally compliant service levels more cost-effectively and better cater for future demand and improve the overall resilience of QLDC's networks.

6 There is currently not a process or a set of assessment criteria for QLDC and private scheme owners to progress with formal acquisition and vesting proceedings, in light of the new 3-waters regulatory environment.

7 Notwithstanding the above, the changes to the LGA (s127) requires the relevant territorial authority to ensure that drinking water is provided to affected consumers if a drinking

water supplier has a significant/potential problem with its services, including if it ceases supply. This is a supplier-of-last-resort type of obligation that is triggered if alternative solutions are not found which may mean that a territorial authority ends up acquiring drinking water network assets that it would otherwise decline to accept, were it not for these statutory obligations.

8 The purpose of the policy is to

a. Minimise public health risks and their impacts by managing the risks from 'non-compliant' 3-waters schemes. And;

b. Maintain prudence - Secondly, minimise prejudice to the Council from the transfer of privately owned assets by establishing well understood guidelines for assessing requests to transfer assets to the Council.

9 It is proposed to adopt the new policy.

## ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

10 A set of critical success factors were established to assess the vesting and acquisition process against. These are based on the principles of other Council Policy and of the equity and prudence requirements with section 101 of the Local Government Act:

a. **Prudence** - Ensure that the financial risk is managed by balancing equity, fairness for existing ratepayers and prospective ratepayers (Section 101 of LGA).

b. **Administrative efficacy** - Ensure the additional resourcing demands (internal and external) to administer the policy are available and commensurate with the public health risk being managed.

11 The policy sets out with fairness to 3-waters scheme owners and prudence to ratepayers, a process to assess the performance, condition, capacity and value of private 3-waters schemes. The intent being increasing the administrative efficiency of the vesting and acquisition process.

12 The fundamental principle of this Policy is that any performance gaps and/or financial risks between Council's standard and that of the private 3-waters scheme(s) will need to be either funded or fixed before vesting or acquisition.

13 Any proposed scheme vesting and acquisition that poses an unacceptable health risk and does not comply with the principals within the policy will still require to be presented to Council for approval.

14 Council will require an evidence-based assessment of the assets to be vested (tangible and intangible) funded by private scheme owners, that includes the following:

a. **An unacceptable health and/or environmental performance risk** – All private 3-waters scheme owners concerned with the health, safety and performance of their schemes MUST contact Taumata Arowai in the first instance. Where a scheme is deemed unsafe and/or non-compliant, a migration pathway must be identified and documented by the scheme owner, at their cost, that is acceptable to Council and Taumata Arowai. This must include at least the following:

b. **Up-front Costs / Compliance Upgrades** – The specific upgrades / improvements /extensions / disposals will be required to meet Council levels of service and/or achieve legal compliance.

c. **On-going Costs** – The on-going maintenance and operating costs of the scheme(s) and that the decline in service potential / depreciation has been adequately managed through asset renewals and/or accumulated in financial reservices / sinking fund.

d. **Enduring Value** – That any value adding aspects of the scheme that benefits Council and would be willing to acquire have been accurately valued. e.g., any additional capacity for future growth, water sources, a resource consent.

e. **Legal Requirements** –All legal agreements, liabilities, easements that are transferred to Council / ceased with the scheme(s) are identified.

15 Before a decision to vest or acquisition, all performance gaps and/or financial liabilities identified in the assessment must be addressed prior through either:

a. Completion of the physical upgrades, extension of Council schemes and/or improvements to approved standards, to meet performance compliance, and/or

b. Adequate funding of any gaps to a level that is fair and reasonable.

16 The costs of the scheme assessment / due diligence will sit with the private scheme owners, to ensure existing rate payers aren't funding costs that benefit private schemes. Council will incur costs and time demands to administer this process also.

17 The new policy is appended to this report.

18 <u>Option 1</u> **Accept** and adopt the new Acquisition and Vesting of Private 3 Waters Scheme Policy.

*Advantages:*

19 Increase the administrative efficacy of vesting/acquisition of private schemes.

*Disadvantages:*

20 No disadvantages.

21 <u>Option 2</u> **Decline** the new Acquisition and Vesting of Private 3 Waters Scheme Policy.

*Advantages:*

22 Council will retain total control and oversight of each proposed vesting and scheme acquisition proposal.

*Disadvantages:*

23 Time, staffing and Council resource will continue to be used preparing and reviewing documents for proposals to vest and acquire schemes.

24 Inconsistencies resulting in risk of defending and justifying approach.

25 This report recommends **Option 1** for addressing the matter because of the efficiency it will achieve when undertaking acquisitions and vesting that comply with the proposed policy.

## CONSULTATION PROCESS | HĀTEPE MATAPAKI:

### > SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

26 Future/subsequent matters of vesting/acquisitions of private schemes to be decided by Council in accordance with this policy are deemed significant as determined by reference to the Council's Significance and Engagement Policy because those decision will involve transferring of Council's ownership of significant strategic assets.

27 The policy therefore sets out a process for determination whereby vesting/acquisition proposals are deemed as matters relating to significant strategic assets with reference to the Council's Significance and Engagement Policy, and requiring a special consultative procedure per below:

a. Schemes that supply more than 100 people and/or have a gross replacement value of $1.0M or more.

b. Or, is deemed significant by the Chief Engineer

c. Acquisitions below these thresholds will still require public consultation before formal approval through the annual planning or long-term planning consultative process.

28 However, this matter (adoption of the proposed policy) is of low significance as determined by reference to the Council's Significance and Engagement Policy because the decision has no detrimental impact on existing ratepayers. Consultation on the proposed policy (not including any proposed vesting or acquisitions of specific schemes) was undertaken via Let's Talk and this information has been provided to Councillors.

29 Feedback submissions were received from various representatives of private schemes, local community associations and as well individuals and has been circulated with the elected members and has informed the amendments adopted into the revision of the proposed policy for adoption.

30 Public Health South advised the following:

*"It is good to see that QLDC is also taking a proactive approach to provide guidance for private scheme owners by the vesting and acquisitions of existing private schemes and informing applicants of the level of acceptance for new 3-water schemes, for future vesting in QLDC. PHS agree that this approach will minimise the public health risks to the community from 'non-compliant' 3-waters schemes and would like to support private 3-waters schemes joining into the QLDC schemes."*

31 ORC responded advising they have no comment.

32 Taumata Arowai – Aotearoa's dedicated regulator of the Three Waters submitting feedback which has been circulated with the elected members and met with Council officers and has informed the amendments adopted into the revision of the proposed policy for adoption.

## RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

33 **Reputational Risk** – Although not the priority, the negative impact of contamination events from non-compliant private 3-waters schemes on the wider district reputation and visitor experiences are significant. The policy serves to implement additional controls for this risk.

34 **Unknown Health and Environmental Risks from Private Schemes**- Council are not directly responsible for the monitoring of drinking water supplies (MoH and Taumata Arowai), nor the monitoring of environmental compliance (ORC). A duty of care remains with Council to proactively identify any 3-waters schemes that pose a health and safety risk to the community and to proactively enable compliance where possible. Section 125 of the Local Government Act also require Council 'from time to time', to assess the adequacy of water and other sanitary services available to communities within the district.

35 **Private Scheme Development** - The policy does not aim to discourage the creation and utilisation of private 3-waters schemes. Rather, where private schemes cannot be avoided, private schemes operators are encouraged to design and implement them in such a way that does not preclude vesting and acquisition in the future. Even insofar that is not the intention to ever vest in Council– this approach will reduce costs and need of rework if ever it is needed.

36 **3-Waters Council Network Planning and Asset Management** – The decision to vest or acquire schemes will be conditional to the risks posed to Council from having to manage many small schemes and / or undergoing network extensions. Furthermore, any proposed changes to the strategic intent of network must be proposed and consulted on through the Long Term Plan process.

37 The risks inherent in the above are the assumed cost of having to remedy, integrate, and assume potentially inefficient assets is a risk to QLDC and the ratepayer. The adoption of the proposed policy will support the Council by allowing us to transfer the risk.

## FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

38 The proposal will result in limited financial implications to QLDC as the policy requires all cost to be paid by the applicant. Costs of Assessments, compliance upgrades and sinking funds, and extensions have been transferred to the scheme owner.

39 The increased costs of Operations and Maintenance Delivery of Upgrades / Extensions will borne by QLDC will also be funded by increased revenue stream via rating, upfront connection agreements and DCs.

40 Any QLDC investment in enduring value or increased capacity in the schemes will be funded via LTP funded capital projects.

41 For administration of the policy, QLDC will need to establish an operational budget of $150k per annum through the annual plan process to support:

a. assessment costs;

b. staff time to administer the policy and agreements;

c. Additional costs can be capitalised against the assets and hence recoverable through scheme acquisitions.

42 To be in accordance with section 125 of the Local Government Act, for proactive identification of 3-waters schemes that pose a health and safety risk to the community and to enable compliance where possible, QLDC will need to establish an operational budget of $150k in the 2021/22 Annual Plan implement additional controls for this risk.

## LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 0 TE KĀWANATAKA Ā-KĀIKA

43 Section 10 of the Local Government Act 2002 states the purpose of local government is (a) to enable democratic local decision-making and action by, and on behalf of, communities; and (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future. The recommendation enables Council to prudently manage public health risks by enabling the vesting and acquisition of private schemes that comply with the principles of the policy ensuring consistency, equity and fairness are upheld through policy and practices developed under inclusive consultation. As such, the recommendation in this report is appropriate and within the ambit of Section 10 of the Act.

44 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure in a way that is most cost-effective for households and businesses by allowing acquisitions and vesting, that comply with the principals, to be processed more efficiently;
- Is consistent with the Council's plans and policies; and

- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council

## ATTACHMENTS | NGĀ TĀPIRIHANGA

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|---|---|
| A | Acquisition and Vesting of Private 3-Waters Scheme Policy |

Note that this is a 'clean' version of the policy and a 'track changes' version is available upon request.