

External Review: Terms of Reference

Wellington Water Limited: Capital programme estimating and budgeting systems.

The Board of Directors (**Board**) of Wellington Water Limited (**WWL**) have appointed Roy Baker, Director of Colway Holdings Limited and Kevin Jenkins, Professional Director (assisted by Suzanne Carter, General Manager Corporate Services of Martin Jenkins) to undertake a review of the circumstances surrounding the error that occurred on or about 1 May 2024 that meant that WWL's corporate cost had not been included in the LTP advice provided to councils relating to major projects carried out within the capital programme (**Estimation Error**). Accordingly, the review will report to the Board of WWL.

Introduction

1. WWL is owned by Wellington City, Hutt City, Upper Hutt City, Porirua City and South Wairarapa District Councils and Greater Wellington Regional Council. On behalf of the shareholding councils, the company manages \$7 billion of assets which provide safe drinking water, treat wastewater and manage stormwater. WWL is amongst the largest organisation involved in water infrastructure management in New Zealand.
2. WWL and the Board receive overall leadership and direction from the Wellington Water Committee (**WWC**). The WWC is made up of representatives from the shareholding Councils and mana whenua and is Chaired by the Mayor of Hutt City, Campbell Barry.
3. WWL funding is provided by its shareholding councils and (with the exception of the Regional Council) the water rates and charges are the single largest, and fastest growing cost the Councils are obliged to pass on to their ratepayers.

Background

4. As part of the development of the Councils' Long-Term Plans (**LTPs**), WWL provides recommendations on capital projects that should be included in the LTPs together with the associated budgets. Councils rely on the accuracy of this advice to develop a draft document, consult with their communities, and eventually adopt their LTP before 1 July 2024. This whole process can take more than 12 months.
5. There can be several iterations of information provided, but the first round of this advice was provided by WWL in September 2023.
6. The capital budgets should represent the total estimated capital cost to deliver the capital programme and should include the WWL corporate costs required to manage and support the capital programme.

7. On or about 1 May 2024, WWL staff realised that an error meant that WWL's corporate cost had not been included in the LTP advice provided to councils relating to the capital programme (**Estimation Error**). It took nearly three weeks to determine the scale of the Estimation Error and advise councils (estimated \$51 million or around 6%) in the first three-years alone.
8. While there is nothing to suggest that the wider asset advice is questionable, the Board is concerned that the Estimation Error has undermined WWL's role as a trusted advisor. The Board has decided to commission an independent review to identify what went wrong, look at the company's systems and processes and provide recommendations for improvement.

Purpose of the review

9. The purpose of the review is to inquire into and report upon the following:

How the Estimation Error occurred and identify lessons appropriate for an entity with a limited life to learn from in order to minimise future occurrences.

Scope of the review

10. In considering this question, the reviewers shall consider WWL systems and processes for developing financial elements for capital projects for the LTPs and the way they are provided to the shareholding Councils, and in doing so they will ask a number of questions to determine how systems and processes can be improved, including:
 - a. *How the Estimation Error occurred:*
 - i. What is the process WWL follow in compiling the capital programme estimates for the LTPs and is it fit for purpose, including comparisons, benchmarks and assurance steps.
 - ii. What is the process for establishing and apportioning the corporate cost for estimating purposes for the LTP, and is it appropriate for the WWL model?
 - iii. What is the state of WWL's systems and processes that support the LTP process and are they fit for purpose? What are the main factors in terms of preventing or detecting an abnormality in the estimates?
 - iv. What is the capacity of the staff involved in this process (out of scope of this review is the capability of staff)?
 - v. What are the roles of other parts of WWL such as the Finance team and Internal Audit in providing advice and assurance?
 - vi. What is WWL's approval process, and did it provide the appropriate checks and balances? What process was followed between management to governance to councils?
 - b. *What happened in response:*
 - i. When did people know in the organisation there was an Estimation Error?

- ii. Why did it take so long to detect the Estimation Error?
 - iii. Why was there a delay in understanding the scale of the issue and advising the shareholders?
 - iv. Is there a culture problem in the organisation (e.g. the “learned helplessness” referred to in the Martin Jenkins Inquiry into the Cessation of Water Fluoridation by Wellington Water dated 21 June 2022) that sees a reluctance to deliver bad news?
 - v. Provide a timeline summarising the actions of WWL from the beginning of the process for developing financial elements for capital projects for the LTPs up until WWL communicating the Estimation Error to all of its shareholding councils and providing commentary on the quality of those actions.
 - vi. Provide specific comment on:
 - The management response,
 - The governance response, and.
 - The shareholder response.
- c. *Determine the root cause of why the Estimation Error happened:*
- i. How did the following factors contribute to the error – organisational structure, oversight, capacity, culture, systems, processes and resources?
- d. *Recommendations on actions to address issues found in this review which will support management learning from these events - within the context of the water reform:*
- i. What changes to culture, systems and processes are required to ensure there is not a repetition of this incident and generally that WWL is able to produce reliable cost forecasts for inclusion in its shareholder councils’ budgets?
 - ii. Provide an action list to ensure this and similar issues do not arise again before WWL ceases to exist in its current form.
11. This review may consider any past incidents and behaviours from a systemic perspective to establish whether there are any parallels between past events and this Estimation Error (e.g. the findings and recommendations contained in the previous reviews or inquiries referred to below).
12. Any recommendations made as a result of the review needs to be appropriate in recognition that the lifetime of WWL is limited due to water reform. While WWL is still delivering critical water services, there will unlikely be an appetite from its shareholders for heavy investment in improvements in systems and capabilities prior to water reform, unless there is a clear rationale and evidence that such investment would be critical in the life of WWL or may be carried over into any new water entity.
13. The Board has the authority to amend these terms of reference.

Out of scope of the review

14. The review will not ascribe blame or liability to any party or individuals and cannot be used in any disciplinary processes with any individuals involved and will not preempt or duplicate any other inquiry into any incidents that come within scope of this review. The review is not to inquire into, determine or report in an interim or final way or otherwise prejudice the following matters:
 - Whether the capability of staff may have contributed to the error,
 - Whether any employment laws have been breached,
 - Whether any disciplinary processes ought to be progressed,
 - Whether any questions of liability arise,
 - Any third-party inquiries or investigations into the Estimation Error, and
 - Any other reviews, inquiries or investigations into similar matters, except to assist the reviewers in establishing if there are any parallels between the events considered in these reviews and the Estimation Error.
15. For the avoidance of doubt and consistency with inquiries under the Inquiries Act 2013, this review has no power to determine civil, criminal or disciplinary liability of any person.

Process for Review

16. Any documents and information the reviewers require to conduct the review will be made available to the reviewers, including the following:
 - a. A copy of the preliminary investigation carried out by staff to identify how the Estimation Error occurred. Any documents used to draw the preliminary conclusions will be attached to this report,
 - b. A copy of the Martin Jenkins Inquiry into the Cessation of Water Fluoridation by Wellington Water dated 21 June 2022; the Field Force Contract Optimisation Review Report (and its Executive Summary) 2023/2024 and WWL's response to it dated 20 December 2023; the Wellington City Council's Mayoral Taskforce on Three Waters Report 2020; and the Independent Report into the relationship between Wellington City Council and WWL dated April 2020; and any associated materials relating to any these reviews. These reports are being provided solely for information to assist the reviewers in establishing if there are any parallels between the events considered in these reviews and the Estimation Error,
 - c. Internal policies, and processes and procedures relating to/involving relevant third parties, and
 - d. A copy of the WWL organisation structure chart.
17. The reviewers can invite any of the following staff or stakeholders to voluntarily provide information or take part voluntarily in an interview for this review whose insights will be reflected as general themes in the report:

- a. Any current WWL staff member, including the Chief Executive,
 - b. Any current Fulton Hogan employee who is working on secondment at WWL including the Alliance Director (**Fulton Hogan Secondees**),
 - c. Any current Board member including the Chair,
 - d. WWL's shareholding Councils represented by one representative from each Council and one person in PMO positions,
 - e. Suppliers of interest (e.g., HR culture advisers if they are being used), and
 - f. Any further documents or resources the independent reviewers require to carry out the review.
18. If it would assist the reviewers to speak to any former WWL staff, Fulton Hogan Secondees or Board members, reasonable endeavours will be used to seek their agreement to participate.
19. Participation from people in the review process is voluntarily and optional only. All information disclosed by a participant will be kept in strict confidence. Any pressure placed on a person to participate in the review, or any reprisal, retaliation, disciplinary action or other adverse action taken against a person for declining the offer to participate in the review is strictly prohibited.
20. The report will be respectful of WWL and its people by not identifying individuals by name or job title except where that is necessary to fulfil the terms of reference. The names of the people who participated in the review as well as any documents, notes, recordings or any other information (verbal or otherwise) made by either the participants or the reviewers during the course of this review are owned by and held by the reviewers in strict confidence and will not be disclosed to anyone outside of the reviewers.
21. The review will be conducted in accordance with natural justice.

Overview and Reporting

22. The Board Chair will oversee the review process and will be available to meet with the reviewers as required to discuss progress and to consider any changes to terms of reference and advise the reviewers of the names of people who may be appropriate for the reviewers to consider interviewing. He will nominate a contact person within WWL to act as day-to-day liaison and arrange meetings and provision of any additional information required.
23. The review will report findings and opinions on, and make any recommendations it considers fit within the scope of these terms of reference, and will include the following:
- Factual background, including a chronology of events,

- Make findings that report the themes at a high-level in a way that will help WWL to learn from the Estimation Error, and
 - Make recommendations that will help WWL to improve its performance in the event of a similar incident and to minimise future occurrences.
24. The report will be provided to the Board in draft for legal advice and legal review, and for comment from the Board. The Chair will provide a copy of the draft report to the Chief Executive and will arrange for the draft report to be shared with any affected parties for comment prior to finalisation and to check the factual accuracy of the report and to socialise it with individuals who have had input into the review. The Board may provide commentary/additional questions that will need to be addressed in the final report.
25. The final report shall be presented at a Board meeting and then to a meeting of the WWC. That WWC meeting will only be closed to the public where there are good reasons to exclude the public under section 48 of the Local Government Official Information and Meetings Act 1987 for the WWC to consider the report in whole or in part.
26. The reviewers will be required to attend the Board meeting during its Board Only Time without WWL Management, and to attend the WWC meeting alongside WWL Management and the Board Chair.
27. The Board Chair will respond to any media queries and handle any public communications about this review, and the reviewers may be required to assist with responding to any media queries as required.

Timeframe

28. The Board requires the draft report by Thursday 4 July 2024.
29. The reviewers will meet with the Board on Thursday 11 July to discuss the draft report.
30. The Board requires the final report by Monday 22 July.
31. The final report will be presented to the WWC on 26 July 2024.

Signed on 13 June 2024 by the Board Chair, on behalf of the Board:

A handwritten signature in black ink, appearing to read 'Nick Leggett', is written over a horizontal line.

Nick Leggett, Board Chair

Board of Directors of Wellington Water Limited