SUMMARY OF POSITIONS PAPER

JULY 2016

Pre-feasibility Assessment of Alternative Management and Funding Models for Sustainable Operation and Maintenance of Stormwater WQ Assets in the ACT

Report prepared for ACT Government – Environment and Planning Directorate

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1. Purpose of this Paper

1.1 Background

Marsden Jacob Associates (MJA) has been engaged by the Environment and Planning Directorate (EPD) to undertake a Pre-feasibility Assessment of Alternative Management and Funding Models for Sustainable Operation and Maintenance of Stormwater WQ Assets in the ACT. This engagement follows on from MJA's report in 2016 that identified eight alternative models for the funding, operation and maintenance of stormwater water quality assets.

The scope of this engagement has six main components outlined below. Each of the components is to be informed through genuine consultation with key stakeholders.

- **Costs of implementation** – To consider the range of costs that will be incurred (one-off and ongoing) from implementation of each option. Costs are to include transaction costs, personnel costs and administrative costs
- **Technical factors that will influence feasibility** – To consider how existing arrangements would be improved through implementation, funding shortfalls could be reduced or eliminated through implementation and further detail on the historical economic drivers that motivated other jurisdictions to adopt cost reflective pricing for stormwater services
- **Broader implementation considerations** – Take account of potential barriers to implementation that may arise from corporate objectives of proposed host organisations, community preferences, legislative challenges, change management issues and other relevant risks
- **Consequences for the BPP assets** – Assess the extent to which each option would be suited to funding and management of O&M functions for the BPP schedule of stormwater WQ assets
- **Triple Bottom Line analysis** - extend the existing TBL analysis contained in the MJA report to each of the options under consideration, including to the extent possible (within budget and time constraints) impact assessment that is consistent with ACT RIS guidance
- Report if there is a **change in the rank** of the options and provide guidance on risks that should be mitigated when implementing each option

In June 2016 MJA prepared an Options Paper that detailed the key steps required to implement the three preferred options. Key stakeholders across the ACT Government (Icon Water, TAMS, the ICRC and the CMTEED) were invited to respond to a number of targeted questions contained in the Options Paper.

This Paper provides a summary of the responses received.

MJA has not provided any assessment of the positions taken by stakeholders.

CMTEDD and TAMS provided responses that were structured around the detailed questions in the Options Paper.

Icon Water provided a detailed overview of a pre-feasibility assessment it had prepared in considering the suite of options outlined in the Options Paper. While not directly addressing each question, Icon Water has addressed many of the themes through its submission.

Discussions were held with EPD, mainly in relations to the implications for Basin Priority Projects.

The ICRC chose not to make a written submission in response to the Options Paper, but did meet with MJA to provide informal feedback on technical aspects of the Options Paper.

There are various references to TAMS in this Paper. At the time submissions were made the recent restructure of TAMS had not occurred, and TAMS had not changed its name to Transport Canberra City Services (TCCS). Therefore, the references to TAMS should be read in that context.

The views expressed in the TAMS submission should be treated as preliminary at this stage, as at the time the Options Paper was published the directorate was undergoing significant structural reform, and the newly appointed Director General had not yet commenced in her role. It is therefore likely that TCCS will provide a more detailed response in the future, and it could reflect alternative views held by the Director General of TCCS, to the extent that alternative views are held.

1.2 Structure of this Summary of Positions Paper

This paper has a similar structure to the Options Paper. Within each section the targeted questions from each section of the Options Paper are repeated, followed by a summary of the responses received.

- **Section 2** - overview of current institutional and funding arrangements for stormwater WQ assets in the ACT
- **Section 3** - Options to implement a Stormwater Levy and/or a Stormwater Charge
- **Section 4** - Options to establish a Stormwater Utility and to transfer stormwater WQ assets to Icon Water

2. Current approach to management and funding of stormwater WQ assets in the ACT

In this section of the Options Paper we provided an overview of the current institutional, regulatory and funding arrangements that apply to stormwater water quality assets in the ACT. An overview of the estimated O&M funding shortfall was also provided.

Questions: • Is this outline of institutional arrangements accurate?

Questions: • Is the description of the regulatory framework for stormwater WQ assets accurate?

Questions: • Is the description of funding arrangements accurate?

Questions: • Is additional/new data available that could improve the accuracy of the analysis presented in this section?

Specific responses to the above questions were received from TAMS and CMTEDD.

Both took the opportunity to point out that the existing O&M funding arrangements for core capital assets had been misrepresented. Rather than no funding being allocated in the first three years of an asset, current arrangements allocate 0% percent in year one, 1% in year two and 2% in year three. CMTEDD also noted that Agencies have the options to put forward a business case for O&M funding in the first year.

TAMS clarified that allocation of O&M funding within TAMS by Strategic Finance is made following consultation with the executive leadership team, and that not all stormwater WQ/WSUD assets are formally identified in the TAMS asset registers. In this context, CMTEDD also noted that the decision to split O&M funding 80/20 between Roads ACT and PATS was made by TAMS.

CMTEDD clarified that where a third party delivers WSUD assets, they are not procured through Procurement and Capital Works, and that the *Utilities Act 2000* provides scope for the preparation of a separate Stormwater Network Code.

Both CMTEDD and TAMS confirmed that the growth funding model has recently been revised for 2016-17 onwards to reflect the increase in multi unit dwelling developments across the

Territory. A broader review to update the growth funding model has been agreed between TAMS and CMTEDD as part of the 2016/17 Budget process.

3. Options to implement a Stormwater Levy or a Stormwater Charge

In this chapter we outlined the various options for implementing a new stormwater charge in the ACT, the available mechanisms and the barriers that would need to be overcome in implementing each option.

The options are:

- Introduce a Stormwater Levy that would be raised via Rates Assessment Notices
- Implement a Stormwater Charge independently determined by the ICRC

3.1 Stormwater Levy raised via Rates Assessment Notices

Questions:

- Are there other ways that a levy could be introduced that would allow revenue to be raised via rates assessment notices?
- What are the typical timeframes for amendments to Legislation in the ACT?
- Is it likely that an amendment of this type would be subject to a Regulatory Impact Statement?
- Is it likely that an amendment if this type would be referred to a Committee for review?
- What are typical costs associated with amending legislation?
- What are the typical costs associated with preparing disallowable instruments?

None of the respondents identified alternative means of introducing a levy that would be applied to rates assessment notice.

CMTEDD made the following comments in relation to this set of questions:

> *The timeframes for amendments to legislation would be dependent on Cabinet dates and Legislative Assembly sitting patterns. The following steps are most likely required:*
>
> *• Finalise Cabinet Submission to seek approval by Cabinet to amendments being drafted – this process takes at least 1 month from when the Submission is finalised (approved by Minister) to when it is formally considered.*
>
> *• Cabinet agreement to proceed;*
>
> *• Drafting of the Amendment Bill would need to be undertaken by The Parliamentary Counsel Office – depending on the nature of the amendments, this could take a few months;*
>
> *• Cabinet would need to consider the amendments prior to a Minister introducing the amendment bill to the Legislative Assembly – this process takes a minimum of 2 weeks from when the Assembly Business Paper (ABP) is finalised (approved by the Minister) to when Cabinet may consider the ABP;*

• Presentation of amendments to Legislative Assembly – this happens on sitting days only and normally occurs in the next sitting period after Cabinet has agreed to its introduction to the Legislative Assembly;

• Scrutiny Committee reviews amendments and provides comments prior to the debate of the Bill – this is dependent on the meeting times, but would happen generally within a month of a Bill being introduced.

• Debate/Passing of the amendments by the Legislative Assembly in a subsequent sitting period; and

• Notification of the amendments and commence of the amendments.

There is no typical timeframes around legislation amendments as it will depend upon the nature of the amendments and the stakeholder consultation required. Cabinet Office can provide more information. (CMTEDD)

With respect to the likelihood of a RIS being required:

This is dependent on the nature of the amendments. If the amendments will be introducing a levy/fee/charge, the consideration on whether a Regulatory Impact Statement (RIS) is required due to the potential impacts on the community as a whole. The requirements of a RIS are outlined within the Legislation Act 2000.(CMTEDD)

On the likelihood that the Act and/or amendment would be referred to a committee:

All amendments to Acts are referred to and considered by the Legislative Assembly Scrutiny Committee and the Committee determines whether comments will be provided or not. There is also the potential that, upon presentation of an Amendment Bill, the Assembly may move to formally refer the Bill to a Committee of the Assembly for further consideration (in addition to the scrutiny committee consideration).(CMTEDD)

With respect to resources required to amend legislation:

This is a matter for the responsible directorate. However, amending Acts would require more resources (time and personnel) than subordinate legislation (e.g. disallowable instrument). (CMTEDD)

Questions:

- What are the pros and cons of the ACT Government determining the prudent and efficient O&M costs for stormwater WQ assets in the ACT?
- What would be the likely costs of this exercise?
- What are the pros and cons of the ICRC determining the prudent and efficient O&M costs for stormwater WQ assets under the investigative powers contained in the ICRC Act?
- What are the likely costs of such an investigation?
- What are the typical timeframes for such an investigation?
- What are the key matters that should be included in a Terms of Reference to the ICRC?

CMTEDD and Icon Water provided views on these questions.

Icon Water did not directly express views on how prudent and efficient O&M costs should be identified, however did state:

A regulated waterways and drainage business offers a more sustainable solution to the ACT Government and the community. (Icon Water).

A sustainable funding and revenue stream must be established, such as a dedicated, cost-reflective stormwater charge per property and developer charges. (Icon Water)

Pricing policy and regulation is the responsibility of the ICRC. The utility collects and allocates funds to the assets it owns, and has the ability to run incentive programs to drive investment throughout the stormwater system, e.g. upstream solutions to minimise downstream issues. (Icon Water)

Implement a separate stormwater levy paid by residential and business customers. Collected by either the ACT government or the utility. (Icon Water)

A complementary stormwater offset mechanism would be incorporated to provide developer incentives to mitigate impacts (Paraphrasing Icon Water)

This implies that Icon Water has a preference for O&M to be determined within the regulatory framework that Icon Water currently operates under.

CMTEDD argued that the ACT Government currently determines prudent and efficient O&M costs through the process to assess relevant business cases through the Budget process.

CMTEDD pointed to the substantial cost that would be associated with a more formal process:

Undertaking a defined process to formally determine the efficient O&M costs associated with existing stormwater WQ assets would be likely to require significant technical support to be engaged by Government, at potentially substantial cost. It would be a matter for the responsible directorate to establish the scope of work and determine the source of funding for such work. (CMTEDD)

With respect to the pros and cons and costs of the ICRC determining O&M costs:

The ICRC would provide an independent party to determine the prudent and efficient level of O&M costs for stormwater EQ assets. They may have greater technical expertise available compared to the ACT Government to undertake this work. However, consideration of such an approach would need to weigh this benefit against the significant cost such an approach is likely to entail. We consider it unlikely that the overall benefits would outweigh the costs from this approach. (CMTEDD)

The cost of an investigation by the ICRC is dependent upon the nature and complexity of the investigation. The ICRC would be best place to provide further information on the costs of pricing investigations undertaken by ICRC in the past. However, such costs, especially in regards to an initial investigation, are likely to be significant. (CMTEDD)

ICRC pricing investigations typically take about 12 months (retail electricity prices) or 18 to 24 months (water and sewerage prices). However, it is dependent upon the nature and complexity of the investigation - our expectations is that an initial determination could take up to 12 months. (CMTEDD)

Informally, the ICRC suggested that investigations of this type, when undertaken for the first time, can be costly. Order of magnitude estimates were between $400,000 and $750,000.

Questions:

- What are the pros and cons of the Minister prescribing stormwater services and networks in the ACT as Utility Services under the *Utilities Act 2000*?
- If the *Utilities Act 2000* were to be amended to include a Stormwater Utility, what would be the likely costs associated with this change? What would be the likely timeframes?
- Are there advantages to the ICRC determining a Stormwater Levy independent of the ACT Government? Are there disadvantages?

Only CMTEDD expressed views on these questions:

> *We do not support this option, due to the extensive process required to establish a stormwater utility, and the significant costs such an approach would entail. Furthermore, there are already provisions within the Utilities Act 2000 to deal with the operation and maintenance of the stormwater network – greater utilisation of these provisions should be considered as a potential option. (CMTEDD)*
>
> *Administrative and compliance costs may outweigh benefits. The actual cost would need to be developed following detailed consideration of scale, scope and functions of any authority. The associated timeframes with the development of a Stormwater Utility would be significant, due to the requirement of having to amend Acts, and to set up the administrative and operational arrangements of the utility. (CMTEDD)*
>
> *There are significant disadvantages from utilising the ICRC to determine a stormwater levy independently. The amount allocated to maintenance is a budgetary allocation for the ACT Government. A key disadvantage of this approach is that it removes the ability of Government to adjust the levy to take into account other financial factors that may be impacting on the cost of living for residents.*
>
> *While the ICRC determining a levy could be advantageous in relation to ensuring it is reflective of efficient costs of providing stormwater services to the community, such benefits would need to be balanced against the associated costs associated with this potential approach. In particular, the processes associated with determining the appropriate level of the levy may involve significant cost, in particular during the initial process to determine efficient costs and set the levy for the first time. (CMTEDD)*

Questions:

- What form should the information campaign take?
- Are there examples of previous information campaigns? What were the costs? For how long were they required?

No comments were received from any parties on these questions.

3.2 Stormwater Charge independently determined by the ICRC

Questions:

- Are there other ways to implement a Stormwater Charge?
- Are there advantages and disadvantages to the Government electing for the ICRC to make a price determination relating to stormwater WQ assets O&M costs?
- If the Government went down this path what are the likely timeframes for undertaking the price determination?
- What are the likely resource requirements for the ICRC? Would external advice be required?

CMTEDD and TAMS made comments with respect to these questions.

CMTEDD argued that:

> *A review of funding provided and associated expenditure should be conducted before any new charge is considered, in particular to clearly establish the actual expenditure levels in relation to WQ asset O&M. (CMTEDD)*

It appears that CMTEDD does not see a material difference between a Stormwater levy or Stormwater charge, arguing that formally determining either of the two would be costly, and that the benefits of doing so are unlikely to outweigh the costs. CMTEDD also pointed to the constrained resources of the ICRC:

> *The ICRC is a relatively small organisation (current has about 8 staff including the Senior Commissioner). Therefore, it would be expected that additional external technical expertise (or alternatively consultants) would be required from time to time to undertake work associated with determining a stormwater charge for the Territory. (CMTEDD)*

Questions:

- What are the alternative options available to TAMS in terms of estimating current expenditure on stormwater WQ asset O&M?
- What are the likely timeframes and resource requirements to collect and reconcile expenditure data?

With respect to alternative options for TAMS to estimate current expenditure on stormwater WQ asset O&M:

> *This is core business for TAMS. A priority action should be for TAMS to firmly establish actual expenditure on stormwater WQ asset O&M, to remove this uncertainty. (CMTEDD)*

> *…we know what our total spend on stormwater maintenance is. Question for Roads ACT is can they split out the WQ expenditure separately. Reporting is the easy bit if expenditure is identified at the source. (TAMS)*

4. Alternative institutional arrangements

In this chapter we outlined the various options for implementing alternative institutional arrangements for O&M of stormwater WQ assets in the ACT.

The options canvassed were:

- The ACT Government creates a Stormwater Utility, which is responsible for stormwater WQ assets in the ACT, including O&M functions
- Stormwater WQ assets in the ACT are formally transferred to Icon Water. Icon water would be responsible for O&M functions as a result
- Responsibility for O&M of stormwater WQ assets is transferred to Icon Water. Assets are not formally transferred to Icon Water

4.1 Establishing a stormwater utility in the ACT Government

There were two fundamental options for the establishment of a stormwater utility in the ACT Government. These are:

- Creation of a branch or business unit within the existing TAMS Directorate structure
- Creation of a Statutory entity, in the form of a Territory Authority or a Territory-owned Corporation

Question:

- Are there other mechanisms available for the ACT Government to establish a Stormwater Utility beyond those identified in this section?

CMTEDD suggested an alternative means of achieving the outcomes desired under a stormwater utility model:

> *Creating an Output within TAMS rather than just a business unit – this ensures transparency of appropriation and also reporting as well as publishable performance indicators, while avoiding costs associated with setting up a formal stormwater utility. (CMTEDD)*

4.1.1 Creation of a branch or business unit

Questions:

- What are the pros and cons of establishing the Stormwater Utility as a business unit within TAMS?
- Would it be appropriate for an Executive Director to lead the Stormwater Utility?
- Are the reporting requirements outlined in this section adequate?

CMTEDD and TAMS directly addressed these questions:

> *Establishing a stormwater unit within TAMS (not necessarily a Utility) would be the simplest method to create transparency around expenditure of O&M for Stormwater.*
>
> *• An output class could be established for Stormwater, publishing the amount appropriated each year in the Budget Papers for this function.*

• Accountability indicators outlining the expected level of performance for these assets would be included in the Budget Papers.

• TAMS would be required to report on the performance against the accountability indicators in the Annual Report.

• The Annual Reports are reviewed by the Legislative Assembly through the Public Accounts Committee. (CMTEDD)

The scope and duties of the role needs to be job sized before identification of the appropriate seniority of the office could be undertaken. (CMTEDD)

Please note TAMS has gone through a significant restructure after merging with CMA (light rail) and some of the references to ACTION's reporting structure are now out of date. Creating a Branch or a business unit is a relatively simple process from a reporting perspective. In my view Director level management would be sufficient. (TAMS)

4.1.2 Creation of a Statutory entity

Under this option the ACT Government would create a stormwater utility through the establishment of a Statutory entity. There are two main options to enable this under ACT law:

1. Territory Authority
2. Territory-owned Corporation

Questions:

- Are there alternative means of establishing the stormwater utility as a Statutory Entity beyond those outlined in this section?

No comments were made in response to this question.

4.1.3 Functions, responsibilities, powers, governance and accountability mechanisms for Statutory entities

Territory Authority

Questions:

- What are the pros and cons of establishing the Stormwater Utility as a Territory Authority?
- What are the likely costs of preparing legislation to enable the establishment of the stormwater utility as a Territory Authority?
- Would it be necessary to transfer existing TAMS staff to the Territory Authority, or there more flexible arrangements available?
- Are the reporting and accountability features sufficient?
- How long does it typically take for enabling legislation of the type described above to be prepared and passed in the Legislative Assembly?

CMTEDD made the following comments in response to the questions:

Establishing a Territory Authority seems to be a high cost solution to implement in contrast to implementing specific output classes and accountability indicators within TAMS. It would require an extensive process to establish a Territory Authority, with no apparent additional benefits that could not be achieved through implementing better reporting arrangements for TAMS. In addition, there are already provisions within the Utilities Act 2000 associated with the operation and maintenance of the stormwater network – these provisions should be used in the first instance where possible, rather than the formal establishment of a Territory authority. (CMTEDD)

[Preparing enabling legislation] … could be achieved within existing resources. (CMTEDD)

On the question of transferring staff:

Under this option, there would be a requirement to have a transition between existing arrangements and the new arrangement. Furthermore, an Authority would need to be adequately equipped to undertake its tasks as per the legislation requirements. However, whether staff will be transferred would be dependent on individual staff, the staffing requirements of TAMS and staffing requirements of a new Authority. (CMTEDD)

Territory-owned Corporation

Questions:

- What are the pros and cons of establishing the Stormwater Utility as a Territory-owned Corporation?
- What are the likely costs of preparing a Ministerial notification as required under the *Territory-owned Corporation Act*?
- What are likely costs of establishing the stormwater utility as a Territory-owned Corporation?
- Would it be necessary to transfer existing TAMS staff to the Territory-owned Corporation, or there more flexible arrangements available?
- Are the reporting and accountability requirements proportionate to the O&M task in question?

CMTEDD made the following comments in response to the questions:

It is unlikely a Stormwater Utility could be created as a Territory owned corporation in the PTE sector, as it is unlikely to comply with the requirements of the Australian Bureau of Statistics. A stormwater utility is likely to be classified as a non-market producer since:

• The services they would provide are not economically significant as they will not impact on the quality or demand for stormwater services;

• There is no competition from the private sector;

• Consumers do not have the option of sourcing the services from another provider; and

• There is no long-term goal to create profit.

These factors would result in any stormwater utility needing to remain part of the General Government Sector.

This is likely to be a high cost option, particularly considering the dual regulatory framework that would apply (i.e Government and Corporations Law).

We do not consider this option should be further pursued. (CMTEDD)

Regarding establishment costs:

Costs are likely to be substantial in regards to establishing a stormwater utility as a Territory-owned corporation. (CMTEDD)

Regarding reporting and accountability requirements:

Reporting and accountability requirements would be substantial, given the dual regulatory framework that would apply to the TOC (both Government and Corporations Law). (CMTEDD)

4.2 Transferring stormwater assets to Icon Water

Under this option the stormwater WQ assets of the ACT Government would be formally transferred to Icon Water, which is a territory-owned Corporation.

The intent of transferring the assets to Icon Water would be to bring those assets within the regulatory gambit of the ICRC with respect to making pricing determinations.

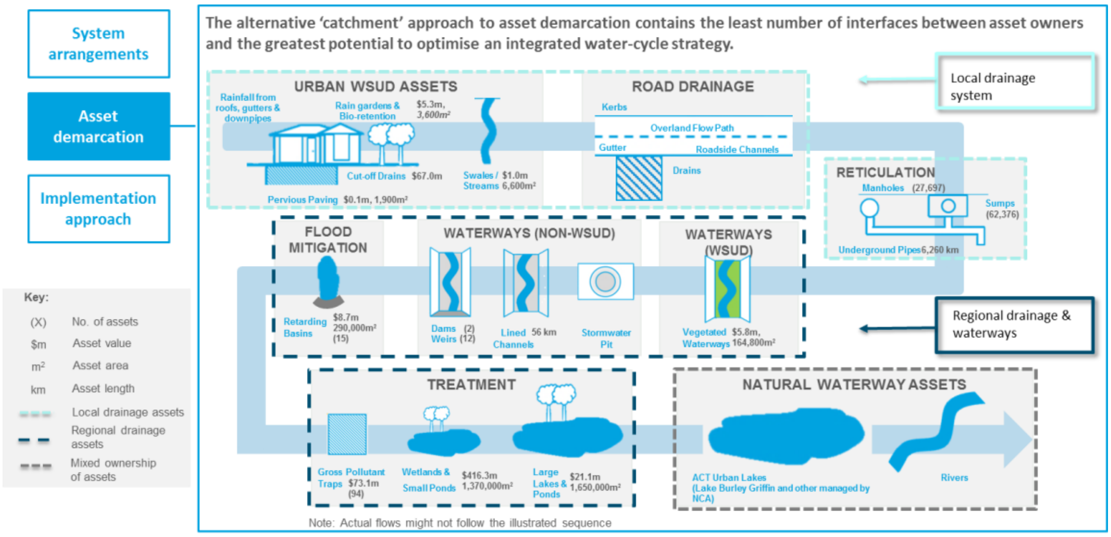
The submission by Icon Water mainly addressed this option.

Questions:

- What are the pros and cons of transferring ownership of the stormwater WQ assets to Icon Water?
- What are the likely transaction costs associated with this?
- What are the relevant legislative provisions that would allow the transfer of assets?
- Are stormwater WQ assets currently recorded on the ACT Government balance sheet?
- If so, what would be the implications for the ACT Government and Icon Water from the transfer of assets?
- What should be the valuation approach?
- What are the likely costs of preparing an asset valuation, if it is necessary?
- Would Icon Water seek to employ existing TAMS staff, or would Icon Water staff be trained to maintain and operate stormwater WQ assets? Are there other ways of resourcing Icon Water to undertake the O&M task?
- Should Icon Water be permitted to earn a return on and of the assets if they are transferred at no cost to Icon Water? Under what circumstances?

Icon Water has made it clear through its submission that it would be unlikely to consider a model where the scope of assets to be transferred to Icon Water was identical to those classified as ‘stormwater WQ assets’ in the Options Paper.

Icon Water has proposed two alternative demarcations of stormwater assets under this option. They are illustrated below:



Icon Water prefers a local and regional catchment demarcation along the stormwater system. The ACTG should consider this alternative to the current scope, to achieve more efficient and sustainable outcomes for the system.

It appears that Icon Water is willing to consider an option where both local and regional scale assets transfer to Icon Water, however appears to have a preference for only regional scale assets. This is very similar to the 'Melbourne Water' model.

For this project that would mean TAMS retaining the local scale assets, with regional scale assets transferring to Icon Water.

No other submissions proposed alternative asset class groupings.

Icon Water is also proposing that it take full ownership of the assets. It is not clear whether Icon Water proposes to purchase the assets, and if so, under what arrangement. Icon Water has outlined below the benefits it sees from taking full ownership, as opposed to 'just-management' models.

Icon Water has considered the three proposed operation, asset management, and ownership options. As discussed our firm preference is for full ownership.

Long-term Leadership
The asset owner can take the lead in achieving the vision for healthy waterways in the ACT. The more responsibilities become devolved through contractual arrangements, the less control and less flexibility there is to realise outcomes.

Customer and community relationship
The asset owner can plan and deliver long-term outcomes in consultation with the community. Icon Water has a direct relationship with the community through its existing business of providing high quality water services to the region.

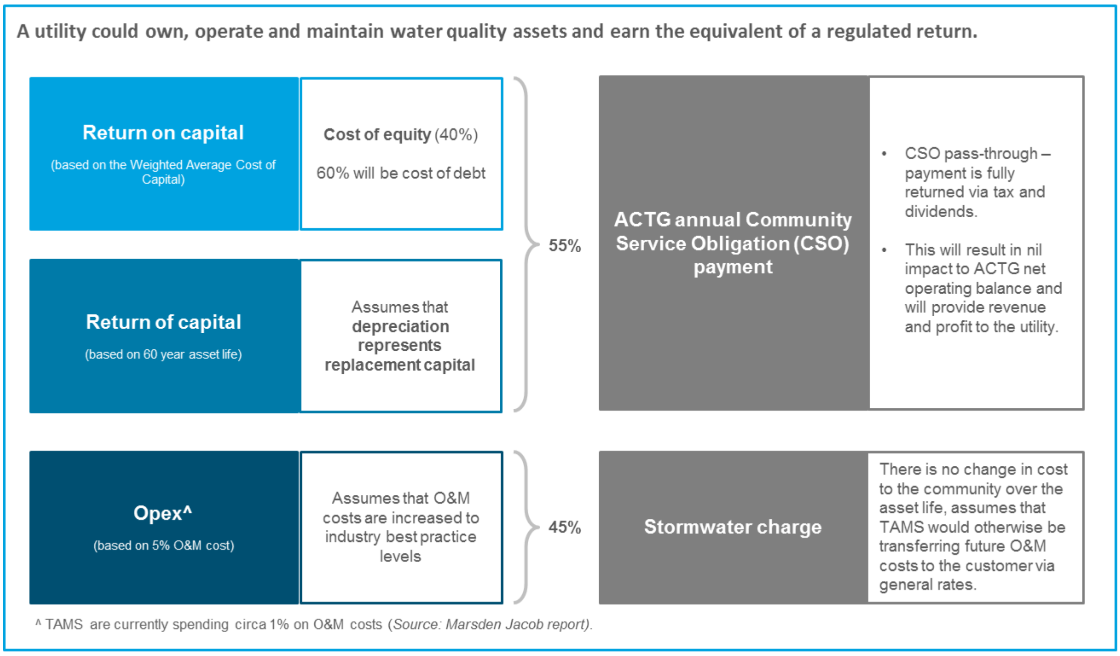
Item	O&M only	O&M and asset mgmt.	Full ownership
Performance of operations & maintenance	✓	✓	✓
Long-term asset strategy work	✗	Partial	✓
Alignment of interests	Poor	Moderate	**Best**
Ability of ownership model to deliver integrated water mgmt.	Poor	Moderate	**Best**
Incentive to deliver leading solutions for the community	Poor	Moderate	**Best**
Transaction Costs*	60% ($2m)	80% ($2.5m)	**100% ($3m)**

* Transaction costs such as due diligence, legal and set up costs are unlikely to vary greatly between options. Difference in costs will depend on employee impacts.

Full ownership enables the greatest opportunity to provide leadership and offer community value. Icon Water is not interested in a restricted O&M model that fails to exploit our expertise in water management.

By taking ownership Icon Water would be in a position to earn the equivalent of a regulated return on those assets, but from payment of a Community Service Obligation (CSO) by the ACT Government. O&M revenue would be earned through a stormwater charge appearing on Icon Water bills.

It appears that Icon Water is seeking to maintain its capital structure through earning regulated returns via the CSO, however because Icon Water is fully owned by the ACT Government, the regulated return would be passed back to Government via dividend payments. Therefore, the CSO would not impact Government financial position.



A regulated waterways and drainage business offers a more sustainable solution to the ACTG and the community.

In terms of legislative provisions to enable the transfer of assets, Icon Water suggests specific enabling legislation be passed, citing examples of where this has been achieved in the past.

System arrangements

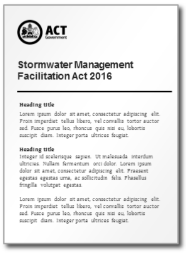
Asset demarcation

Implementation approach

Enabling or facilitation legislation can be used to implement the desired outcome for future management of WSUD assets.

Recent examples of facilitation legislation within the ACT include:

Capital Metro	ActewAGL	Inter-Territory asset transfer
Planning and Development (Capital Metro) Legislation Amendment Act 2015 - modify development application requirements for proposals related to light rail.	*ACTEW/AGL Partnership Facilitation Act 2000 – facilitate the implementation of the ActewAGL joint venture.*	*Financial Management Act 1996 (Amendment 2006) – to permit the relevant Territory Authority to transfer ownership of assets to the ACT Government.*



New legislation could overcome some identified implementation issues:
- Transferring ownership of assets between entities
- Setting or revising existing asset values
- Enabling secondment of employees between entities
- Managing the application of any ACT taxes on changed institutional arrangements

Key benefits of this approach:
- Clearly identify transaction scope
- Reduced transaction costs
- Reduce implementation time
- Manage transaction risks

The primary focus of the review should be on which option produces the best solution for stormwater management. Facilitation legislation can assist to smooth the implementation of the best option.

Icon Water address a number of other related issues through an over-arching implementation strategy, set out below.

System arrangements

Asset demarcation

Implementation approach

The favourable option is a broad whole-of-system stormwater strategy that considers integrated water management

GOVERNANCE AND REGULATION	**Soft:** Flexible // Regulation, codes and guidelines set after consultation // Recommendations and engagement	> Transition from the current 'hard' top-down governance to a 'soft', more collaborative and consultative model that considers the inputs of multiple stakeholders; owner, operator government and communities
FUNDING	CHARGES AND INCENTIVES **SW Levy:** Charge charge on bill/rates // Flat rate **SW Offset:** Developer incentive // Mitigate impacts	> Implement a separate stormwater levy paid by residential and business customers. Collected by either the ACT government or the utility
STRATEGY	**Broad:** Strategic goals focused on community amenity // Integrated water management	> Apply a broad, whole-of-system strategy that incorporates integrated water-cycle principles. Include inputs from community and government stakeholders with an interest in the broader outcomes
PERFORMANCE MANAGEMENT	**Integrated:** Activities and outcomes focused // Equal focus on quantity, quality and amenity // Customer at heart	> Commence with a conventional performance framework and establish broad KPIs for the whole system performance. Transition to an integrated framework that requires community satisfaction to be a key element
ASSET DEMARCATION	**(See Page 7):** TAMS local drainage / Utility regional drainage	> Preferred options for a utility to manage either the whole system, or the system downstream of reticulation. If the latter, the utility would have a budget to influence and work with TAMS on upstream mitigation efforts
ASSET MANAGEMENT	PLANNING: **Integrated:** One mgmt. plan // Flexible funds MAINTENANCE: **Routine/Reactive:** Renew at fail **Prevent:** Maintenance program	> Have an integrated asset management plan for all stormwater assets. Where more than one party owns different assets, have a working group to collaborate on a joint asset management plan
ORGANISATION – APPROACH	**Soft:** Focus on meeting community expectations // Waterways to enhance wellbeing and amenity	> A combination of both 'hard' and 'soft' engineering skills collaborating within the entity or entities managing the stormwater assets with well defined scopes to ensure alignment of outcomes
ORGANISATION – SOURCING	**Insource:** Employment costs // More control of outcomes and quality **Outsource:** Specialist external company // Perform to KPIs & SLAs	> Will require a capability assessment of skills needed to deduce whether roles can be hired internally or if the private sector is best placed to provide the services needed
TRANSITION PERIOD	**Slow:** Stage transition of asset management 6-12 months // Build capability in environmental engineering & community engagement	> Capability is built to evolve from 'pipes and pumps' to a contemporary environmental and community focused, integrated water-cycle management > Water business will benefit from culture and capability on integration

KEY:
Favourable Option
Negotiable Option

Setting out an implementation approach enables visualisation of an effective stormwater business.

CMTEDD provided a number of direct comments in response to the questions.

On the pros and cons of transferring assets to Icon Water:

> *The key disadvantage of transferring ownership of stormwater WQ assets to Icon is that $2.4 billion of assets (approximately 12 per cent of the asset base) will be removed from the GGS statements. This approach would also involve the ACT losing direct control and ownership of the asset, which would limit the influence the Government, could have on ensuring the assets are maintained to the required standard.*
>
> *Given the nature of Icon Water being an ACT Government owned corporation, and stormwater services being a monopoly service, there would be the need for significant additional regulatory requirements, in particular if a stormwater levy was to be*

adopted (in order to ensure costs are efficient). Another disadvantage is that it is not likely that commercial returns could be earned from these assets, given the nature of the service being provided.

There does not appear to be any apparent benefit over existing arrangements for the assets from this approach that could not be achieved from an alternative approach to improving the current management of the assets. (CMTEDD)

On the associated transactions costs:

The transaction costs are likely to be fairly significant, in particular in setting up a transparent framework and approach for the setting of a levy. (CMTEDD)

On the implications for the ACT Government balance sheet:

Yes. Stormwater Assets are currently recorded in the balance sheet and account for approximately $2.4 billion of assets. This equates to approximately 12 per cent of the Territory's total assets.

Icon Water would not need to pay a dividend on gifted assets as they have an explicit exemption from this following a recent decision of the Government.

There would be a $2.4 billion financial impact on the Head Net Operating Balance, as Icon Water is a PTE and their finances do not get included in the General Government Sector. (CMTEDD)

On weather Icon Water should be permitted to earn regulated returns on the assets:

No. These are not commercial assets and should not be priced in a manner that allows for a return on and return of capital associated with the assets. Under a commercial model, consumers need to make decisions (i.e. amount and quality to buy) based on demand, supply and price.

Given Icon Water would not have paid any upfront capital for the assets (either in their establishment or in relation to a purchase of the assets), it would not appear appropriate for them to be provided a commercial return on and return of capital associated with the assets, under this approach. (CMTEDD)

4.3 Transferring stormwater WQ asset O&M responsibilities to Icon Water

As an alternative to transferring stormwater WQ assets to Icon Water, the relevant Minister could transfer responsibility for the O&M of those assets to Icon Water, while retaining the current ownership structure of the assets.

Questions:

- What are the pros and cons of transferring responsibility for the O&M of stormwater WQ assets to Icon Water but retaining ownership within the ACT Government?
- What are the likely transaction costs associated with this option?
- What are the relevant legislative provisions that would allow the transfer of responsibilities for O&M of the assets without transferring ownership?
- Would Icon Water seek to employ existing TAMS staff, or would Icon Water staff be trained to maintain and operate stormwater WQ assets? Are there other ways of resourcing Icon Water to undertake the O&M task?
- Should Icon Water be permitted to earn a return on and of the assets if it is only responsible for the management of the asset? Under what circumstances?

Icon Water has made it clear through its proposal that this option is not feasible:

> *Icon Water is not interested in a restricted O&M model that fails to exploit our expertise in water management. (Icon Water)*

CMTEDD made a number of direct comments in relation to the questions:

> *The key benefit of this option is that the ACT Government would retain ownership and ultimate control of the asset, but could utilise Icon Water for the ongoing management of the assets, which may allow for an improvement in their overall management compared to current arrangements.*
>
> *However, any benefits would need to be balanced against potential competition issues, in particular in light of the ongoing process to implement reforms arising from the Harper Review of Competition Policy. Any shift to outsource maintenance of these assets directly from Government should involve a competitive procurement process. (CMTEDD)*

On the question of enabling legislation:

> *This should be possible as per Part 14 of the Utilities Act 2000, which allows the Territory to maintain the asset. Legal advice would be required to determine the extent of the powers provided within this part of the Utilities Act and whether there needs to be further clarity provided through legislative amendments. (CMTEDD)*

On the question of whether Icon Water should earn regulated returns under this option:

> *No. These are not commercial assets and should not be priced in a manner that allows for a return on and return of capital associated with the assets. Under a commercial model, consumers need to make decisions (i.e. amount and quality to buy) based on demand, supply and price.*
>
> *In addition, if Icon Water is only managing the assets, then it would clearly not be appropriate for them to receive a return on and return of capital associated with the*

assets, given they would not have contributed any capital required to establish or purchase the assets. (CMTEDD)

5. Refining current arrangements

In its Final Report MJA did not recommend that a refinement of current arrangements be considered as a reform option by the ACT Government. However, at the request of EPD, our Final Report provided information and discussion on how to implement that option.

In this section of the Options Paper we provided further detail on the steps that would be required.

5.1 Refine Current Arrangements

Under this option responsibility for the O&M of stormwater WQ assets in the ACT would remain with TAMS and the respective roles of Roads ACT and PATS would continue to be defined by the MOU between the two divisions.

The key changes would be as follows:

- broadening the base of assets that are captured in the funding determination framework
- Funding O&M of landscape assets immediately following asset acceptance.
- inserting a performance framework that requires TAMS Strategic Finance to report back to CMTEDD each year on how the annual O&M funding was allocated across TAMS functions and how the funding was expended.

Questions:

- What are the pros and cons of broadening the base of core capital works assets that attract recurrent O&M funding to include 'soft' stormwater WQ assets?
- What would be the transactions costs associated with broadening the base of assets?
- Is a review of the assets included in the 'growth' model necessary and warranted at this point in time?
- What are the most appropriate mechanisms for undertaking that review? What are the likely transaction costs associated with each option?
- What are the pros and cons of requiring more detailed and specific reporting on stormwater WQ assets O&M funding and expenditure as part of the requirements for budget preparation and performance reporting under the *Financial Management Act 1996*? Are the other means of providing the same level of public reporting?
- What are the likely transaction costs associated with this option?

CMTEDD and TAMS made comments in relation to these questions:

> *It is likely that additional funds above what is currently being expended would be required. There would either be costs to budget (through additional appropriation) or costs to consumers (through a cost reflective levy) from this option. However, this approach may lead to an improvement in the overall maintenance of the assets. (CMTEDD)*

On reviewing the growth model:

> *The growth model should be revised due to fundamental shifts in the ratios of units to houses that have changed since the model was first developed. This review could include WSUD assets.*

TAMS and CMTEDD could work together to review this model, potentially as part of a broader working group if necessary. The costs associated with undertaking this review would be lie with the responsible directorate (TAMS), with other directorates providing support where appropriate and required. (CMTEDD)

As part of the 2016-17 budget process it was decided that TAMS would work with Treasury to update / review the growth model. I am not sure what this means for WQ assets / funding but it will be included as an issue. (TAMS)

On the pros and cons of an improved reporting regime:

Given the substantial uncertainty about current expenditure associated with WQ assets, the establishment of an improved reporting regime would be highly beneficial.

The best means of providing reporting on funding and expenditure for stormwater quality assets would be as follows:

• An output class could be established for Stormwater, publishing the amount appropriated each year in the Budget Papers for this function.

• Accountability indicators outlining the expected level of performance for these assets would be included in the Budget Papers.

• TAMS would be required to report on the performance against the accountability indicators in the Annual Report.

• The Annual Reports are reviewed by the Legislative Assembly through the Public Accounts Committee. (CMTEDD)

Minimal costs (particularly when compared to the alternative options) would be required to implement this approach, and ultimately this cost would be borne by the responsible directorate for the WQ assets. (CMTEDD)