

Notice of Meeting:

I hereby give notice that an ordinary Meeting of the Council will be held on:

Date: Thursday 3 February 2022

Time: 9.30am

Meeting Room: Council Chamber and Audio Visual link

Venue: Municipal Building, Garden Place, Hamilton

Lance Vervoort Chief Executive

Council *Kaunihera*OPEN AGENDA

Membership

Chairperson *Heamana*

Mayor P Southgate

Deputy Chairperson

Heamana Tuarua

Deputy Mayor G Taylor

Members Cr M Bunting Cr A O'Leary

Cr M Gallagher Cr R Pascoe
Cr R Hamilton Cr S Thomson
Cr D Macpherson Cr M van Oosten
Cr K Naidoo-Rauf Cr E Wilson

Cr M Donovan

Quorum: A majority of members (including vacancies)

Meeting Frequency: Monthly - or as required

Amy Viggers

Mana Whakahaere | Governance Lead

26 January 2022

Telephone: 07 838 6727 Amy.Viggers@hcc.govt.nz www.hamilton.govt.nz

Purpose

The Council is responsible for:

- 1. Providing leadership to, and advocacy on behalf of, the people of Hamilton.
- 2. Ensuring that all functions and powers required of a local authority under legislation, and all decisions required by legislation to be made by local authority resolution, are carried out effectively and efficiently, either by the Council or through delegation.

Terms of Reference

- 1. To exercise those powers and responsibilities which cannot legally be delegated by Council:
 - a) The power to make a rate.
 - b) The power to make a bylaw.
 - c) The power to borrow money, or purchase or dispose of assets, other than in accordance with the Long Term Plan.
 - d) The power to adopt a Long Term Plan or Annual Plan, or Annual Report.
 - e) The power to appoint a Chief Executive.
 - f) The power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the Long Term Plan, or developed for the purpose of the Council's governance statement, including the 30-Year Infrastructure Strategy.
 - g) The power to adopt a remuneration and employment policy.
 - h) The power to approve or change the District Plan, or any part of that Plan, in accordance with the Resource Management Act 1991.
 - i) The power to approve or amend the Council's Standing Orders.
 - j) The power to approve or amend the Code of Conduct for Elected Members.
 - k) The power to appoint and discharge members of committees.
 - I) The power to establish a joint committee with another local authority or other public body.
 - m) The power to make the final decision on a recommendation from the Parliamentary Ombudsman, where it is proposed that Council not accept the recommendation.
 - n) The power to amend or replace the delegations in Council's *Delegations to Positions Policy*.
- 2. To exercise the following powers and responsibilities of Council, which the Council chooses to retain:
 - a) Resolutions required to be made by a local authority under the Local Electoral Act 2001, including the appointment of an electoral officer and reviewing representation arrangements.
 - b) Approval of any changes to Council's vision, and oversight of that vision by providing direction on strategic priorities and receiving regular reports on its overall achievement.
 - c) Approval of any changes to city boundaries under the Resource Management Act.
 - d) Adoption of governance level strategies plans and policies which advance Council's vision and strategic goals.

- e) Approval of the Triennial Agreement.
- f) Approval of the local governance statement required under the Local Government Act 2002.
- g) Approval of a proposal to the Remuneration Authority for the remuneration of Elected Members.
- h) Approval of any changes to the nature and delegations of the Committees.
- i) Approval of all Council and Committee Advisory Groups and their terms of reference.
- j) Appointments to, and removals from, CCO CCTO and CO boards;
- k) Approval of proposed major transactions or constitutional adjustments of CCOs, CCTOs and COs.
- I) Approval or otherwise of any proposal to establish, wind-up or dispose of any holding in, a CCO, CCTO or CO.
- m) Approval of city boundary changes, including in respect of Strategic Boundary Land Use Agreements.
- n) Approval Activity Management Plans.

Oversight of Policies and Bylaws:

- Corporate Hospitality and Entertainment Policy
- Delegations to Positions Policy
- Elected Members Support Policy
- Significance and Engagement Policy

ITEM	TABLE OF CONTENTS	PAGE
1	Apologies – Tono aroha	5
2	Confirmation of Agenda – Whakatau raarangi take	5
3	Declarations of Interest – Tauaakii whaipaanga	5
4	Public Forum – Aatea koorero	5
5	Confirmation of the Council Open Minutes of 16 December 2021	6
6	Confirmation of the Elected Member Open Briefing Notes - 9 December 2021	16
7	Chair's Report	18
8	Proposed Development Contributions Policy 2022/23	21
9	Reform Response Programme update	30
10	Strategic Risk and Assurance reporting: Safety & Wellness	334
11	Strategic Risk and Assurance reporting: Risk Management	358
12	2022 Triennial Elections Information	399
13	Resolution to Exclude the Public	406

1 Apologies – Tono aroha

2 Confirmation of Agenda – Whakatau raarangi take

The Council to confirm the agenda.

3 Declaration of Interest – Tauaakii whaipaanga

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

4 Public Forum – Aatea koorero

As per Hamilton City Council's Standing Orders, a period of up to 30 minutes has been set aside for a public forum. Each speaker during the public forum section of this meeting may speak for five minutes or longer at the discretion of the Mayor.

Please note that the public forum is to be confined to those items falling within the terms of the reference of this meeting.

Speakers will be put on a Public Forum speaking list on a first come first served basis in the Council Chamber prior to the start of the Meeting. A member of the Governance Team will be available to co-ordinate this. As many speakers as possible will be heard within the allocated time.

If you have any questions regarding Public Forum please contact Governance by telephoning 07 838 6727.

Council Report

Item 5

Committee: Council Date: 03 February 2022

Author: Tyler Gaukrodger **Authoriser:** Amy Viggers

Position: Governance Advisor **Position:** Governance Lead

Report Name: Confirmation of the Council Open Minutes of 16 December 2021

Report Status Open

Staff Recommendation - Tuutohu-aa-kaimahi

That the Council confirm the Open Minutes of the Council Meeting held on 16 December 2021 as a true and correct record.

Attachments - Ngaa taapirihanga

Attachment 1 - Council Unconfirmed Open Minutes - 16 December 2021



Council Kaunihera OPEN MINUTES

Minutes of a meeting of the Council held in Council Chamber and Audio Visual Link, Municipal Building, Garden Place, Hamilton and audio visual link on Thursday 16 December 2021 at 9.34am.

PRESENT

Chairperson Mayor P Southgate

Heamana

Deputy Chairperson De

n Deputy Mayor G Taylor

Heamana Tuarua

Members Cr M Bunting

Cr M Gallagher Cr R Hamilton Cr D Macpherson Cr M Donovan Cr R Pascoe

Cr S Thomson (Exclusively via audio visual link)

Cr M van Oosten Cr E Wilson

In Attendance Lance Vervoort – Chief Executive

Sean Murray – General Manager Venues, Tourism and Major Events

Chris Allen - General Manager Development

Eeva-Liisa Wright - General Manager infrastructure Operations Sean Hickey – General Manager Strategy and Communications

David Bryant - General Manager People and Organisational Performance

Blair Bowcott - General Manager Growth

Andrew Parsons – Executive Director Strategic Infrastructure

Michelle Hawthorne - Legal Services Manager

Julie Clausen - Unit Manager Strategy and Corporate Planning

Katy Nudd - Business Planning Analyst

Greg Carstens - Growth, Funding and Analytics Unit Manager

Stephen Halliwell – Water Reform Financial Advisor Justine Kennedy - Project Manager Special Projects

Nigel Ward - Communication and Relationships Manager, Three Waters Reform

Hannah Windle – Special Projects Manager

Governance Staff Becca Brooke – Governance Manager

Amy Viggers – Governance Team Leader Tyler Gaukrodger – Governance Advisor

The meeting was opened with a karakia from Tame Pokaia.

1. Apologies – Tono aroha

Resolved: (Mayor Southgate/Deputy Mayor Taylor)

That the apologies for absence from Cr O'Leary and Naidoo-Rauf are accepted.

2. Confirmation of Agenda – Whakatau raarangi take

Resolved: (Mayor Southgate/Deputy Mayor Taylor)

That the agenda is confirmed noting that:

- a) item 19 (Founder Theatre Site -TOTI proposals request for extension) will be taken after item 4 (Public Forum) to accommodate public in attendance;
- b) the late attachments (Infrastructure Acceleration Fund Draft Proposals) for Item 14 (Infrastructure Acceleration Fund (IAF) Proposals) are accepted. They were circulated under separate cover (and is available here as supplementary information) to enable the most up to date information to be included in the proposals;
- b) the late addition to item 15 (item 15 (Reform Response Programme Update) and the Resource Management Reform section concerning the Ministry for the Environment's Document 'Transforming Aotearoa New Zealand's Resource Management System Materials for Discussion' is accepted. The background material was circulated under separate cover (and is available here as supplementary information) as it was received after the agenda was circulated and is relevant to the matters already being discussed; and
- c) the late item C6 (Waikato Regional Airport Limited Northern Precinct Development) is accepted. The report was circulated as a late item to enable timely decision on the matter.

3. Declarations of Interest – Tauaakii whaipaanga

No members of the Council declared a Conflict of Interest.

4. Public Forum – AAtea koorero

Margaret Evans (TOTI) spoke to item 19 (Founders Theatre Site – TOTI proposal request for extension), requesting that Elected Members approve the eextension requested by Theatre of the Impossible Charitable Trust (TOTI) to submit their proposal and outlined some of the proposed design. She responded to questions from Elected Members concerning future operating cost to Council, the proposed timeline, current funding acquired and proposed impact on the Waikato Regional Theatre.

Kelvyn Eglinton (Momentum Waikato) spoke to item 19 (Founders Theatre Site – TOTI proposal request for extension) noting that Momentum Waikato was neutral in their stance as to the future of the Founders Theatre Site but that their concerns were related to the proposed use for community event/town hall activities as this would be in direct competition with the Waikato Regional Theatre as outlined in the theatre's business case. He responded to question from Elected Members concerning the theatre's business case in relation to Community use and rates, and the revenue deficit.

Item 19 (Founder Theatre Site -TOTI proposals request for extension) was taken after item 4 (Public Forum) to accommodate public in attendance.

19. Founders Theatre Site - TOTI proposal request for extension

The General Manager Venues, Tourism and Major Events took the report as read. Staff responded to question from Elected Members concerning the timeline in relation to the Annual Plan process, the cost of maintaining Founders Theatre as is, budgeted amounts for the future of Founders Theatre, the status quo, the proposed motions, and proposed operating model.

Resolved: (Mayor Southgate/Cr van Oosten)

That the Council:

- a) receives the report; and
- approves the extension requested by Theatre of the Impossible Charitable Trust (TOTI) to submit both final concept design and funded business case for the redevelopment of Founders Theatre by 31 March 2022.

Cr Hamilton Dissenting.

Motion: (Mayor Southgate/Cr van Oosten)

That the Council notes that no further extension to this deadline will be granted.

Those for the Motion: Deputy Mayor Taylor, Councillors Pascoe,

van Oosten and Wilson

Those against the Motion: Mayor Southgate, Councillors Gallagher,

Macpherson, Bunting, Hamilton and

Thomson.

The Motion was declared LOST.

The meeting was adjourned 11.00am to 11.47am.

5. Confirmation of the Council Open Minutes of 11 November 2021

Resolved: (Mayor Southgate/Deputy Mayor Taylor)

That the Council confirm the Open Minutes of the Council Meeting held on 11 November 2021 as a true and correct record.

6. Confirmation of the Extraordinary Council Open Minutes - 30 November 2021

Resolved: (Cr Bunting/Cr van Oosten)

That the Council confirm the Open Minutes of the Extraordinary Council Meeting held on 30 November 2021 as a true and correct record.

7. Confirmation of the Extraordinary Council Open Minutes - 2 December 2021

Resolved: (Cr Wilson/Cr Pascoe)

That the Council confirm the Open Minutes of the Extraordinary Council Meeting held on 2 December 2021 as a true and correct record.

8. Confirmation of the Elected Member Open Briefing Notes - 3 November 2021

Resolved: (Deputy Mayor Taylor/Cr Bunting)

That the Council confirm the Open Briefing Notes of the Elected Member Briefing held on 3 November 2021 as a true and correct record.

9. Confirmation of the Elected Member Open Briefing Notes - 17 November 2021

Resolved: (Cr Wilson/Cr van Oosten)

That the Council confirm the Open Briefing Notes of the Elected Member Briefing held on 17 November 2021 as a true and correct record.

10. Confirmation of the Elected Member Open Briefing Notes - 24 November 2021

Resolved: (Mayor Southgate/Cr Wilson)

That the Council confirm the Open Briefing Notes of the Elected Member Briefing held on 24 November 2021 as a true and correct record.

11. Confirmation of the Elected Member Open Briefing Notes - 26 November 2021

Resolved: (Cr van Oosten/Cr Macpherson)

That the Council confirm the Open Briefing Notes of the Elected Member Briefing held on 26 November 2021 as a true and correct record.

12. Chair's Report

The Mayor took the report as read, noting that her report included changes to the Governance Structure.

Resolved: (Cr Wilson/Cr Macpherson)

That the Council:

- a) receives the report;
- b) approves all changes to the Governance Structure Terms of Reference and Delegations 2019-2022 as summarised below and as set out in attachment 2 (track changes) and 3 (clean version) of this report:
 - i. establishment of a Waikato Regional Council/Hamilton City Council Governance Group, with Mayor Southgate, Cr O'Leary, Cr Macpherson and Cr Thomson as members;
 - ii. Cr Bunting be removed as a member of the Environment Committee;
 - iii. Cr O'Leary be appointed as the HCC member of the WRC Transport Emissions Working Group;
 - iv. Cr Thomson be appointed as an alternate HCC member to the WRC Transport Emissions Working Group;
 - v. Cr Pascoe and Cr van Oosten replace Deputy Mayor Taylor, Cr Naidoo-Rauf and Cr Hamilton as members of LGNZ Zone 2; and
 - vi. Cr Gallagher replace Deputy Mayor Taylor as a member of the Waikato and Waipa District Council/Hamilton City Council Governance Group.

13. Building Hamilton's Wellbeing Together - Wellbeing Report

The Unit Manager Strategy and Corporate Planning introduced the report, noting that the matter had been discussed at the briefing of 3 November 2021. Staff responded to questions from Elected Members concerning the statistics provided being based on older annual figures.

Resolved: (Cr Hamilton/Cr Wilson)

That the Council:

- a) receives the report; and
- b) notes that the next 'Building Hamilton's Wellbeing Together' report will be presented to the Council in late 2022.

14. Infrastructure Acceleration Fund (IAF) Proposals

The Growth, Funding & Analytics Unit Manager and the Executive Director Strategic Infrastructure provided Elected Members with an update on the Infrastructure Acceleration Fund process and Council's the draft proposals. Staff responded to questions from Elected Members concerning the executive summary of the supplementary attachment, expected dwelling and other information covered in the proposals, letters of support that were also to be provided with the proposals, cost estimates, and the next steps in the process.

Resolved: (Mayor Southgate/Cr Wilson)

That the Council:

a) receives the report;

- b) approves the Central City and Rototuna North Infrastructure Acceleration Fund (IAF) proposals to Kaainga Ora be submitted on 17 December 2021;
- c) delegates authority to the Chief Executive, in consultation with the Chair and Deputy Chair of the Strategic Growth Committee, to finalise and submit the Central City (Attachment 1) and Rototuna North (Attachment 2) Infrastructure Acceleration Fund proposals to Kaainga Ora no later than 17 December 2021; and
- d) notes that submitted proposals are non-binding on the Council, and that if a proposal is accepted the next stage in the Infrastructure Acceleration Fund process will require binding funding and housing outcome agreements.

15. Reform Response Programme – update

The General Manager Strategy and Communications and the Project Manager Special Projects outlined the matters covered in the report and noted the late attachment, the Ministry for the Environment's 'Transforming Aotearoa New Zealand's Resource Management System - Materials for Discussion'.

Three Waters Reform

The Executive Director Strategic Infrastructure and the Water Reform Financial Advisor provided Elected Members with an update regarding the Water Services Entities Bill and the updated staff recommendation. Staff responded to questions from Elected Members concerning the proposed consultation including the timeline, process, and education plan.

Resolved: (Mayor Southgate/Cr van Oosten)

That the Council:

- a) approves the Hamilton City Council Submission on Economic Regulation and Consumer Protection for Three Waters Services in New Zealand to Ministry of Business, Innovation and Employment.
- b) approves a copy of the submission be sent to the Department of Internal Affairs, expressing concern there is insufficient connection, essential to achieving efficiency and innovation in the establishment of new waters entities, between the Government's three waters reform programme (managed by the Department of Internal Affairs) and the Government's Three Waters Economic Regulation and Consumer Protection plans (managed by Ministry for the Business, Innovation and Employment).
- c) Community Engagement
- d) approves consultation and engagement **option C**, as outlined in the staff report, for the Water Services Entities Bill select committee consultation period, subject to Government timeframes;
- e) notes that staff will circulate a draft consultation document to all elected members for feedback prior to presenting a draft consultation document for approval at the next available Council meeting following confirmation of the introduction of the Water Services Entities Bill and subsequent Select Committee dates; and
- f) notes staff will report back to the Council with a summary of the feedback received through an engagement process, if approved.

Resource Management Reform

The Special Projects Manager then outlined the recently released 'Transforming Aotearoa New Zealand's Resource Management System - Materials for Discussion' and the submission process.

Resolved: (Mayor Southgate/ Deputy Mayor Taylor)

That the Council receives the report.

Resolved: (Mayor Southgate/ Deputy Mayor Taylor)

That the Council:

- a) approves the Chair, Deputy Chair of the District Plan Committee and staff to develop the Council's submission to the Ministry for the Environment's 'Transforming Aotearoa New Zealand's Resource Management System - Materials for Discussion' in consultation with Members;
- b) delegates authority to the Infrastructure Operations Committee to approve the final version of the Council's submission to the Ministry for the Environment's 'Transforming Aotearoa New Zealand's Resource Management System - Materials for Discussion' at its 24 February 2022 meeting; and
- c) notes that the approved Council submission will be sent to the Ministry for the Environment and by 28 February 2022 to meet submission closing date.

Cr Donovan joined the meeting (12.40pm) during the discussion of the above item. He was present when the matter was voted on.

16. Draft 2022 Schedule of Report for Council and Committee Meetings

The report was taken as read.

Resolved: (Cr Macpherson/Cr Wilson)

That the Council:

- a) receives the draft Schedule of Reports for Council and Committees 2022; and
- b) notes that the Schedule of Reports for Council and Committees 2022 will be updated as required and will be available to all Members via Diligent.

The meeting was adjourned 1.37pm to 2.29pm.

Deputy Mayor Taylor and Cr Bunting left the meeting during the above adjournment.

17. Recommendations from Open Committee Meetings

Economic Development Committee meeting 23 November 2021

Resolved: (Cr Hamilton/Cr Wilson)

That the Council approves \$100,000 of additional funding for rent relief for eligible Council tenants in the Covid-19 Level 3 and 2 lockdowns from 1 November to 31 December 2021, in accordance with the criteria approved by Council on 5 October 2020.

Community Committee meeting 25 November 2021

Resolved: (Cr Bunting/Mayor Southgate)

That the Council approves the easement to WEL Networks Ltd over Lot 9 DPS 87761 and Section 1 SO 499978, subject to:

- ii. the Department of Conservation approval being obtained for Lot 9 DPS 87761; and
- iii. all costs relating to the easement, and registration of it on relevant Titles, being the responsibility of WEL Networks Ltd.

Deputy Mayor Taylor and Cr Bunting re-joined the meeting (2.30pm) during the discussion of the above matter. They were present when the matter was voted on.

Environment Committee meeting 30 November 2021

Resolved: (Cr Gallagher/Cr Thomson)

That the Council:

- a) approves its support of the 'Free Fares Campaign' to central government which is seeking free bus fares for community service card holders, tertiary students and under 25's;
- b) delegates authority to the Mayor to sign the petition on the Council's behalf; and
- c) delegates its Regional Connections Committee Members to discuss the petition at the Regional Connections Committee.

Finance Committee meeting 14 December 2021

Resolved: (Cr Pascoe/Cr van Oosten)

That the Council:

- a) approves the capital movement as identified in paragraph 26 of the 14 December 2021 Capital Portfolio Monitoring Report;
- b) approves the significant forecast adjustments as set out in paragraphs 50 to 54 of the staff report; and
- c) approves the revised Financial Strategy position for Debt to Revenue, Net Debt and Balancing the Books as set out in paragraphs 56 to 58 of the staff report.

District Plan Committee meeting 15 December 2021

Resolved: (Cr Hamilton/Deputy Mayor Taylor)

That the Council:

- a) approves amending the Hamilton District Plan to include a new objective as set out in Attachment 1 of the staff report, in accordance with the requirements of the National Policy Statement on Urban Development 2020; and
- b) notes that a public notice of this change to the Hamilton District Plan will be issued within 5 working days of implementation of the change.

<u>Infrastructure Operation Committee meeting 7 December 2021</u>

Resolved: (Cr Thomson/Cr Bunting)

That the Council approves Option 1 of the staff report – adopt the proposed Hamilton Traffic Bylaw 2021 (Attachment 1 of the staff report).

18. Resolution to Exclude the Public

Resolved: (Mayor Southgate/Deputy Mayor Taylor)

Section 48, Local Government Official Information and Meetings Act 1987

The following motion is submitted for consideration:

That the public be excluded from the following parts of the proceedings of this meeting, namely consideration of the public excluded agenda.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution follows.

General subject of each matter to be	Reasons for passing this	Ground(s) under section	
considered	resolution in relation to each	48(1) for the passing of	
	matter	this resolution	
C1. Confirmation of the Council) Good reason to withhold	Section 48(1)(a)	

Public Excluded Minutes of 11
November 2021

- C2. Confirmation of the Elected Member Public Excluded Briefing Notes - 3 November 2021
- C3. Confirmation of the Elected Member Public Excluded Briefing Notes - 17 November 2021
- C4. Contract for Electoral Services for 2022 Triennial Elections
- C5. Recommendations from Public Excluded Committee Meetings
- C6. Waikato Regional Airport Limited - Northern Precinct Development

) information exists under
) Section 7 Local Government
) Official Information and
) Meetings Act 1987

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

Item C1.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C2.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C3.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C4.	to enable Council to carry out commercial	Section 7 (2) (h)
	activities without disadvantage	Section 7 (2) (i)
	to enable Council to carry out negotiations to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C5.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C6.	to enable Council to carry out commercial	Section 7 (2) (h)
	activities without disadvantage	Section 7 (2) (j)
	to prevent the disclosure or use of official	
	information for improper gain or improper advantage	

The meeting moved into a public excluded session at 2.39pm.

The meeting moved into an open session at 3.27pm.

The meeting was adjourned from 3.27pm to 3.39pm.

17. Recommendations from Open Committee Meetings – Continued

Motion: (Mayor Southgate/Cr Wilson)

That the Council declines the application for the speed limit of the section of Wairere Drive between Arthur Porter Drive and Pukete Road to be decreased from 80km/h to 60km/h.

Amendment: (Cr Macpherson/Cr Pascoe)

That the Council:

- a) approves that the speed limit on a section of Wairere Drive between Arthur Porter Drive and Pukete Road from 80km/h;
- notes that the new speed limit will come into effect in conjunction with the construction of traffic signals at Karewa Place intersection on Wairere Drive which will be fully funded and completed by Foodstuffs; and
- c) requests staff report back to a future Infrastructure Operations Committee with the final intersection design for approval.

The Amendment was put.

Those for the Amendment: Councillors Gallagher, Pascoe,

Macpherson, Bunting, Taylor, Hamilton

and van Oosten

Those against the Amendment: Councillors Southgate, Thomson, Wilson

and Donovan

The Amendment was declared carried.

The Amendment as the substantive Motion was then put and declared CARRIED.

Resolved: (Cr Macpherson/Cr Pascoe)

That the Council:

- a) approves that the speed limit on a section of Wairere Drive between Arthur Porter Drive and Pukete Road from 80km/h to 60km/h; and
- notes that the new speed limit will come into effect in conjunction with the construction of traffic signals at Karewa Place intersection on Wairere Drive which will be fully funded and completed by Foodstuffs; and
- c) requests staff report back to a future Infrastructure Operations Committee with the final intersection design for approval.

Cr Wilson Dissenting.

The meeting was adjourned 3.45pm to 3.54pm during the above item.

The meeting was declared closed at 4.17pm.

Council Report

Item 6

Committee: Council Date: 03 February 2022

Author: Tyler Gaukrodger **Authoriser:** Amy Viggers

Position: Governance Advisor **Position:** Governance Lead

Report Name: Confirmation of the Elected Member Open Briefing Notes - 9 December

2021

Report Status	Open

Staff Recommendation - Tuutohu-aa-kaimahi

That the Council confirm the Open Briefing Notes of the Elected Member Briefing held on 9 December 2021 as a true and correct record.

Attachments - Ngaa taapirihanga

Attachment 1 - Elected Member Unconfirmed Open Briefing Notes - 9 December 2021

Elected Member Briefing Notes – 9 December 2021 – OPEN

Time and date: 2.36pm, 9 December 2021

Venue: Council Chamber and Audio Visual Link

Mayor Southgate, Crs Pascoe (exclusively via audio visual link), O'Leary (exclusively via audio visual link), Macpherson, van Oosten (exclusively via

audio visual link), Thomson (exclusively via audio visual link), Wilson,

Donovan, and Gallagher

Apology for Full Session: Deputy Mayor Taylor, Crs Bunting, Hamilton, Naidoo-Rauf, Maangai Kana,

Hill, Te Ua, Thompson-Evans and Whetu

Apologies for

In Attendance:

lateness/early departure: Cr O'Leary

Discussion

The open briefing session covered:

1. Waikato Public Transport Business Improvement Review

Mark Tamura (Director Regional Transport Connections, Waikato Regional Council) explained that the purpose of the presentation was to discuss the Regional Transport Business Improvement Review and the work being undertaken with Hamilton City Council. He outlined the reasons for improving the public transport operating model, the reviews findings, recommendations and actions, Waikato Regional Council's vision for the city, the new tools within Waikato Regional Council control that would not impact on territorial local authority mandates or functions, institutional arrangements, recent discussions on institutional reform, and next steps.

Members asked questions in relation to the following:

- funding model and constraints;
- unfunded requirements of the current transport model;
- patronage improvements and benchmarking;
- Waikato Regional Council's ability to improve patronage;
- previous transport studies undertake by Waikato Regional Council;
- Waikato Regional Council's ability to begin roll-out more public transport;
- the management of infrastructure and new transport systems;
- implementation of high frequency routes;
- rating division between services versus infrastructure;
- feedback on review and recommendation from other organisations; and
- integration of the review recommendations into the urban transport programmes.

Council Report

Item 7

Committee: Council Date: 03 February 2022

Author: Tyler Gaukrodger **Authoriser:** Amy Viggers

Position: Governance Advisor **Position:** Governance Lead

Report Name: Chair's Report

Report Status Open

Recommendation – Tuutohu

That the Council receives the report.

Attachments - Ngaa taapirihanga

Attachment 1 - Chair's Report



Chair's Report

Welcome everyone to the first Council meeting of 2022. I hope everyone is refreshed and looking forward to what promises to be another busy year.

This will be another year of significant changes that will have a fundamental impact on Hamilton.

In August our new District Plan must be notified. The District Plan is the rulebook for growth of the city, and is one of the most significant documents any Council publishes. The significant growth our city is experiencing, the ongoing housing crisis, and the recent legislation on intensification will make it even more important to get this right for Hamilton.

We will soon be working through the 2022-23 Annual Plan, building on the good work done in last year's Long-Term Plan. There will also be significant issues for all of our Committees to engage with, from transport and climate change, to important work on the Endowment Fund and the adoption of *He Pou Manawa Ora: Pillars of Wellbeing*, all while continuing to provide for growth in our city so that Hamilton remains a fantastic place to live – for everyone. As we have already seen this year, COVID will continue to affect the lives of Hamiltonians, and we must be nimble, as we have throughout the pandemic, to meet the changing needs of our community.

It will also be a year of continued positive developments to the city around us, through the construction of the Waikato Regional Theatre and the K'aute Pasifika Pan-Pacific Community Hub, the continuing build of the new crossing over the Waikato River to Peacocke and the completion of the Waikato Expressway. These changes — and so many more besides — will set us up for future success, improving the wellbeing of Hamiltonians.

There will also be significant milestones on the Government-led reforms, as the Future for Local Government panel work towards publication of their draft report and the Government seeks to pass legislation on water reform and reform of resource management. The pace and extent of change is huge and will fundamentally change Hamilton, and the way our Council operates.

Today's meeting includes discussion on these reforms. While the Government appears to be heeding the very real concerns of our Council and others on their water reform programme, with some important changes indicated in the exposure draft of the Bill, more needs to be done.

In the last couple of weeks I have had very productive meetings with the Commissioners of Tauranga City Council and the Mayor of Auckland, discussing the many shared opportunities and challenges ahead of us. I will be heading to Wellington in the next few weeks to set out the issues facing metros such as Hamilton which need to be taken seriously. At a time of vast change, I am committed to continuing to fight for the best outcome for Hamiltonians, as I know we all are.

Finally, this year will see our first elections under the Single Transferable Vote system, and the first election of Councillors in our new Maori ward. I passionately believe in public participation in our democratic processes. The more people who vote, the more that Council will be representative of the people it serves. It is therefore vital that we help Hamiltonians to understand the changes to our electoral system and how they affect them, and encourage as many people as possible to vote.

I look forward to working alongside you all this year to deliver in your portfolios as a professional board.

Chair's Recommendation

That the Council receives the report.

Paula Southgate

Mayor Hamilton City

Council Report

Committee: Council **Date:** 03 February 2022

Author: Greg Carstens **Authoriser:** Blair Bowcott

Position: Growth, Funding & Analytics **Position:** General Manager Growth

Unit Manager

Report Name: Proposed Development Contributions Policy 2022/23

Report Status	Open

Purpose - *Take*

1. To seek the Council's approval of recommended changes to the operative Development Contributions Policy, to inform a Proposed Development Contributions (DC) Policy 2022/23 ("Proposed Policy") to be reported to the 17 March 2022 Council Meeting.

Staff Recommendation - Tuutohu-aa-kaimahi

- 2. That the Council:
 - a) receives the report;
 - b) approves, for the purpose of preparing a Proposed Development Contributions Policy 2022/23 ("Proposed Policy"):
 - i. amending the definition of gross floor area (GFA) such that development contributions will continue to be charged for the area under building canopies with the exception of eaves or overhangs of up to one metre in depth;
 - ii. for the stormwater component of a charge, charging 1 Household Unit Equivalent (HUE) of development contributions rather than 1.29 HUE, for dwellings of more than one level that have four or more bedrooms;
 - c) notes that:
 - the Proposed Policy will include new provisions for a partial remission of development contributions for development undertaken by state-integrated schools, as resolved by the Strategic Growth Committee (item 6) on 2 December 2021;
 - ii. the changes in b) i. and ii. above are recommended to give effect to the 27 August 2021 Judicial Decision on AGPAC Limited & others vs Hamilton City Council;
 - iii. recommendation b) i. includes amendments to the definition of GFA that will improve clarity and transparency, but not change the substance of the existing provisions;
 - iv. recommendation b) ii. will better align household sizes with stormwater impacts;
 - v. approving these recommendations will not amend the current Development Contributions Policy;

vi. a draft Proposed Policy which includes the draft provisions to give effect to these recommended changes to the Development Contributions Policy will be presented to the 17 March 2022 Council Meeting, seeking approval for community engagement in alignment with the 2022/23 Annual Plan process.

Executive Summary - Whakaraapopototanga matua

- 3. This report seeks the Council's approval of the recommended changes to the operative Development Contributions Policy, for inclusion in a proposed Development Contributions (DC) Policy 2022/23 ("Proposed Policy"). This Proposed Policy will be brought back to the 17 March 2022 Council Meeting for consideration, seeking approval for community engagement.
- 4. The proposed community engagement will be presented to the Council at it 17 March 2022 meeting. Legal advice on the engagement approach to the Proposed DC Policy has been received, with engagement to target groups those most impacted by the Policy. This will include Property Council, the newly established Developer Reference Group, which includes Elected Member representatives and influential members of the development community and those within the ratepayer association or similar.
- 5. Ultimately, an updated Development Contributions (DC) Policy 2022/23 giving effect to these draft amendments (subject to any change arising from consultation) will be adopted in June 2022, becoming operative on 1 July 2022.
- 6. This report outlines three proposed changes to the DC Policy:
 - **Change 1** Amend the definition of gross floor area (GFA) gives effect to the 27 August 2021 Judicial Decision on AGPAC Limited & others vs Hamilton City Council ("Judicial Review");
 - **Change 2** Amend the approach to charging residential stormwater also gives effect to the 27 August 2021 Judicial Decision;
 - **Change 3** Introduce a state-integrated schools remission gives effect to the resolution of the Strategic Growth Committee on 2 December 2021 to introduce a partial remission of DCs relating to state-integrated school facilities where those facilities have a specified level and term of public accessibility.
- 7. At its <u>17 September 2019</u> meeting, the Council resolved its strategic considerations for DC Policy reviews. This included the key principle of reviewing its DC policy once every three years with the Long Term Plan (LTP), unless there are sound reasons to do otherwise.
- 8. Overall, the amendments outlined in paragraph 2 b) of the staff recommendation are considered minor in relation to the Policy; staff do not believe they represent a "review" of the DC Policy as envisioned by the 17 September 2019 resolution. There are no fundamental changes to the Policy structure, underlying capital programme, or process proposed as a result of the amendments. Significantly, there are no consequential changes to the schedule of DC charges or projected DC revenue on which the LTP is based.
- 9. Staff consider the decisions in this report have low significance and that the recommendations comply with the Council's legal requirements.

Background - Koorero whaimaarama

Judicial Review outcome

- 10. The 2021/22 DC Policy was adopted alongside the 2021-31 LTP and the associated capital programme. At the adoption meeting, staff signalled that there may need to be changes made to the DC Policy once the outcome of the AGPAC Limited & others vs Hamilton City Council Judicial Review was received.
- 11. Justice Gault's decision on 27 August 2021 dismissed the case for judicial review, finding in favour of Council on all of the 17 claims (noting that two claims were settled prior to the hearing). He provided no relief to the applicants in relation to their claims; however, he did make two comments in relation to the Council's DC Policy. Those two comments are addressed by the recommendations in paragraphs b) i. and ii. above.
- 12. The Judicial Review outcome was significant and consequential and provides the Council and the community with confidence that Council's DC policy is legally robust and strongly aligned with the Local Government Act (LGA) 2002. It also provides important guidance to not only Hamilton City Council but to other councils and to developers on what councils can include in their DC policies and how they make policy decisions.
- 13. More background information on the Judicial Review is available in the <u>report</u> to the 2 December Strategic Growth Committee (see pages 23 to 81).

State-integrated schools remission

- 14. At the request of Elected Members, staff presented a report to the Strategic Growth Committee on 2 December 2021 that outlined the options in relation to providing a partial remission of DCs for developments undertaken by state-integrated schools. The request originated from discussions about development at Hamilton Christian School and the treatment of state-integrated schools as compared to state schools.
- 15. The Committee resolved to introduce a partial remission into the DC Policy (aligned with the 2022/23 Annual Plan process), for development undertaken by state-integrated schools where that development provides public access and community benefit.

Discussion - Matapaki

16. Three recommended amendments to the DC Policy are referred to in this report. The following table summarises each change. The background, description and justification, and financial implications for each change are detailed in the subsequent paragraphs of the report.

Proposed change	Description	Reason Refere		
Amend the definition of gross floor area (GFA)	Update the definition of gross floor area, including specifying where canopies are included/excluded.	Direction in the Judicial Review decision.	Paragraphs 17-25	
	Note that drafting will include proposed minor amendments to improve clarity and transparency without changing the substance of the existing provisions.			
2. Amend the approach to charging residential stormwater DCs	Update the stormwater DC charge for residential developments to take account of multi-level dwellings by charging 1 Household Unit Equivalent (HUE) of development contributions rather than 1.29 HUE, for dwellings of more than one level and with four or more bedrooms.	Direction in the Judicial Review decision.	Paragraphs 26-34	

3. Introduce a stateintegrated schools
remission

Introduce a partial remission for development undertaken by state-integrated schools that provide public access and community benefit

Description

As resolved by the Strategic Growth
Committee (item 6) on 2 December 2021.

Proposed change 1: Amend the GFA definition

Background

17. GFA is defined in section 6.25 of the current 2021/22 DC Policy as follows:

Gross floor area (GFA) means the sum of the area of all floors of all buildings on a site measured from the exterior faces of the exterior walls or from the centrelines of walls separating two buildings. Gross floor area shall:

- a) include elevator shafts, stairwells and lobbies at each floor and mezzanine floors and balconies,
- exclude any provided car-parking, incidental or temporary loading and servicing areas and access thereto and building service rooms containing equipment such as lift machinery, tanks, air conditioning and heating plants,
- c) exclude buildings and structures where defined as temporary in a relevant consent,
- d) include permanent outdoor covered structures,
- e) for the purposes of this Policy, include car parking provided on a commercial basis, and
- f) in cases where there is no constructed floor or in which existing floor area is covered for the first time by a roof or other covered structure, include the area under the roof or the covered structure.
- 18. Contrary to the Applicant's claim, Judge Gault found in his decision that Council's approach to charging of DCs for the area under canopies was lawful:
 - [98] ...in the context of estimating the number of HUEs of demand in HCC's development contributions policies, I do not consider the LGA requirements preclude use of GFA including canopies. It does not lead to aggregate over-recovery or windfall for HCC.
- 19. Judge Gault did, however, direct the Council to make transparent which areas (if any) under canopies should be included or excluded:
 - [99] ... The definition of GFA does not refer to including canopies where they extend the principal activity or excluding them where they are incidental. I consider that these departures do not render the use of GFA including canopies unlawful and decline to grant the relief sought, but the policy should be transparent in relation to when canopies are included and excluded whether the distinction is between principal and incidental activity or otherwise.

Description and justification for change

- 20. Staff recommend that the Council continue to charge DCs for the area under canopies consistent with the Judge's decision in the Judicial Review, with the exception of eaves or overhangs of up to one metre in depth to take account of the direction provided in respect of inclusions and exclusions set out in the paragraph above. This exception is recommended to recognise building eaves or overhangs that are shallow and not likely to contribute to the principal activity of the development.
- 21. It is important to note that, on the basis of the Judge's decision, the Council could charge for all canopies including eaves. Staff are recommending excluding them on the basis of reasonableness and with alignment to the District Plan. The DC Policy is strongly linked to the District Plan and where possible Council has used District Plan guidelines and definitions within the DC Policy.

- 22. The District Plan states in its definitions section that when calculating Site Coverage "the permitted eave overhang of 1.0m shall be excluded in all circumstances". Staff recommend the same exclusion be adopted within the DC Policy.
- 23. Making this amendment will achieve consistency with the comments made by Justice Gault and provide greater transparency and certainty for developers and staff regarding when canopies are included and excluded from the chargeable GFA.
- 24. An amended and legally reviewed GFA definition incorporating this amendment, in addition to several other minor amendments to improve clarity and transparency (but not change the substance of the existing provisions), will be included in the Proposed Policy for the Council's consideration at the 17 March 2022 Council Meeting.

Financial Implications

25. There are minimal financial implications associated with this change. The assessment of canopies is in large part unchanged from the current policy, and the proposed change will create only minor changes (both positive and negative) for DCs for individual developments.

Proposed change 2: Amend the stormwater charge for certain residential developments Background

- 26. Council has been charging DCs on a per bedroom basis since the 2018/19 DC Policy, using the following four categories:
 - i. large residential (4+ bedrooms);
 - ii. standard residential (3 bedrooms);
 - iii. two bedroom; and
 - iv. one bedroom dwelling.
- 27. These categories were implemented following extensive research using Census 2013 data and in collaboration with staff at Tauranga City Council who had a similar policy approach. The data showed that statistically the greater the number of bedrooms in a dwelling the more people that are likely living to be in it. The more people in a dwelling the greater level of Council services that dwelling demands. Accordingly, development contributions for larger dwellings are higher than smaller dwellings, noting that all dwellings with four or more bedrooms pay the large residential rate.
- 28. Council's DC Policies charge DCs per household unit equivalent (HUE). A HUE means demand for Council services, equivalent to that produced by an average household. For example, a standard three-bedroom dwelling will pay equivalent to 1 HUE.
- 29. The Court rejected the complainant's argument that a bedroom-based approach cannot be used to assess stormwater DCs for residential developments, and that it can only be based on impermeable area. The Judge did, however, provide the following comment:
 - [120] I expect HCC, as part of its annual review of its development contributions policy, will consider how best to address the prospect of greater anomalies in future as multi-level dwellings become more prevalent with higher density developments.
- 30. The current DC Policy assumes that dwellings that have more bedrooms will have a greater proportion of site area that is impervious, because the roof area of a big house is greater than a smaller house. However, this may not hold true where a large house has multiple levels. To take an extreme example, a four-storey house with one bedroom on each floor will cover a small area but under the current DC Policy still attract a large residential dwelling charge. This anomaly was identified by the applicants in the Judicial Review and referred to by the judge in his decision.

- 31. There is extensive work underway to review Hamilton's District Plan and to update the zoning requirements to reflect the NPS-UD and the Government's high density intensification requirements. As these changes are likely to see a significant shift in the typology and density of housing in Hamilton, it would be prudent to undertake a detailed assessment of the stormwater demand created by households in this new setting.
- 32. As such, staff are recommending this interim change to comply with the Judge's recommendation until this detailed work can be done for the DC Policy review aligned with the 2024-34 Long-Term Plan.

Description of change

33. Staff propose an amendment to the DC Policy to remove the anomaly described above, which can be achieved by charging 1 Household Unit Equivalent (HUE) of development contributions (rather than 1.29 HUE in the current Policy) for dwellings of more than one level and with four or more bedrooms.

Financial Implications

34. The estimated effect on DC revenue is around \$90,000 per year on average, based on historical building consent data between 2018-21.

Proposed change 3: Introduce a remission for state-integrated schools

Background

- 35. At the request of Elected Members, a report was presented to the Strategic Growth Committee on 2 December 2021 outlining options for a partial remission of DCs for development undertaken by state-integrated schools. The request originated from discussions about development at Hamilton Christian School and the treatment of state-integrated schools as compared to state schools.
- 36. The relevant resolution (Item 6) from that meeting is set out below:

Resolved: (Cr Wilson/Mayor Southgate)

That the Strategic Growth Committee:

- a) receives the report;
- b) approves Option 1 (detailed in Paragraphs 52-54 of the staff report), that requests staff develop draft provisions, that introduce a partial remission for development undertaken by state-integrated schools that provides public access and community benefit, as part of the development of the draft Development Contributions Policy 2022/23;
- c) notes that the remission provisions referred to in b) above will:
 - i. state that any remission will be at Council's sole discretion;
 - ii. apply only to parts of a development that provide formalised public access and community benefit;
 - iii. be calculated based on the proportion of hours the facility is available for use by the public, which should be at least 50% of opening hours, and also consider the floor area of the facility that is available for use by the public; and
 - iv. require that a signed operational use agreement between Council and the school is in place and lasts for a period commensurate with the expected life of the building; and
- d) notes that the resolution in b) above is not a final decision on the content of a state-integrated schools remission and will not amend the current Development Contributions Policy. The final provisions approved by the Council will go into a draft Development Contributions Policy which will go out for public consultation in the first quarter of 2022, and will report back to the Council in time for consideration as part of the 2022/23 Annual Plan development process.

37. This report seeks to confirm that the Proposed Policy will include provisions for this partial remission, as per the 2 December 2021 Strategic Growth Committee resolution.

Financial considerations

- 38. Whenever Council adopts a remission, it is foregoing revenue for which it is legally entitled to recover capital costs relating to growth. Therefore, creating a new remission provision within the DC Policy, or providing a one-off remission, has financial implications for Council.
- 39. As advised to Council on 10 June 2021, staff estimated that DCs on Hamilton Christian School's (HCS) 2 court gymnasium would equate to about \$1.1m under the DC Policy at the time. A 50% remission would therefore be foregone DC revenue of approximately \$550,000.
- 40. As the remission will be at Council's sole discretion and is dependent on the degree of community access and the operational agreement, it is difficult to be more specific about the ongoing costs of this policy change. However, it could be assumed that a similar financial impact as with HCS would come with any future development of similar nature and would best be factored in when that information became known.

Financial Considerations - Whaiwhakaaro Puutea

- 41. As outlined in paragraph 25, there are not expected to be any significant financial implications relating to the amendments to the definition of GFA (proposed change 1).
- 42. The estimated effect on DC revenue from the recommendation relating to stormwater DCs for residential developments (proposed change 2) is around \$90,000 per year on average (see paragraph 34).
- 43. There are financial implications from providing a remission for state-integrated schools (proposed change 3) as outlined in paragraphs 38-40. In the case of the HCS development that is approximately \$550,000.

Legal and Policy Considerations - Whaiwhakaaro-aa-ture

- 44. Staff confirm that the staff recommendations comply with Council's legal and policy requirements, and that legal review will be sought for the final provisions for the Proposed Policy to be presented to the Council on 17 March 2022.
- 45. Legal advice has been taken regarding the engagement approach and is outlined in paragraph-60.

Wellbeing Considerations - Whaiwhakaaro-aa-oranga tonutanga

- 46. The purpose of Local Government changed on 14 May 2019 to include promotion of the social, economic, environmental and cultural wellbeing of communities in the present and for the future ('the 4 wellbeings').
- 47. The subject matter of this report has been evaluated in terms of the 4 wellbeings during the process of developing this report as outlined below.
- 48. The proposed changes set out in this report are consistent with that purpose.
- 49. Both those undertaking developments and the general community benefit from growth in Hamilton. The cost of growth needs to be balanced fairly, given the limited sources of funding available to the Council. The overall impact of requiring DCs on the current and future social, economic, environment and cultural wellbeing of the community needs to be considered.

50. If DCs were not to be required from developments, the Council may not be able to provide the necessary infrastructure to meet the new demand in a community, and more revenue would need to come from general rates. The latter scenario means that existing ratepayers meet the cost for new development. Both outcomes negatively impact on all aspects of wellbeing for the communities involved.

Social

51. DCs help to fund city infrastructure such as roads and reserves, which help to link whanau and communities and provide places for them to connect.

Economic

52. DCs support investment in critical infrastructure for both residential and non-residential development activity. Once a growth cell, or existing areas in the city, are enabled through infrastructure, economic benefits can be realised. New development creates jobs and wealth both now and in the future, supporting our communities' economic wellbeing.

Environmental

53. DCs help to fund reserves as well as certain environmentally friendly infrastructure, particularly stormwater and waste water. These help to protect our waterways and ecosystems, while also providing spaces where people can enjoy their local environment.

Cultural

54. Cultural wellbeing is enabled by projects that acknowledge and support their local communities' shared cultural attributes. DCs also help to fund projects such as those that enhance the wellbeing of the Waikato River and support Te Ture Whaimana o Te Awa o Waikato.

Risks - Tuuraru

55. The recommended amendments have been legally reviewed and are considered lawful.

Significance & Engagement Policy - *Kaupapa here whakahira/anganui* Significance

- 56. Staff have considered the key considerations under the Significance and Engagement Policy and have assessed that the matter(s) in this report has/have a low level of significance.
- 57. The significance and hence the required engagement level is deemed to be low for this report principally because approval of the recommendations in this report would not amend the current Development Contributions Policy, and because a further report and a Proposed Policy will come to the Council at the 17 March 2022 Council Meeting which will then go out for consultation with the community. It is at this time when the significance materialises and when the required level of engagement with the community will be confirmed.

Engagement

- 58. Given the medium level of significance determined, the engagement level is medium. Engagement is required.
- 59. The Council has consulted prior to every DC policy being adopted. The views of historic submitters are known and have been considered during the development of the Proposed Policy. The current 2021/22 DC policy was adopted following consultation undertaken by the Council as part of its Annual Plan decision-making process.

- 60. As there will be no public consultation on the 2022/23 Annual Plan, legal advice has been taken on the engagement approach to the Proposed DC Policy. The following approach, which targets those most impacted by the Policy, is suggested:
 - i. council website publication for the general public, accompanied by communications which highlights where the relevant information can be accessed;
 - ii. direct engagement with the Waikato Branch of the Property Council;
 - iii. direct engagement with the Developer Reference Group;
 - iv. direct engagement with the Ratepayers Association or similar.

Attachments - Ngaa taapirihanga

There are no attachments for this report.

Item 9

Council Report

Committee: Council Date: 03 February 2022

Author: Justine Kennedy **Authoriser:** Sean Hickey

Position: Project Manager Strategy

and Communications

Report Name: Reform Response Programme update

Report Status	Open

Purpose - Take

1. To inform the Council on the status of central government reform and Hamilton City Council's Reform Response Programme.

- 2. To seek the Councils approval for the Executive Director, Strategic Infrastructure to provide feedback to the "Working Group on Representation, Governance and Accountability of new Water Services Entities" (the Working Group) on the updated "Exposure Draft of the Water Services Entities Bill (ED)".
- 3. To inform the Council of other matters relating to reform expected to occur in the next 6 weeks.

Staff Recommendation - Tuutohu-aa-kaimahi

- 4. That the Council:
 - a) receives the report; and
 - b) approves the Executive Director, Strategic infrastructure to provide feedback to the "Working Group on Representation, Governance and Accountability of new Water Services Entities" (the Working Group) on the updated "Exposure Draft of the Water Services Entities Bill (ED)" based on the information in **Attachment 1** of the staff report.

Executive Summary - Whakaraapopototanga matua

- 5. The Reform Response Programme encompasses the Three Waters Reform, Future for Local Government and Resource Management Reform projects.
- 6. The three reforms are working to different timeframes and are of varying complexity. To enable informed decision-making, staff decided to bring them together for reporting and engagement purposes under the Reform Response Programme umbrella.

Three Waters Reform

- 7. This report provides an update of new and emerging matters since 16 December 2021 Council meeting.
- 8. At the drafting of this report no new information has been provided by the Government.

- 9. Staff have focussed on understanding information released just prior to Council's 16 December 2021 meeting, including:
 - a) Comparing the Exposure Draft of the Water Services Entities Bill (ED) (Attachment 3) with Council's Feedback to Government (1 October 2021), to assist in understanding the changes made in the ED and for considering feedback to the Representation, Governance and Accountability Working Group. This analysis shows some significant changes that respond directly to the potential solutions outlined in Council's feedback, but some areas that based on Council's Feedback needs further changes.
 - b) To comment on other and emerging matters, mainly in relation to the National Transition Unit (NTU).

Future for Local Government

- 10. The Future for Local Government Review panel released an interim report on 30 September 2021. The report states the review is an opportunity to rethink local governance to create a system in which the many organisations that contribute to local wellbeing can work together more effectively to address the challenges and deliver the shared goals and aspirations for now and future generations. The report asks for responses to five priority questions by the end of March 2022.
- 11. Staff are preparing information for elected members to consider in relation to developing a response to each of the five priority questions. The information will cover the context of the discussion on a response to the Panels questions, a discussion on the potential new future state, consideration of models used elsewhere, points for discussion on a potential response to each of the questions, and points for discussion with the Panel.
- 12. This paper will be circulated to elected members prior to a workshop which will be held; date to be confirmed.
- 13. There are two separate additional work programmes (Zone Two programme and WLASS programme) being undertaken within our region that Council is participating in. As these the reports from the programmes are delivered, they will be made available to elected members.
- 14. The Mayor's office has confirmed a date for a session with the Panel on Thursday, 3 March 2022 from 2pm to 4pm. Governance is working on options to allow all elected members to be able to attend the session.

Resource Management Reform

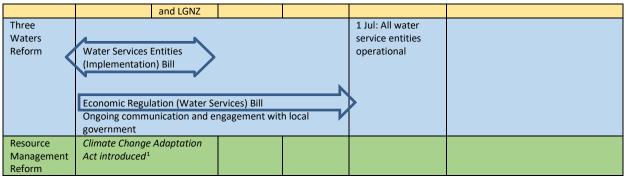
- 15. In February 2021, the Government announced it would repeal the RMA and enact new legislation based on the recommendations of the Resource Management Review Panel. The three proposed acts are:
 - a) Natural and Built Environments Act (NBA), as the main replacement for the RMA, to protect and restore the environment while better enabling development
 - Strategic Planning Act (SPA), requiring the development of long-term regional spatial strategies to help coordinate and integrate decisions made under relevant legislation; and
 - c) Climate Adaptation Act (CAA), to address complex issues associated with managed retreat.
- 16. The proposed Natural and Built Environments Act (NBA) is intended to be the primary piece of legislation to replace the RMA. Like the RMA, the National and Built Environments Act will be an integrated statute for land use and environmental protection.
- 17. Council provided a submission on the exposure draft of the NBA that can be accessed here.

- 18. On 1 November the Environment Select Committee released its <u>report on their inquiry on the Natural and Built Environments Bill 2021</u>, following a consultation on the parliamentary paper and an exposure draft of the Bill.
- 19. In November, the Ministry for the Environment published a <u>discussion document</u> on the Resource Management Reform seeking further feedback on a number of topics.
- 20. A submission on this document is under development and will be taken to the Infrastructure Operations Committee on 24 February for sign off, prior to the submission closing date of 28 February 2022.
- 21. Staff consider the recommendations of this report has low significance as assessed against the Significance and Engagement policy. The recommendations comply with the Council's legal requirements.

Background - Koorero whaimaarama

- 22. Central government is undertaking a number of significant reform programmes that will have varying degrees of impact on local government. These cover three waters, resource management, local government, housing, climate change, health, and education.
- 23. Hamilton City Council has established a Reform Response Programme to ensure we take a holistic view of central government reform and coordinate our response on those matters most impacting local government.
- 24. There are three key workstreams that make up the proposed Reform Response Programme: Three Waters Reform, Future for Local Government; and Resource Management Reform.
- 25. The Resource Management Reform, and the Future for Local Government Reform are still in much earlier stages than Three Waters. Each of the three workstreams is of differing complexity and on a different timeline:

	202	21		2022		
	Q3	Q4	Q1	Q2	Q3	Q4
						Local Govt election
Future for Local Govt (FfLG)	Aug: Internal programme establishment Sept: Interim review panel report released	24 November: Elected Member briefing	FfLG review panel broader public engagement		Sept: Review panel draft report and recommendations for public consultation to Minister of Local Government	Formal consultation
Three Waters Reform	Sept: Feedback sent	group	Technical working groups formed Water Services Entities Bill Water Services Entities (Implementation) Bill Ongoing communication and engagement with local government			
Resource		Select	NBA* and	Submission	Terrioda government	NBA* and SPA° expected to be
Management Reform		Committee Enquiry into Exposure Draft of NBA*	SPA° formally introduced Submission on RM reform	on full bills NBA*, SPA° and CAA ^Δ		passed into law
		2023		2024	2025	
_	Q1	Q2	Q3	Q4	2024	2023
		<u> </u>	<u> </u>	Central Go	ovt election	
Future for Local Govt	Formal consultation	Apr: Review panel presents final report to the Minister				



^{*} Natural and Built Environments Act

Note

The *italicised* text in the table indicates that these timeframes and next steps have been assumed; staff are waiting on clarity from central government.

Discussion - Matapaki

Status Updates

Three Waters Reform

Overview

26. Since the 16 December 2021 Council meeting the following items have progressed:

Working Group on Representation, Governance and Accountability of new Water Services Entities (the Working Group)

- 27. As advised at the 16 December Council Meeting the Working Group was established in November 2021.
- 28. "This working group is comprised of representatives from local government and iwi/Maori, and will consider how representation, governance and accountability arrangements for water services entities can be strengthened.
- 29. The Working Group will **report back to the Minister by 28 February 2022**, which will enable Ministers to consider recommendations arising from the Working Group process before the Bill is introduced." From DIA Three waters website.
- 30. Further information on the Working Group, including terms of reference, agendas and minutes can be found here. The agenda for the Working Group's last meeting (Attachment 2) includes copies of presentations on:
 - a) Iwi/Māori perspectives on Te Mana o Te Wai and Co-Governance models
 - b) Crown perspective on Treaty rights and interests
 - c) Government perspective on alternative models.
 - d) An overview of the changes to the Exposure draft of the Water Services Entities Bill.

Exposure Draft - Water Services Entities Bill (ED) (Attachment 3)

31. In December 2021, an Exposure Draft of the Water Services Entities Bill was released to assist the Working Group with its mahi. This ED is the first time we have seen a version of this.

[°] Strategic Planning Act

[△] Climate Change Adaptation Act

¹ https://environment.govt.nz/news/rm-reform-update-third-edition/#the-way-forward-what-and-039s-next

- 32. The ED matters relate to the establishment and operation of the Water Services Entities. It includes transitional matters that will enable the establishment to occur.
- 33. Staff have analysed the ED in relation to the matters of structure, governance and accountability against Council's Feedback in (**Attachment 1**), additionally the ED includes:
 - a) Transition requirements in Schedule 1 Subpart 1, 2, 3, 4 and 5. These provisions make roles and responsibilities clearer, including the duties of local authorities to co-operate and DIA's hands-on involvement in local government waters decision making.
 - b) Schedule 2 gives Entity B the name "Western-Central Water Services Entity" and lists the proposed 22 councils of the entity.
- 34. On 1 October 2021, Council provided feedback on the Government's reform proposal. This feedback was based on information on the DIA three waters website available during the September 2021 period of the Government Reform pause for Council feedback. Our feedback was largely based on formal statements in Cabinet Minutes and Papers one, two and three and the Treasury Regulatory Impact Statement.
- 35. This ED contains matters that were represented differently in the material available during the feedback pause and reflects some of the feedback provided by councils. The material changes are:
 - a) Ownership is to be recognised using a body corporate structure.
 - b) Rights of ownership have improved with:
 - i. All councils able to be represented on the Regional Representative Group (RRG)
 - ii. A constitution, which will be customised for each entity, and should address issues Council raised such as decision-making procedures (including voting procedures, or weighting of votes or required consensus), meetings and meeting procedure.
 - iii. The power to appoint and remove members of the Board.
 - iv. The requirement for the Board to seek feedback from the RRG on draft strategic documents (the Statement of Intent, Asset Management Plan Infrastructure Strategy and Finance and Pricing Policy).
- 36. Areas of Council feedback that have either not been addressed or are partially addressed are:
 - a) Local Voice. While Council should have a representative on the RRG and the entities' Board have operating principles of "partnering and engaging early and meaningfully with territorial authorities and their communities", there is no specific requirement for the Entities to pre-engage with individual Council for the purpose of aligning the communities' wellbeing expectations with the entities' plans.
 - Placemaking. The linkages to growth, development and council planning priorities and preferences also are only considered at the objectives and operating principles level.
 This alongside the uncertainty of RM reform remains a significant risk to achieve the City's goals

Community Engagement – Three Waters

- 37. Council resolved at its meeting of 16 December 2021 "that staff will circulate a draft consultation document to all elected members for feedback prior to presenting a draft consultation document for approval at the next available Council meeting following confirmation of the introduction of the Water Services Entities Bill and subsequent Select Committee dates"
- 38. The Water Services Entities Bill has been put on hold and will not be put to Parliament until after the Government has considered the report of the Working Group.

Future for Local Government

- 39. The Future for Local Government Review panel released an interim report on 30 September 2021. The report states the review is an opportunity to rethink local governance to create a system in which the many organisations that contribute to local wellbeing can work together more effectively to address the challenges and deliver the shared goals and aspirations for now and future generations.
- 40. The Panel is seeking submissions to respond to the five priority questions set out in the interim report. The questions are:
 - a) How should the system of local governance be reshaped so it can adapt to future challenges and enable communities to thrive?
 - b) What are the future functions, roles and essential features of New Zealand's system of local government?
 - c) How might a system of local governance embody authentic partnership under Te Tiriti o Waitangi, creating conditions for shared prosperity and wellbeing?
 - d) What needs to change so local government and its leaders can best reflect and respond to the communities they serve?
 - e) What should change in local governance funding and financing to ensure viability and sustainability, fairness and equity, and maximum wellbeing?
- 41. Staff are preparing information for elected members to consider in relation to developing a response to each of the five priority questions. The information will cover the context of the discussion on a response to the Panels questions, a discussion on the potential new future state, consideration of models used elsewhere, points for discussion on a potential response to each of the questions, and points for discussion with the Panel.
- 42. This paper will be circulated to the elected members prior to a workshop which will be held; date to be confirmed.
- 43. There are two separate additional work programmes (Zone Two programme and WLASS programme) being undertaken within our region that Council is participating in. As these reports from the programmes are delivered, they will be made available to elected members.

Zone Two programme

- 44. Council is also participating in work being commissioned by the Zone Two group for Peter McKinlay to provide a report on the proposition that local government is the gateway between communities and central government. This work will be available prior to the end of February. The work comprises two separate projects:
 - Building the evidence and analysis to support the case that local government does
 have that gateway function. This analytical piece will include reviewing recent policy
 material from central government, and examples of emerging practice. It will also
 include drawing on international research and practice and understanding the
 approach taken by higher tiers of government in jurisdictions similar to New Zealand.
 - II. Strengthening communities. We each advocate that councils are the natural leaders of their communities. Part of this is helping communities themselves come together and better connect. Elsewhere, this is at the heart of good well-being practice. For New Zealand councils demonstrating this in practice is crucial to support the argument that local government is the natural gateway between communities and central government and vice versa. We have links with a number of think tanks which are world leaders in how best to enable resilient place-based communities and can draw on their experience and expertise. It gives us a real advantage in ensuring that councils

are recognised as the natural enabler of strong, resilient and connected communities. This work will also provide for consideration of the relationship between place-based communities and Mana Whenua and Iwi.

WLASS programme

- 45. Council is also participating in the work that Rob Williams (CEO of Thames Coromandel District Council) is leading with the Waikato Local Authority Shared Services (WLASS) councils relating to the assessment of community needs under the Shifting Landscapes project. This work involves the collection of positive and negative stories that illustrate how each of the respective councils have worked in partnership with central government and other parties. The overall aim of the project is to bring together data on what Waikato communities need and how the public sector is, and has historically, been meeting those needs.
- 46. The Mayor's office has confirmed a date for a session with the Panel on Thursday, 3 March 2022 from 2pm to 4pm. Governance is working on options to allow all elected members to be able to attend the session.

Resource Management Reform

- 47. The reform of the Resource Management system is based on the findings of the comprehensive review which were released in 2020.
- 48. The review was carried out by the independent Resource Management Review Panel led by Hon Tony Randerson, QC. It is the most significant, broad-ranging, and inclusive review of the resource management system since the Resource Management Act 1991 (RMA) was enacted.
- 49. In February 2021, the Government announced it would repeal the RMA and enact new legislation based on the recommendations of the Resource Management Review Panel. The three proposed acts are:
 - a) Natural and Built Environments Act (NBA), as the main replacement for the RMA, to protect and restore the environment while better enabling development
 - Strategic Planning Act (SPA), requiring the development of long-term regional spatial strategies to help coordinate and integrate decisions made under relevant legislation; and
 - c) Climate Adaptation Act (CAA), to address complex issues associated with managed retreat.

Ministry for the Environment Discussion Document

- 50. In November 2022, the Ministry for the Environment published a discussion document on the Resource Management Reform to provide another opportunity to engage on the current proposals for the NBA and SPA before they are developed into full Bills.
- 51. The document deals mainly with initial decisions made on reform detail since the exposure draft of the NBA was prepared.
- 52. The objectives of the engagement are to:
 - a) Provide an update for Maori, local government and sector stakeholders on where the Government is up to in the reform of the resource management system and on next steps in the reform
 - b) Present a fuller view of the main components of the system designed to date, including the role of Maori and local government within the new resource management system, from the national to the local level
 - c) Respond to and build on feedback received to date
 - d) Provide a general overview of the RM reform to audiences who have a limited understanding or limited engagement to date, and support preparation for submissions on the full Bill to a select committee in 2022.

- 53. The document notes that together with submissions provided to the Environment Committee's inquiry on the exposure draft Bill for the NBA, feedback received on this document will inform Ministerial decisions that shape the NBA and SPA legislation that will be introduced to Parliament in 2022.
- 54. The document is seeking feedback on a series of questions across a broad spectrum of topics, including:
 - a) The new National Planning Framework (NPF)
 - b) Regional Spatial Strategies including their geographical scope and implementation arrangements
 - NBA plans including their geographical scope and the role of local authorities in placemaking
 - d) RSS and NBA joint committees including their membership and decision-making powers
 - e) Consenting, compliance, monitoring and enforcement
 - f) The role of local government in the future system
 - g) National Maori entity including functions, membership and appointments
 - h) Enhanced Mana Whakahono a Rohe arrangements, integrated with transfers of powers and joint management agreements
 - i) Funding in the future system
- 55. Staff are working with elected members to develop a council submission on the discussion document, and a final draft will be taken to the Infrastructure Operations Committee Meeting on 24 February 2022 for sign off prior to the submission closing date of 28 February 2022.

How feedback will inform decision making

- 56. A Ministerial Oversight Group² has been delegated decision-making authority by Cabinet to work through the policy details needed to progress the legislation required to reform the system.
- 57. The discussion document includes policy proposals where Ministers have made initial decisions on matters beyond the scope of the NBA exposure draft. It also provides further policy proposals for testing before advice is finalised. Feedback received through this engagement process will inform Ministerial decisions that shape the NBA and SPA legislation.

Working with Local Government

- 58. Engagement with local government was increased in September 2021 with the establishment of the Local Government Steering group to advise the Government on the RM reforms.
- 59. The group includes 12 appointments from local government and includes elected members and senior council executives, and will be co-chaired by Hauraki Mayor Toby Adams, and Ministry for the Environment Deputy Secretary, Janine Smith. Select committee processes remain the main way for the public and stakeholders to engage with the reforms. MfE are also holding a series of forums and hui where they will share work on the remaining policy details of the NBA and the SPA. This includes initial policy decisions that have been made around the key components of the system and the roles and responsibilities within it.

HCC Staff involvement in MfE Work Programme

60. HCC staff from the Growth Group have been working closely with the Ministry for the Environment providing advice to inform the development of the new Strategic Planning Act.

² The Ministerial Oversight Group comprises the Ministers of and for Finance (Chair), Environment (Deputy Chair), Māori Crown Relations: Te Arawhiti, Housing, Local Government, Building and Construction, Agriculture, Māori Development, Transport, Conservation, Associate Environment and Associate Arts, Culture and Heritage Hon Kiritapu Allan, and Associate Environment Hon Phil Twyford, and Climate Change.

- 61. This advice focuses on sharing our practical experience gained through participation in a number of collaborative forward planning initiatives, including the Waikato Plan, Hamilton to Auckland Corridor Plan, Metro Spatial Plan, and the Future Proof Partnership.
- 62. This opportunity has allowed HCC to raise issues directly with the Ministry regarding the practicality and workability of the new legislation, as well as its potential impacts on local government and the communities that it will impact.
- 63. This working arrangement will continue throughout 2022 as the legislation is finalised.

Next Steps for Council

Three Waters Reform

- 64. Staff are aware of four matters that may progress between the drafting of this report and the next Council meeting. These are:
 - a) Working Group Report to Government 28 February 2022
 - i. The working group plans to meet weekly from 28 January to meet this government set deadline.
 - b) Water Services Entity Bill (timing uncertain).
 - c) National Transition Unit (NTU) engagement with Western-Central Water Services Entity representatives on:
 - i. Constitution
 - ii. Local Establishment Entity (LEE) Board appointments
 - d) NTU transition information requests.
 - i. Staff received correspondence late December 2021 from the NTU lead advising that a "Transition Information Pack in January, our engagement with the sector will kick in through regular webinars, in-person and virtual hui, reference and working groups and other methods"
 - ii. They advised their workstreams are:
 - I. Commercial and Legal
 - II. People & Workforce
 - III. Asset Management, Operations & Stormwater
 - IV. Finance & Corporate Services:
 - V. Data & Digital
 - iii. Staff have arranged to meet with each workstream lead and get a greater understanding of roles and expectations.
 - iv. The ED of the Bill includes Schedule 1 which "contains the transition and establishment arrangements, including:
 - establishment entities, which will make the preparatory arrangements for full operation; and
 - II. the statutory oversight powers of the National Transition Unit (a business unit based in the Department of Internal Affairs) for the transition period:

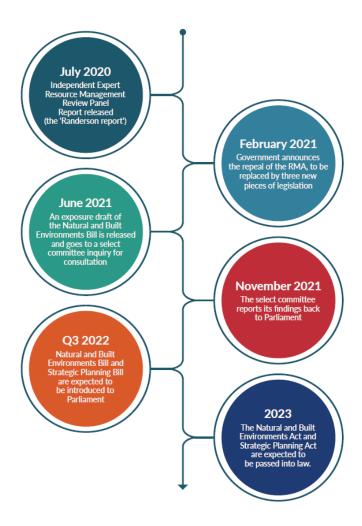
III. transitional provisions relating to employment of the water services workforce, including employment security by transferring existing employment positions to the relevant water services entity on terms that are no less favourable than existing terms."

Future for Local Government

- 65. Staff are preparing a plan to assist elected members consider in developing the Council's response to the five questions. Background information is being prepared alongside a plan for engagement with key stakeholders and the community.
- 66. The February 2022 Elected Member workshop will focus on:
 - a) Overview of the information prepared to assist Council in determining a response to the five priority questions
 - b) Gain an understanding of Councils position in relation to the five priority questions to allow staff to commence drafting a response to the five priority questions.
 - c) Discuss options for engagement with the community on the five review questions.

Resource Management Reform

- 67. The next steps in respect of Resource management Reform are:
 - Continue staff engagement with MfE on the development of the Strategic Planning Act.
 - b) Identify and confirm key HCC messaging on RM reform, building on our stated position in recent submissions.
 - c) Work with our key partners for collaboration.
 - d) Provide a submission on the Central Government Engagement Material released in November 2021.
 - e) Note that the Natural and Built Environments Act and the Strategic Planning Act will be formally introduced in 2022.
 - f) A standard legislative and select committee process will follow with the aim of the NBA being passed into law in this parliamentary term.
 - g) The CAA will be progressed in this time too.



Financial Considerations - Whaiwhakaaro Puutea

- 68. There are no financial implications in relation to the Reform Response Programme.
- 69. The cost of participation in the Government's Three Waters Reform to date has been funded from the Government waters stimulus fund. This is reported separately to the Infrastructure Operations Committee. As this reform moves to a new stage more funding will be required for Council to continue to participate in the reform and start the transition phase. As discussed in the Feedback to Government these costs should be funded by the Government.

Legal and Policy Considerations - Whaiwhakaaro-aa-ture

70. Staff confirm that staff recommendations comply with the Council's legal and policy requirements.

Wellbeing Considerations - Whaiwhakaaro-aa-oranga tonutanga

- 71. The purpose of Local Government changed on the 14 May 2019 to include promotion of the social, economic, environmental and cultural wellbeing of communities in the present and for the future ('the 4 wellbeings').
- 72. The subject matter of this report has been evaluated in terms of the 4 wellbeings during the process of developing this report as outlined below.
- 73. The recommendations set out in this report are consistent with that purpose.
- 74. No social, economic and environmental wellbeings were identified during the creation of this report.

Cultural

Three Waters Reform

- 75. Early work on project risks has identified significant and complex matters could arise with the Government's Reform program. This could include but not be limited to the following matters:
 - a) The importance of Te Mana o te Wai;
 - b) The relationship Maaori have with the Crown;
 - c) Council's relationship with local lwi;
 - d) Iwi's relationship across a wider Waikato / Bay of Plenty; and
 - e) The role Maaori may or may not have in the future governance of a three water's entity.
- 76. Due to the importance of Council's relationship with Maaori in this reform a Maangai Maaori representative has been included as a member of the Three Waters Reform Reference Group.
- 77. Council staff are engaging with Waikato-Tainui through the joint management committee (JMA). The next JMA meeting 2 June 2022 will be updated on the matters contained in this report.

Risks - Tuuraru

78. There are no known risks associated with the decisions required for this matter.

Significance & Engagement Policy - Kaupapa here whakahira/anganui Significance

79. Staff have considered the key considerations under the Significance and Engagement Policy and have assessed that the recommendation(s) in this report has/have a low level of significance.

Engagement

80. Given the low level of significance determined, the engagement level is low. No engagement is required.

Attachments - Ngaa taapirihanga

- Attachment 1 Three Waters Reform Comparison of Feedback with ED of Waters Entity Bill
- Attachment 2 Three Waters Reform Representation, Governance and Accountability Government Working Group meeting 17 December 2021 agenda
- Attachment 3 Three Waters Reform Exposure Draft of Water Services Entities Bill December 2021
- Attachment 4 Three Waters Reform Transition Information Pack

Council Meeting 3 February 2022

Attachment 1:

Comparison of HCC feedback to the Exposure Draft of the Water Services Entities Bill (Dec 2021)

In December 2021, an Exposure Draft of the Water Services Entities Bill (ED) was released to assist the Representation, Governance and Accountability Working Group with its mahi. This ED is the first time we have seen a version of this.

On 1 October 2021, Council provided feedback on the Government's reform proposal. This feedback was based on information on the DIA three waters website available during the September 2021 period of the Government Reform pause for Council feedback. Our feedback was largely based on formal statements in Cabinet Minutes and Papers one, two and three and the Treasury Regulatory Impact Statement.

This ED contains matters that were represented differently in the material available during the feedback pause and reflects sone of the feedback provided by councils.

The table below provides a staff perspective of matters raised by Council and the extent to which those matters are addressed in this ED. Note, some matters of feedback may not be relevant to the purpose of this proposed piece of legislation.

The purpose of this table is to identify areas Council may look to advocate on through the Working Group.



Item	Feedback Paragraph number and Potential Solution	Response in Exposure Draft of Water Services Entities Bill (ED)	Degree Solution Addressed
Big Cr	itical Success Factors		
1.	Consultation: We require absolute assurance that formal, effective and transparent consultation with our community will be undertaken before any structural changes to Council's management of Three Waters services.	Not applicable to the content and purpose of the Bill. The Government is currently engaging with local government and mana whenua through the Representation, Governance and accountability Working Group. Formally consultation on the Bill will occur using the Select Committee process.	
2.	7b Local Voice: Councils and communities must have meaningful input and influence over strategic directions, investment plans and service delivery standards of 3 Waters	Local Voice is provided through a representative of the RRG, an operating principle for the entity of partnering and engaging early and meaningfully with territorial authorities and their communities and	Good partnering will be essential to achieving this. Achievement of great outcomes will be more to do with relationships than

Item	Feedback	Response in Exposure Draft of Water	Degree Solution Addressed
	Paragraph number and Potential Solution	Services Entities Bill (ED)	
	entities, especially as these relate to specific communities.	specific engagement requirements on statutory policies and other decisions	statute.
3.	Ownership: There must be proper rights of ownership for councils as the owner. Nominal ownership by councils, without any of the benefit of ownership is meaningless without the rights of ownership and accountability of the entity to the owners, and thereby to the owner's community.	ED Cl.13 states: 1. A water services entity— a. is a body corporate; and b. is accordingly a legal entity separate from the entity's board members, the entity's regional representative group, and the entity's territorial authority owners; and c. continues in existence until it is dissolved by an Act. 2. A water services entity is owned collectively by its territorial authority owners. 3. Despite subsection (2), a water services entity is not— a. A council organisation or a council- controlled organisation as those terms are defined in section 6 of the Local Government Act 2002; or b. a local government organisation as defined in section 124 of the Local Government Act 2002. ED Cl.25 This clause modifies the functions of the RRG from the Cabinet Minutes. The RRG functions are now: a. appointing and removing the entity's board members under this Part; and b. participating in the process of setting the entity's strategic direction and performance expectations under subpart 4 of Part 4; and c. reviewing the performance of the entity under section 120; and d. approving the appointment and remuneration policy prepared by its board appointment committee under section 35. See items below also.	Ownership and the rights of ownership have improved significantly from the Cabinet Minute. Collectively the RRG has more influence over the appoint and removal of Board members. The RRG also is produces and holds the Board accountable for delivering the RRG's Statement of Strategic and Performance Expectations. The RRG receives and provides comments on the strategic documents. The rights of ownership are less than a CCO in that: HCC has no equity and no voting according to its amount of equity (shares) in the entity. HCC voting on Board appointments is indirect through a committee of the RRG (which HCC could or could not be represented) and HCC representatives influence voting on the decisions is subject to the constitution voting rules (not drafted) Non-owners get a vote on the RRG.

Item	Feedback Paragraph number and	Response in Exposure Draft of Water Services Entities Bill (ED)	Degree Solution Addressed
	Potential Solution	Services Entities bill (ED)	
4.	7d Placemaking: There must be a strong connection to councils' roles in placemaking and supporting thriving communities and the future of local government reform.	Overall, the linkages to growth, development, and council priorities and preferences are only considered at the objectives and operating principles level.	Good partnering (as stated in the Operating principles) will be essential to achieving this. Achievement of great outcomes will be more to do with relationships than statute.
5.	7e Other Reforms: There must be a strong connection to the existing resource management framework (e.g. the National Policy Statement on Urban Development), future of local government and resource management reform.	Overall, the linkages to growth, development, and council priorities and preferences are only considered at the objectives and operating principles level.	This item remains a significant risk to achieve Council's goals for the City. Council and the public have insufficient information to understand how waters reform and the Future Local government roles will work together.
Overa	III Governance Concerns		
6.	A shareholders' forum, where every asset-owning council is represented, and where strategic directions are discussed and recommended back to councils before going to the Board/company for approval. This could include iwi in an advisory capacity.	The ED makes significant changes to the Regional Representation Group (RRG) from what was proposed in Cabinet Minutes. ED Cl.24 provides for the Entity B RRG to have up to 44 representatives, being 1 from each TLA and an equal number from Mana Whenua. ED Cl.36 to 43 provides for the RRG to have a constitution. This constitution will state "how the group will perform or exercise its functions, powers, and duties" ED Cl.49 provides that the Board is accountable to the RRG.	Matters in 27a should all be able to be addressed in constitution.
7.	27b Councils and iwi develop a skills matrix and approve Board members.	ED Cl.25, 33, 34, 35 address the Board appointment process including a requirement to have an "Appointment and Remuneration Policy".	Council and Iwi will be involved in the Board appointments through RRG representatives.
8.	27c A requirement for direct negotiation with individual	The high-level Objective and Principles for the Entity include:	While high level objectives

Item	Feedback	Response in Exposure Draft of Water	Degree Solution Addressed
	Paragraph number and	Services Entities Bill (ED)	
Item		Objective statement to: "support and enable urban development" Cl.10 and the operating principle of: "(f) partnering and engaging early and meaningfully with territorial authorities and their communities; and (g) co-operating with, and supporting, other water services entities, infra-structure providers, local authorities, and the transport sector." Cl.12 ED Cl. 116 provides for the RRG to issue a Statement of Strategic and Performance Expectations every three years. It includes: • the regional representative group's expectations and strategic priorities for the entity: • the outcomes the group expects to be achieved through the delivery of water services by the entity: • how the group expects the water services entity to fulfil its objectives, functions, and operating principles; and • require the entity to give effect to the objective under section 10(a) of delivering water services and related infrastructure in an efficient and financially sustainable manner. ED Cl.94 provides that the Minister nor a territorial owner or their representative can direct the Board to act or bring a result. The ED requires the Board must prepare, deliver to the RRG and publish the following accountability	and plans indicate a strong intention, the draft legislation does not specifically require direct early partnership or engagement with councils.
		documents: • Cl. 125 a Statement of Intent (SOI) annually. ED Sch.3 includes provisions similar to CCO provisions for RRG consideration of the draft SOI.	
		 Cl.128 an Asset Management Plan (AMP), every three years. AMP. Cl.131 a Funding and Pricing Plan (FPP) for 10 years, every three years. The FPP includes the Financial Strategy. Cl.134 an Infrastructure Strategy 	
		(IS) for 30 years, every three years.	

Item	Feedback Paragraph number and Potential Solution	Response in Exposure Draft of Water Services Entities Bill (ED)	Degree Solution Addressed
		Cl.137 an Annual Report, annually.	
9.	27d Accountability through annual reporting to each council and iwi within the entity.	ED Cl.95 provides the Entity must hold at least two meetings annually that are open to the public. The Board is now required to deliver strategic documents and annual report to the RRG. See item 20 for more detail. There is no requirement for individual reporting to councils.	Accountability and reporting is achieved through the RRG representation and publication of key strategic and planning documents and is not directly with each individual council.
10.	27e Local council decision-making over the method/split of charges, once the water is delivered, or the wastewater 'uplifted' at the city/district boundary	The RRG will see and get to comment on the draft Funding and Pricing Plan (every three years) and there is a principle that the entity will work with local authorities and a requirement to engage with consumers and communities.	Influence on funding and pricing is reliant on representation on the RRG.
11.	27f Plans that correspond to the timing of each Council's 10 and 30 year plans.	While key plans are not dissimilar to current local government plans and have similar time frames, the ED is not specific as to the timing of these policies with the LTP processes.	It might be possible that the Constitution of the RRG include provision for alignment in timing of these processes.
12.	Required involvement of the entity in spatial planning groupings (e.g. Future Proof, Smart Growth), where alignment with environmental/conservation measures, transport and stormwater issues, community wellbeings, etc. can be better assured.	The ED includes high level objective and purpose statements in relation to urban development and partnering. ED Cl.19 provides an Objective statement to: "support and enable urban development" ED Cl.12 provides an operating principle of: "(f) partnering and engaging early and meaningfully with territorial authorities and their communities; and (g) co-operating with, and supporting, other water services entities, infra- structure providers, local authorities, and the transport sector."	The entities involvement with matters of local interest to the growth and development of the city is reliant on the RRG and Boards interpretation of high-level objective and purpose statements.
13.	Protection against privatisation is required.	The ED sets out strong safeguards against privatisation or loss of control of water services and significant	Provides the best protection

Item	Feedback	Response in Exposure Draft of Water	Degree Solution Addressed
iteili	Paragraph number and	Services Entities Bill (ED)	Degree Jointion Andressen
	Potential Solution	Services Emilies Em (EE)	
	principle 20.5 (from Cabinet Minute CAB-21-MIN-0226)	modified by ED S.12(f) & (g).	
	must provide stronger support	This modification removed the words	
	or Resource Management	"- including in relation to	
	planning (spatial planning and natural and built environments	infrastructure planning, and development control and land-use	
	planning) its development and	planning processes."	
	implementation.		
16.	49	Cabinet Min. Obj. 15.5 is modified in	
	Objective 15.5 and operating	ED S.10(g) and Cl. 20.2 is unchanged in	
	principle 20.2 (from Cabinet	ED S.12(b).	Although there are
	Minute CAB-21-MIN-0226) must provide strong	Reference to climate change	improved references to climate change mitigation
	expectations to climate change	mitigation is improved in ED S.10(g).	proposed in Water Services
	mitigation including supporting		Entities high level
	the expectations of		objectives, there is no
	government to be carbon neutral.		reference to achieving carbon neutral objectives.
	nal Governance Group		
17.	53	The FD medical significant changes to	
	We would prefer the legislation includes a schedule that	The ED makes significant changes to the Regional Representation Group	
	defines the process by which	(RRG) from what was proposed in	
	the 22 councils come together	Cabinet Minutes.	
	to make decisions with regard to their representatives and to	ED Cl.24 provides for the Entity B RRG	
	hear from their representatives	to have up to 44 representatives,	
	on the Regional Reference	being 1 from each TLA and an equal	
	Group.	number from Mana Whenua.	
		ED Cl.36 to 43 provides for the RRG to	
		have a constitution. This constitution	
		will state "how the group will perform or exercise its functions, powers, and	
		duties" This also includes the voting	
		rights of members "which may include	
		voting procedures or procedures for	
		the weighting of votes, or require consensus decision-making."	
		ED Cl.49 provides that the Board is	
		accountable to the RRG.	
18.	53		
	The entity should fund all three	There is no specific provision for this.	
	waters governance meetings and engagements for the		The ability to appoint and remove members of the
	councils, the group of councils,		Board, with all Council's
	mana whenua and the regional		represented on the RRG and
	representative group.		with the RRG able to draft a
			constitution which could

Item	Feedback Paragraph number and	Response in Exposure Draft of Water Services Entities Bill (ED)	Degree Solution Addressed
	Potential Solution	Services Littlies Bill (LD)	
	Potential Solution		include addressing these matters. This could provide a mechanism for the council and mana whenua representatives to ensure sufficient funding is available to meaningfully participate in the governance of the entity.
	ımer, Community and Council Eng	agement	
19.	60. We strongly prefer that individual councils are treated individually and with priority by the entity.	The ED makes no specific provision for individual council's to be treated individually by the Entity. The high-level Objective and Principles for the Entity include: Objective statement to: "support and enable urban development" Cl.10 and the operating principle of: "(f) partnering and engaging early and meaningfully with territorial authorities and their communities; and (g) co-operating with, and supporting, other water services entities, infra-structure providers, local authorities, and the transport sector."Cl.12 Engagement is addressed in ED Cl.176 to 179. Cl.176 requires the entity to consult and/or seek input during the formulation of a proposal or feedback on a proposal before deciding on a matter. Cl.177 provides for a Consumer Forum. Cl.178 provides for an annual Consumer Engagement Stocktake. Schedule 3 of the ED includes a requirement for the Board to engage with consumers and communities on the strategic plans.	While there is somewhat of an improvement, combined with poor linkages to urban planning and RM reform there is no certainty that individual councils plans will be well co-ordinated with the Water Services Entities plans. Council's feedback sought to have specific local pre-engagement by the entity with each TLA. It might be possible that the Constitution of the RRG includes provision for each council to provide feedback.
20.	60. We have developed a proposed process that gives each council the opportunity to participate in an engagement process and work with the entity on its strategic documents, as	The accountability of the Board to the RRG has significantly improved ED Cl. 25 Role of RRG provides the RRG must participate in the process of setting the Entity's strategic direction	

lhous	Feedback	Designation Francisco Designation of Market	Daguas Calutian Addussed
Item	Paragraph number and	Response in Exposure Draft of Water Services Entities Bill (ED)	Degree Solution Addressed
	Potential Solution	(22)	
	representatives of their	and performance expectations under	
	community to ensure	Cl. 124 to 145.	
	alignment with that council's		
	plans. This pre-engagement is	ED Cl. 116 provides for the RRG to	
	prior to the entity undertaking	issue a Statement of Strategic and	
	its own consumer consultation or engagement	Performance Expectations every three years (but may be reviewed and not	
	or engagement	inconsistent with the Government	
		Policy Statement (GPS)). It must be	
		published.	
		The ED requires the Board must	
		prepare, deliver to the RRG and	
		publish the following accountability documents:	
		Cl. 125 a Statement of Intent (SOI)	
		annually. ED Sch.3 includes	
		provisions similar to CCO	
		provisions for RRG consideration of	
		the draft SOI.	
		Cl.128 an Asset Management Plan	
		(AMP), every three years. AMP.	
		 Cl.131 a Funding and Pricing Plan (FPP) for 10 years, every three 	
		years. The FPP includes the	
		Financial Strategy.	
		Cl.134 an Infrastructure Strategy	
		(IS) for 30 years, every three years.	
		Cl.137 an Annual Report, annually.	
		Sch. 3 also includes requirements for the CE to prepare and publish reports	
		on how consumer and community	
		input into and feedback on these key	
		strategic documents was considered	
		and incorporated. Cl	
		130(b)AMP,133(b) FPP, 136(b) IS.	
Einan	rial Implications for our Communi	+v.	
21.	cial Implications for our Communi 67.	Not applicable to the content and	
	More information for the	purpose of the Bill.	
	community on how it impacts		
	the community them in the	This is a matter for the local	
	short term is required for all	government and mana whenua	
	models considered.	through the Representation,	
		Governance and accountability Working Group.	
		working Group.	
Datte	Off Package		
22.	r Off Package 72.	Not applicable to the content and	
LL.	We request that additional	purpose of the Bill.	
	1		

Item	Feedback	Response in Exposure Draft of Water	Degree Solution Addressed	
	Paragraph number and	Services Entities Bill (ED)		
	Potential Solution			
	funding of \$15M is provided to			<u>ဂ</u>
	contribute to the necessary	The Government has allocated		Item
	community infrastructure for	funding, whether that reaches		句
	placemaking and build strong,	Hamilton is unknown.		=
	resilient new communities.			
Worse	e Off Package			
23.	80.	Not applicable to the content and		ľ
	We request that additional	purpose of the Bill.		
	funding of \$21M be provided			
	to fund ALL costs created by	The Government has allocated		
	government waters reform	funding, whether that reaches		
	that leave stranded costs in	Hamilton is unknown.		
	Council after 1 July 2024 on a			
	declining basis of Year 1 75%,			
	Year 2 50% and Year 3 25% of			
	the forecast overheads			
	budgeted in the 10-year plan.			
Transf	formation Costs			١
24.	91.	Not applicable to the content and		Τ.
	We request that the	purpose of the Bill.		Attachment
	government guarantee that it	purpose of the bill.		₫
	will fund all reasonable costs of	The Government has allocated		Ε
	council participating,	funding, whether that reaches		
	transitioning and transforming	Hamilton is unknown.		ည္က
	from now until 2027 (the end	Transition is unknown.		뿔
	date for stranded costs),			4
	including the costs of any			
	formal consultation with our			
0	community.			4
	ers' Representative Costs	Not continued to the continued		1
25.	We request that the	Not applicable to the content and		
	government guarantee funding	purpose of the Bill.		
	for all reasonable costs of the			
	Regional Representative Group	The Government has allocated		
	during the establishment	funding, whether that reaches		
	phase-up until Entity B can	Hamilton is unknown.		
	fund its activities.			Ц
	able – Key Success Factor			
26.	97a	Not applicable to the content and		
	The government must develop	purpose of the Bill.		
	and maintain a detailed	November 2021 updated timetable		
	timetable from next steps after			
	the eight-week period to final			
	payments for stranded costs.			
27.	97b	Not applicable to the content and		
	Within that timetable it must	purpose of the Bill.		
	be clear when councils will			
	formally consult with their	The Governments decision to make		
	communities.	participation mandatory leaves		
		community consultation as a choice		
				1
		for Council's. Council has chosen this		
		for Council's. Council has chosen this option. To be implemented to align		

Item	Feedback	Response in Exposure Draft of Water	Degree Solution Addressed
	Paragraph number and	Services Entities Bill (ED)	
	Potential Solution		
Comn	nunication – Key Success Factor		
28.	101	Not applicable to the content and	
	a. The Government develop	purpose of the Bill.	
	and share a communication		
	strategy and timeline that	We guess that a new government	
	clearly distinguishes the roles	communication may start soon to	
	of government and its	support engagement with the select	
	agencies, transition entities,	committee process. We have no	
	local government through to	information on this.	
	30 June 2024.		
	b. The Government commits to		
	engage with councils on the		
	content of any public collateral		
	or campaign prior to release,		
	and actively work to respond		
	to, and address, concerns		
	raised by Councils regarding		
	that communication.		
	c. Communication should be		
	balanced to focus on all the		
	benefits of reform including all		
	the wellbeings - economic,		
	social, cultural and		
	environmental.		
	d. The Government funds		
	communication in the		
	transition costs, recognising		
	that councils will need to		
	communicate / engage with		
	staff (waters staff and stranded		
	costs) stakeholders (e.g.		
	significant water users) and the		
	community from now until the		
	transfer.		
	e. The government shows its		
	contribution to the partnership		
	by releasing information		
	concerning the reform and		
	waters matters to local		
	government prior to releasing		

government prior to releasing to media or general public.



Agenda

Working Group on Accountability, Governance and Representation of Water Services Entities

Date and time	Friday 17 December 2021 9.30 - 4.00pm
Location	Whare o Te Waipounamu, 15 Show Place, Addington, Christchurch 8024
Attendees	Doug Martin (Chair), Ngahiwi Tomoana, Ngarimu Blair, Jamie Tuuta, Karen Vercoe, Olivia Hall, Gabrielle Huria, Barry Bragg, Hūhana Lyndon, Tukuroirangi (Tuku) Morgan, Phil Goff, Dr Jason Smith, Garry Webber, Neil Holdom, Campbell Barry, Rachel Reese, Lianne Dalziel, Tim Cadogan, Lyn Patterson, Brian Hanna, Susan Freeman-Greene, Paul James, Donna Flavell
Guests and presenters	Nick Davis, Ngaa Rauuira Puumanawawhiti, Sarah Sinclair, Sarah Baddeley, Michael Petherick, Amanda Wells, Tina Porou, Jamie Fergusson.
Apologies	

Indicative timing	Item	Description	Participants/leads
9.30am	Mihi whakatau	Ngāi Tahu will extend a welcome	All
		to the Working Group	
0.50			
9.50am		Refreshments	
10.00am	Introduction	Overview and objectives for the day	Doug Martin
10.05am	Presentation on the	Ngāi Tahu will lead a	Gabrielle Huria (Ngāi
	Ngāi Tahu model	presentation on their preferred	Tahu), Barry Bragg
	(45min)	model	(Ngāi Tahu) and Natalie
			McClew (PWC)
11.05am	lwi/Māori	There will be a short introduction	lwi representatives and
	perspectives on Te	and then a presentation on the	expert advisors (Tina
	Mana o Te Wai and	iwi/Māori perspectives with	Porou and Jamie
	Co-Governance models	expert participants	Fergusson)
1.00pm	Lunch break		10
1.45pm	Crown perspective	DIA will provide an overview of	Sarah Baddeley (for
	on Treaty rights and	the key issues that informed the	DIA)
	interests	Crown's perspective on the key	, in the second
		Treaty Rights and Interests	
		reflected in the reform proposals	
2.25pm	Government	DIA will provide a short	Nick Davis
	perspective on	presentation on the	
	alternative models	Government's perspective on	

IN CONFIDENCE 1

		alternative models	
3.15pm	Overview of legislation	DIA will provide an overview of the exposure draft Bill including what would be required from a legislative and entity constitution perspective	Michael Petherick
3.50pm	Focus for next meeting	A Working Group discussion on the priorities for the next meeting	Doug Martin
3.55pm	Any other business	Any outstanding issues	All
4.00pm	Karakia whakamūtunga	Ngāi Tahu will offer closing karakia	All

Please ensure you have advised the organisers if you will attend in person or by zoom.

Relevant biographies of expert advisors

Tina Porou

Tina Porou will be provide an overview of the Te Ao Māori concept of Te Mana o Te Wai

Tina is of Ngati Porou, Ngati Tuwharetoa, Ngati Kahungunu and Ngai Tamanuhiri. She has been an environmental planner for the last 20 years working with local authorities, iwi and hapu, central government and the private sector on a range of natural resource matters.

Jamie Fergusson

Jamie Fergusson, Kahui Legal, will provide an overview of contemporary co-governance arrangements

Jamie (Tangata Tiriti, Kōtarani) is a co-founding Partner of Kāhui Legal Jamie regularly represents and advises iwi in relation to Treaty settlements with a particular focus on natural resources and was integrally involved as legal counsel in the negotiation of both the Waikato River and Te Awa Tupua (Whanganui River) settlements.

IN CONFIDENCE 2



Council Agenda 3 February 2022- OPEN

Te Tiriti o Waitangi/Treaty of Waitangi

- Article 1: The Māori version granted the Crown "kāwanatanga" (or governorship) whereas the English version granted the Crown rights and powers of "sovereignty".
- Article 2: The Māori version guaranteed Māori "tino rangatiratanga" (or the unqualified exercise of their chieftainship) over their lands, villages, and all their property and treasures. The English version guaranteed Māori "exclusive and undisturbed possession" of "lands and estates, forests, fisheries and other properties".
- Article 3: The Māori version reflects an assurance by the Crown that Māori would have the Queen's protection and all rights (tikanga) accorded to British subjects. This is considered a fair translation of the English.
- Recent research has suggested that the British framers of Te Tiriti may have had a similar understanding to the rangatira signatories in 1840.
- Te Tiriti as it was likely understood by both tangata whenua and the British framers in 1840 is difficult to reconcile with the contemporary sovereign power exercised unilaterally by the Crown and legislature and the currently very small space in which tangata whenua exercise rangatiratanga.



Te Tiriti relationship

One model for conceptualising how Te Tiriti was intended to reflect "different roles and different spheres of influence" can be seen in the

following diagram:



- While simplified, this reflects the need to re-centre rangatiratanga and its fundamental importance in relationship under Te Tiriti.
- The rangatiratanga sphere reflects tangata whenua autonomy and governance over people and places. The kawanatanga sphere represents Crown governance, in which tangata whenua must be able to participate. There is also a "joint sphere" in which tangata whenua and the Crown share governance over issues of mutual interest/ concern. That is the area in which partnership operates.



Te Tiriti principles

- The phrase "principles of the Treaty of Waitangi" is a Crown construct (Treaty of Waitangi Act 1975) designed to bridge any gap between the te reo Māori and English language versions of Te Tiriti.
- Principles of Te Tiriti derived from the text, spirit, intent and circumstances of the Treaty. Importantly, the principles cannot be divorced from, and necessarily include, the Articles and language of Te Tiriti itself.
- Principles of Te Tiriti have developed over time and continue to evolve.
- Key principles recognised by the Waitangi Tribunal and Courts include:
 - partnership (including mutual responsibilities to act towards each other reasonably, honourably and in good faith);
 - active protection of tino rangatiratanga (the ongoing authority of tangata whenua) and the continued recognition and application of kawa, tikanga and mātauranga;
 - right to development (including economic development);
 - equity



Mana whenua rights, interests and responsibilities

- Axiomatic (for Māori). All too often misunderstood, mis/re-interpreted, marginalised or missing in the legal and governance systems at a national and regional level.
- Sources/foundations:
 - Custom: tikanga, kawa and mātauranga;
 - Te Tiriti o Waitangi;
 - Treaty settlement arrangements (wide range and variety in form and effect);
 - Policy documents (eg, NPS-FM and Te Mana o te Wai); and
 - Statutory recognition (in a inconsistent variety of ways, eg RMA v Conservation).
- Integrated and indivisible: environmental, cultural, social and economic
- Debate/discussion is how these should be manifest in new structures and system (in the present case, Three Waters).



Co-Governance/Co-Management

Examples:

- Hawkes Bay: Regional Planning Committee.
- Rangitaiki River: River Forum and Te Ara Whanui o Rangitaiki
- Te Oneroa:
- Waikato River: Te Mana o Te Awa and Mana Whakahaere,
 Waikato River Authority, Te Ture Whaimana, Kingiitanga
 Accord and JMAs
- Whanganui River: Te Awa Tupua, Tupua te Kawa, Te Pou Tupua, Te Kōpuka and Te Heke Ngahuru ki Te Awa Tupua.

Limitations: Inconsistent, limits in scope and application, implementation, integrity/durability.



Denominators for mana whenua

- **Experience:** Denial, disempowerment, dislocation, degradation, deprivation
- Needs: Definiteness, dimension, decision-making, drivers, direction, delivery, durability
- **Risks:** Duplication, deferral, delay, dilution, division, dispute, denial



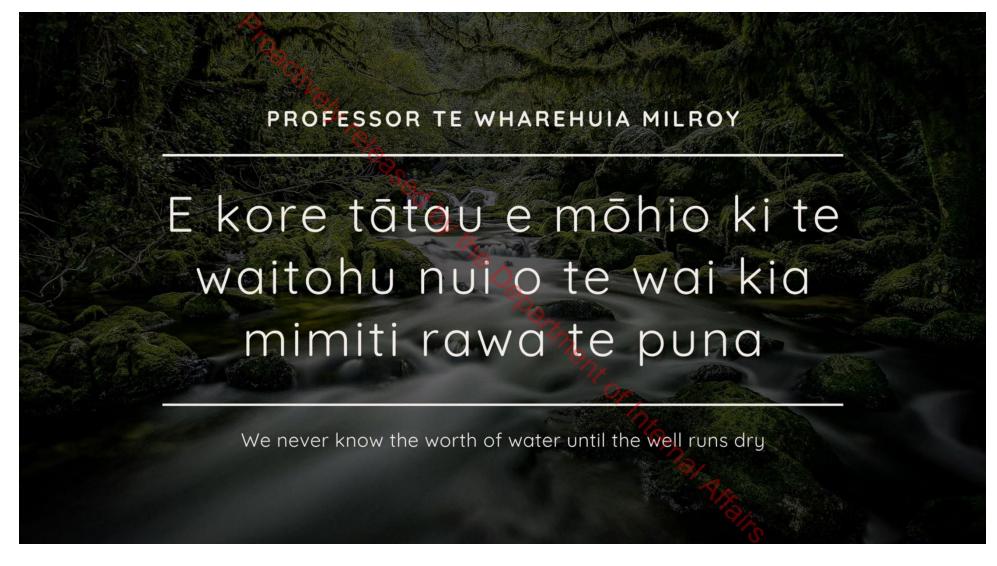
Key System/Structure/Governance Considerations

- Significant opportunity (if optimal, not minimal, approach)
- Principles / values are critical
- Participation what, where, who, why, how
- Inter-relationships must be recognised and addressed:
 - Iwi, hapū, marae, whānau, Māori
 - Crown/Iwi-Māori
 - Local Government/Iwi-Māori
 - Taumata Arowai/Iwi-Māori
 - Taumata Arowai/Water Service Entities
 - Water Service Entities/Iwi-Māori
 - Three Waters statutes and direction/LGA, RMA or NBA & SPA statutes and direction (including national direction, planning and consenting)





Council Agenda 3 February 2022- OPEN Page 63 of 406



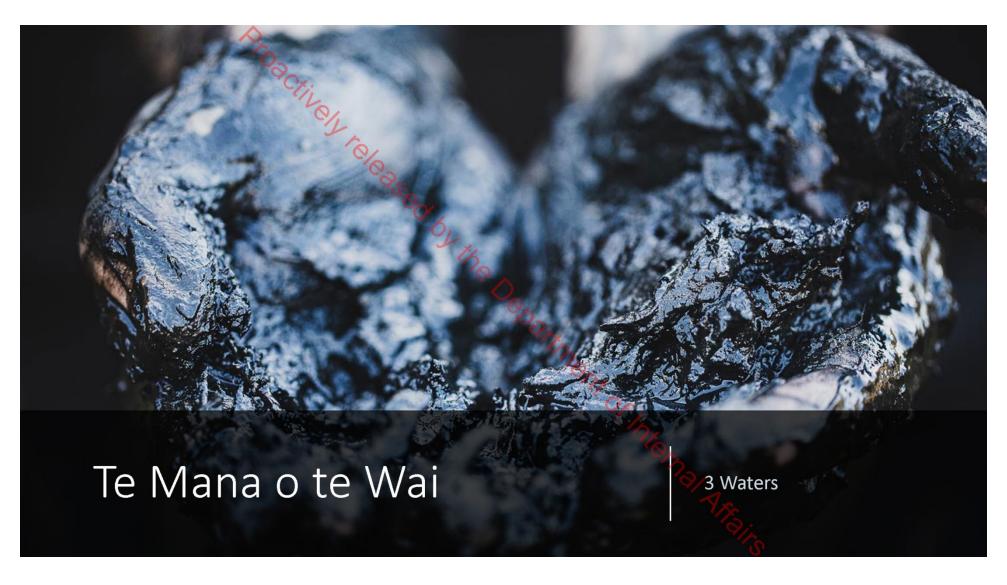
TE MANA O TE WAI

At its simplest, the principle of Te Mana o te Wai reflects the paramountcy of the health and wellbeing of wai, this concept comes from Te Aō Māori.

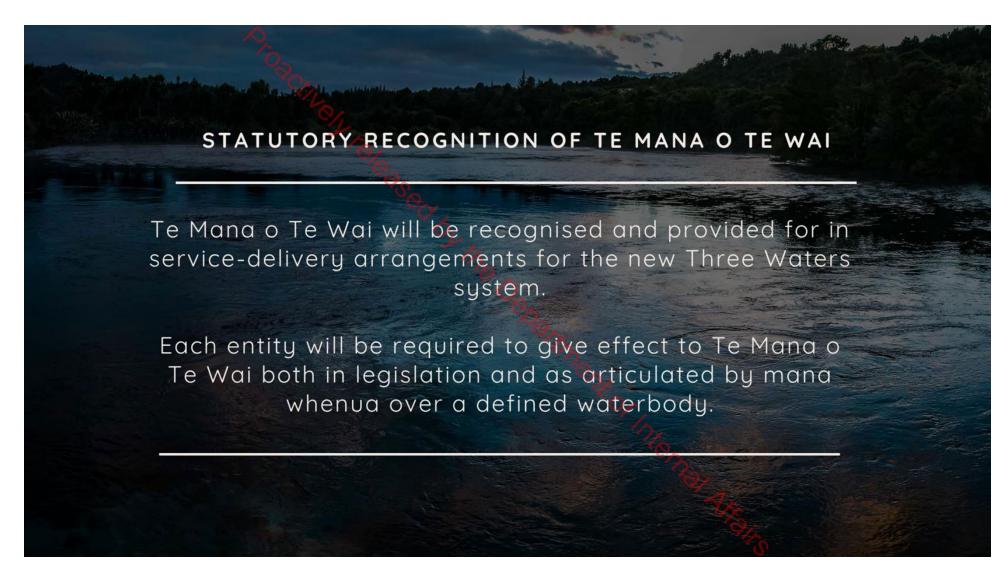
Te Mana o te Wai was included in the National Policy Statement on Freshwater (NPSFW) in 2014 and advanced in 2017 by the advocacy of the lwi Chairs. The 2017 iteration of Te Mana o te Wai was developed as a result of wānanga conducted by the Freshwater lwi Chairs held that year. These hui gathered the views of iwi and hapū across the country on Te Mana o te Wai with a particular focus on water allocation.

The current version in 2020 was extended through Te Kahui Wai Māori an advisory group of the Crown on policy options which was established in 2018.

Council Agenda 3 February 2022- OPEN



Council Agenda 3 February 2022- OPEN Page 66 of 406



TE MANA O TE WAI STATEMENTS Legislation will broadly describe Te Mana o Te Wai, however the emphasis is that mana whenua define what Te Mana o Te Wai means to their specific location. Operationally, a statement can take the form of an lwi Management Plan, Cultural Impact Statement or the like Provides an instrument for mana whenua to prioritise their capacity and capability to participate in the new system and recognises the role of whanau and hapu in providing kaitiakitanga activities



FUNDAMENTAL CONCEPT - TE MANA O TE WAI Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community. Te Mana o te Wai is relevant to all freshwater management and not just to the specific aspects of freshwater management referred to in this National Policy Statement. Sec 1.3

Council Agenda 3 February 2022- OPEN

THE SIX PRINCIPLES OF TE MANA O TE WAI

Part 1: Section 1.3.3

The application of these six principles to the management of three waters will strengthen the health and the well-being of wai



Council Agenda 3 February 2022- OPEN

OBJECTIVE

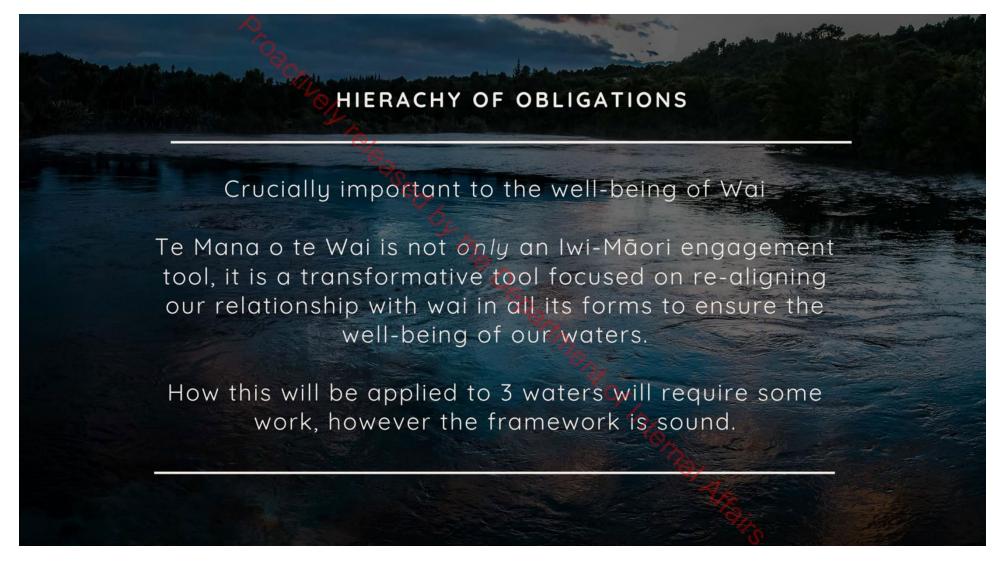
The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:

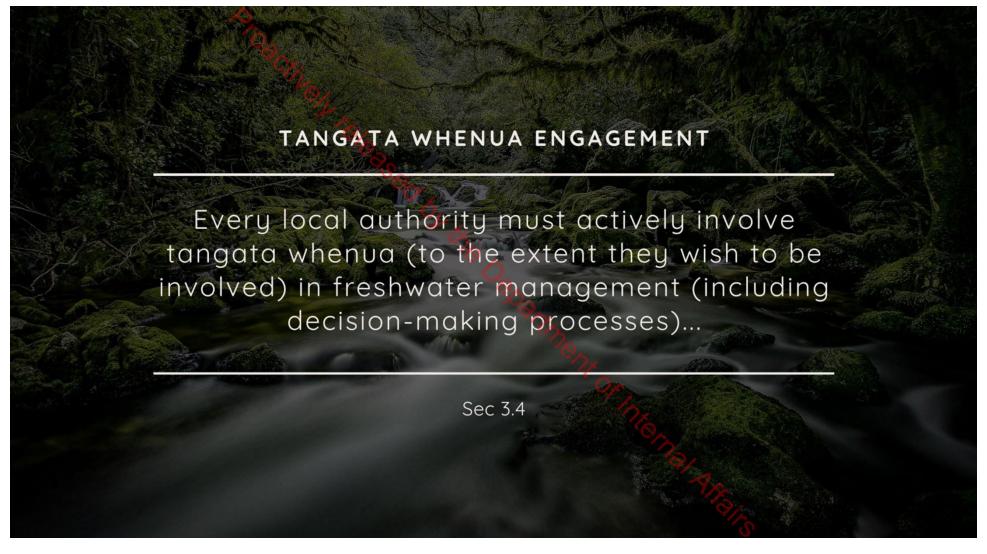
- (a) first, the health and well-being of water bodies and freshwater ecosystems
- (b) second, the health needs of people (such as drinking water)
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

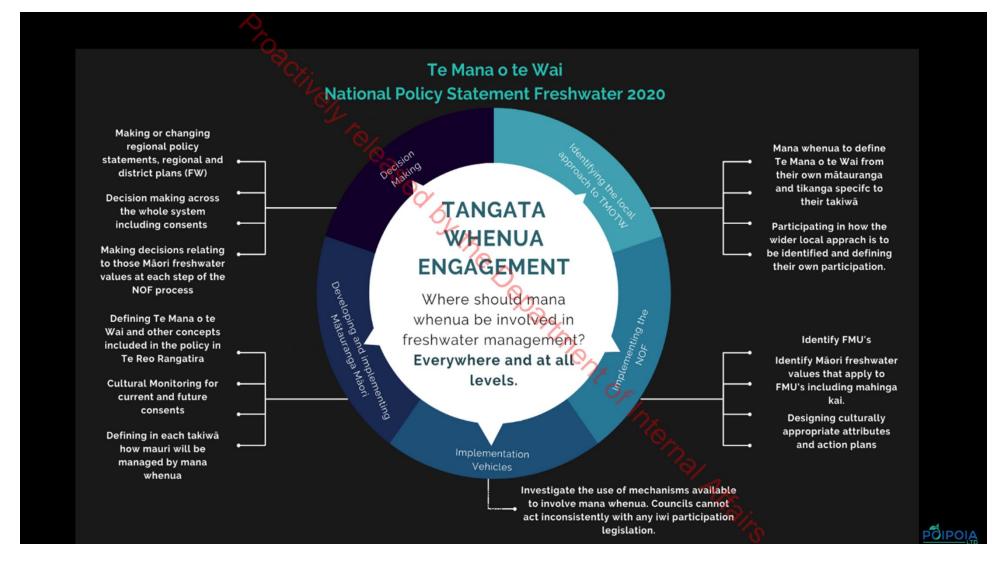
Sec 2.1



Council Agenda 3 February 2022- OPEN Page 73 of 406



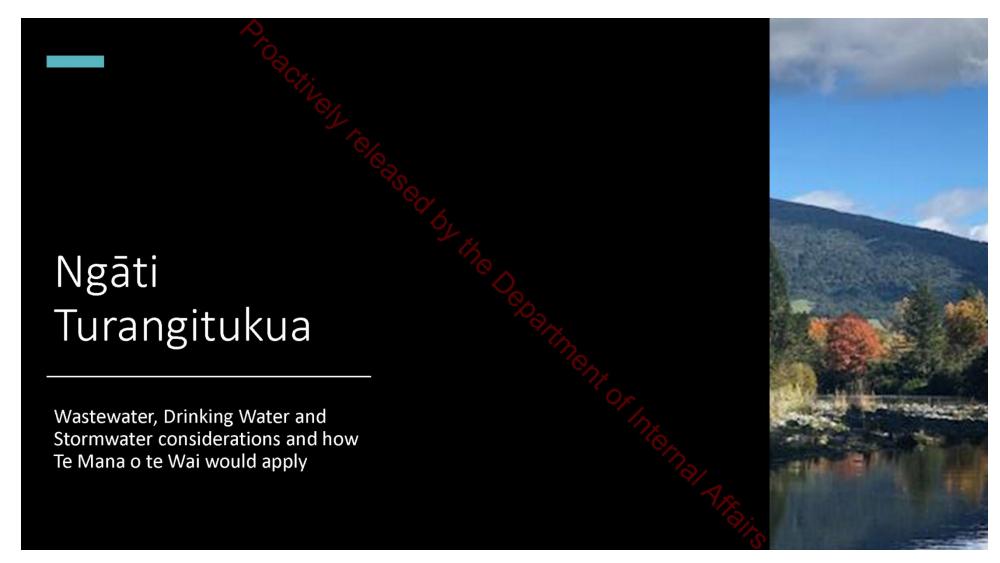




Council Agenda 3 February 2022- OPEN Page 76 of 406



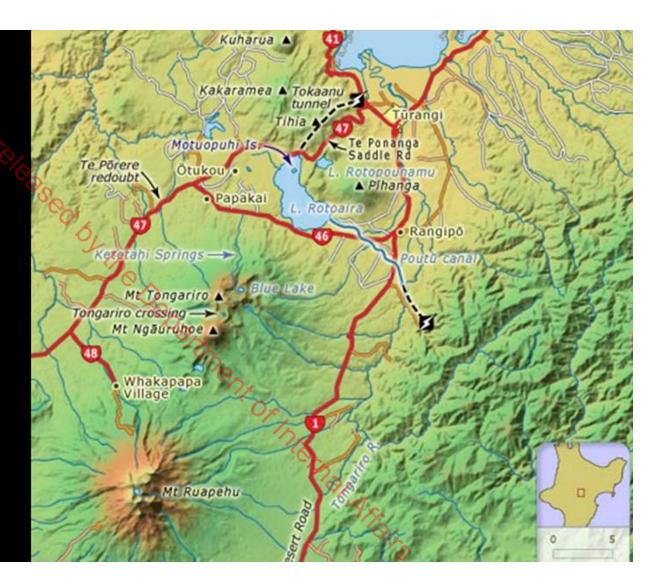
Council Agenda 3 February 2022- OPEN Page 77 of 406



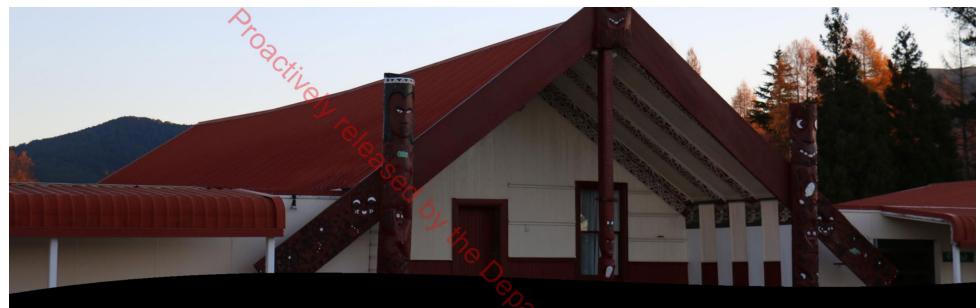
Council Agenda 3 February 2022- OPEN Page 78 of 406

Ngati Turangitukua

- Ko Pihanga te Maunga
- Ko Tongariro te Awa
- Ko Ngati Turangitukua te hapu
- Ko Tuwharetoa te iwi



Council Agenda 3 February 2022- OPEN Page 79 of 406



Breaches to Te Tiriti o Waitangi

- The Turangi Township Act of 1964 provided for the confiscation of land from the people of Ngati Turangitukua for the purposes of building the Tongariro Hydro Development.
- The Crown took an area of 1540 acres and then disposed of it for the purpose of a permanent town, which the Ministry of Works had already started building.
- Included in these confiscations were lands taken for the drinking water, stormwater and wastewater systems for the town.

Turangi Wastewater Plant

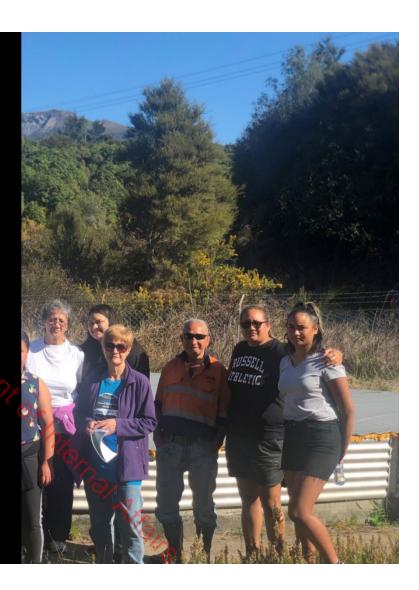
- Location of the current plant is an important waahi tapu for the hapu.
- The treatment plant currents discharges treated waste water into Lake Taupo which is culturally unacceptable to the hapu.
- Taupo District Councils application to renew their resource consent to discharge treated waste water from the Turangi Waste Water Treatment Plant (TWWTP) to the Hangarito stream and Te Mātāpuna wetland expired in
- Ngati Turangitukua opposed the consent renewal for a range of cultural and environmental reasons and have been working with the TDC closely over the last two years to relocate and remediate the waste water system. This has been an example of the implementation of Te Mana o te Wai in practice.



Council Agenda 3 February 2022- OPEN Page 81 of 406

Drinking Water Take

- The reserve on which the drinking water take for Turangi sits is owned by the Ngati Turangitukua Charitable Trust and was returned in the Settlement.
- Ngati Turangitukua opposed the drinking water take consent renewal and is now working closely with TDC to establish a mitigation agreement as part of a Mana Whakahono a Rohe and to establish a cultural flow similar to that achieved by Ngati Rangiwewehi.



Turangi Stormwater

- All of the stormwater for the Turangi township discharged into our sacred awa, the Hirangi stream which our marae is named after.
- Until our intervention in 2018, this stormwater was largely untreated.
- We advocated with the Council and we now have a filter system on all discharge points, we are ultimately working towards alternative systems.



Council Agenda 3 February 2022- OPEN Page 83 of 406

Three Waters Reform Programme

Briefing to the Representation, Governance and Accountability Working Group
TREATY RIGHTS AND INTERESTS

17 December 2021

www.dia.govt.nz/Three-Waters-Reform-Programme

New Zoot and Government



Iwi/Māori rights and interests

These slides present analysis undertaken by DIA and so represents a Crown perspective, informed by engagement with iwi and Māori throughout the Three Waters Review. It is provided to the Working Group as the basis for understanding the rationale for the inclusion of key features of the Government's policy decisions that aim to protect and promote the rights and interests of iwi/Maori in respect of three waters service delivery

A fuller discussion of these matters can be found in the Cabinet Paper:

Protesting was Evamoting Iwi/Maori Rights and Interests in the New Three Waters Service

Delivery Model: Paper Three

Council Agenda 3 February 2022- OPEN

Original challenge

For Government, the three waters challenges are rooted in the way the system is currently designed:

- 1. Limited opportunities to achieve benefits of scale
- 2. Significant affordability challenges
- 3. Misaligned incentives for critical water infrastructure decisions
- 4. Lack of effective oversight and stewardship for the three waters sector

For iwi/Māori:

- 1. Widespread recognition the decline of water quality and poor environmental outcomes across the motu
- 2. General openness to change from current service delivery arrangements (although differences of opinion in the nature of that change)
- 3. Strong desire that the new approach be Treaty based

Three Waters Reform Programme

NOT GOVERNMENT POLICY

•

Waitangi Tribunal Report

THE

STAGE 2 REPORT

ON THE

NATIONAL FRESHWATER

AND

GEOTHERMAL RESOURCE.
CLAIMS

PRE-PUBLICATION VERSION

WAI 2358

WAITANGI TRIBUNAL REPORT 2019

The engagement between Māori and the Crown was framed by the Crown's commitment to address Māori rights and interests in fresh water, which – the Crown acknowledged – needed to be better recognised and provided for through its water reforms. This was exemplified by the assurances given to the Supreme Court in November 2012 by the Deputy Prime Minister, Bill English, but it was also stated in Cabinet papers and public policy documents. The Supreme Court noted:

Mr English summarised the Crown position as being that it acknowledges that Maori have 'rights and interests in water and geothermal resources'. Identifying those interests is being addressed through the 'ongoing Waitangi Tribunal Inquiry' and a number of 'parallel mechanisms'. The Crown position is that any recognition must 'involve mechanisms that relate to the on-going use of those resources, and may

15

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

A 'FRESH START FOR FRESH WATER'

3.2.1.1

include decision-making roles in relation to care, protection, use, access and allocation, and/or charges or rentals for use. Currently the Ministry for the Environment has responsibility for progressing policy development around these issues.' The Court should accept that it is not an empty exercise.'

It is important to observe, however that the engagement was also framed by the Crown's position that 'no one owns water.' 4

NOT COVERNMENT DOLLCY

New Zealand Government, National Policy Statement for Freshwater Management 2014 (Wellington: Ministry for the Environment, 2014), p.4 (Martin Workman, papers in support of brief of evidence (doc re(a)), p.4)

^{2.} New Zealand Government, National Policy Statement for Freshwater Management 2014, p6 (Workman, papers in support of brief of evidence (doc F6(a)), p6)

Early Treaty principles considerations

Water is a taonga of significance and importance to Māori, the Crown has a duty to protect iwi/Māori rights and interests under Te Tiriti o Waitangi (Te Tiriti).

The **Crown also has broad responsibilities** to protect taonga, to consider kāwanatanga and tino rangatiratanga are exercised, along with applying the principles of the Treaty.

Māori do not distinguish their rights and interests in freshwater from three waters, they are viewed as a connection to the water environs and its systems. Failure to meet Treaty obligations would undermine the Māori/Crown relationship and could create a litigation risk for the Crown. The risk is greater in the Waitangi Tribunal given its jurisdiction is broader than the Courts. The Waitangi Tribunal would likely deal with a claim about the three waters in its National Freshwater and Geothermal Resources Inquiry (Wai 2358).

Iwi/Māori already have a number of roles within the current three waters service delivery system they are suppliers and/or recipients of water services (particularly to rural marae, papakāinga, and rural communities), and members of communities who receive poor quality or no three waters services.

Any policy response must highlight the connection between three water service delivery and Government other work programmes underway particularly those that relate to resource management and freshwater allocation.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

_

Cabinet Office

CO (19) 5

Circular

22 October 2019

Intended for

All Ministers All Chief Executives

All Senior Private Secretaries

All Private Secretaries

All officials involved in policy development

Te Tiriti o Waitangi / Treaty of Waitangi Guidance

Introduction

This circular sets out guidelines agreed by Cabinet for policy-makers to consider the Treaty of Waitangi in policy development and implementation.

Background

- The Treaty of Waitangi (the Treaty) is one of the major sources of New Zealand's constitution1.
- Much has been thought, written and said about the Treaty, the circumstances of its creation, the differences between the English and Maori texts and the consequent difficulties of understanding its meaning and implications in the modern day. The texts of the Treaty (from the Treaty of Waitangi Act 1975 and a translation by Sir Hugh Kawharu) are attached to this guidance as Appendix 3.

Te Tiriti o Waitangi/The Treaty of Waitangi

- The Treaty consists of a preamble and three articles. The influence of the Treaty on New Zealand's constitution has fluctuated in the years since its signing. Since 1975, however, reference to the Treaty has been included in many laws passed by Parliament, and the courts and Waitangi Tribunal have developed a considerable body of Treaty jurisprudence.
- The Cabinet Manual states the Treaty of Waitangi is regarded as a founding document of government in New Zealand and that it:

"may indicate limits in our polity on majority decision-making. The law may sometimes accord a special recognition to Maori rights and interests such as those covered by Article 2 of the Treaty. And in many other cases the law and its processes should be determined by the general recognition in Article 3 of the Treaty that Maori belong, as citizens, to the whole community. In some situations, autonomous Māori institutions have a role within the wider constitutional and political system. In other circumstances, the model provided by the Treaty of Waitangi of two parties negotiating and agreeing with one another is appropriate. Policy and procedure in this area continues to evolve." [Cabinet Manual 2017, p. 2]

Cabinet has a

framework to

these matters

receive advice on

NOT COVERNMEN

Council Agenda 3 February 2022- OPEN

Page 89 of 406

¹ Other major sources include The Constitution Act 1986, the prerogative powers of the Queen, the State Sector Act 1988, the Electoral Act 1993, the Senior Courts Act 2016, the New Zealand Bill of Rights Act 1990 and other relevant New Zealand, English and United Kingdom statutes, relevant decisions of the courts and the conventions of the constitution (Cabinet Manual p. 2).

Objectives for the Crown/Māori relationship within the three waters service delivery reforms

The following set of Crown/Māori relationship objectives have guided the Government's consideration of iwi/Māori rights and interests within the three waters service delivery reforms, and informed the development of specific mechanisms for addressing them:

- Enabling greater strategic influence: Enable iwi/Maori to have greater strategic influence to exercise their rangatiratanga over water services delivery, including through enhanced capacity and capability.
- Integration within a wider system: Ensure that the rights and interests of iwi/Māori are analysed within a wider system, including issues related to allocation and the future of the Resource Management Act 1991, but specifically focussing on issues that relate to the establishment of water services entities and delivery of water services.
- Reflection of a Te Ao Māori perspective: Recognise the holistic manner (environmental, cultural, spiritual, economic) in which water is viewed using te ao Māori perspectives and Te Mana o te Wai including ki uta ki tai or a catchment-based approach, consistent with rohe/takiwā or whakapapa links
- Supporting clear accountabilities: Ensure roles, responsibilities, and accountability for the relationship with the Treaty partner is clear throughout the wider system, and that capacity and capability is available to honour the Crown's Treaty obligations
- Improving outcomes at a local level: Provide a step change improvement in delivery of water services for iwi/Māori at a local level, including through enhanced capacity and capability and improved wellbeing

Three Waters Reform Programme

NOT GOVERNMENT POLICY

tem 9

Attachment 2

Themes from engagement

that the proposals need to uphold Te Mana o te Wai, and promote a holistic approach to water

that mātauranga
Māori should be
given equal weight
to scientific
knowledge in the
new system

to enable kaitiakitanga aspirations at a catchment-bycatchment level; protecting existing Treaty settlement arrangements.

Other impressions:

- 1. recognition the decline of water quality and poor environmental outcomes across the motu
- 2. general openness to change from current service delivery arrangements (although differences of opinion in the nature of that change).

Note: Policy work in parallel with close to 100 individual hui, many involving multiple hapū/iwi over an 12 month period

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Iwi/Māori rights and interests analysis

Right	Considerations	Interest analysis		
Article two – Rangatiratanga Māori will have the right to make Decisions over resources and taonga which they wish to retain	 Are there options for Māori to exercise rangatiratanga while recognising the rights of the Crown (including through local government) to govern? What role is there for Māori in design and implementation? Does the Three Waters reform offer an opportunity to enhance Māori wellbeing or build Māori capability and capacity? 	 Iwi/Māori have expressed dissatisfaction with the Treaty partnership approach and cultural responsiveness of current territorial authority delivery. This includes understanding and application of mātauranga Māori frameworks as they apply in place (hapū/whanāu level) Introduction of new legislative, governance and management arrangements will give rise to interests in co-governance opportunities. Iwi/Māori have expressed interest in ownership (including investment), governance, board appointments and board composition 		
Article three – Rights as citizens Implicit assurance that rights will be enjoyed equally by Māori with all New Zealanders, which may warrant special measures to attain that equal enjoyment of benefits.	 What are the implications for equitable outcomes? What considerations should support legal values including natural justice, due process, fairness, and equity including through regulatory processes? What does a tikanga lens bring to consideration of the issues? 	 Iwi/Māori raised the importance of ensuring that water services are affordable for all. Iwi organisations have raised the potential for Māori to benefit from alternative delivery mechanisms more directly (for example, jobs or social enterprise) Iwi organisations have also expressed a desire to invest in the water infrastructure sector 		

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Suite of tools considered

Appendix C: Options analysis

	ASSESSMENT I	(EY:/	Does not meet objectives		Partially meet objectives	Meets objectives
Design Feature	Option 1	Option 2	Option 3	Option 4	Comments	
GOVERNANCE What is the of mana whenua role in Governance?	NO CO-GOVERNANCE ROLE FOR MANA WHENUA WI/Maori have no direct role influencing governance of water services entities	SINGLE CO-GOVERNANCE WITH LOCAL AUTHORITIES wi/Māori interests are represented alongside local government in a single Governors Group with equal rights	JOINT CO-GOVERNANCE Invi/Maori interests are represented alongside local government in a Separate Forum that comes together with a Local Council Forum on significant strategic issues like the Statement of Intent/Letter of Expectations. Representation on the Governors Group wouldbe equal. Both the Mana Whenua Form and the Local Government Forum could also have other functions.	MANA WHENUA FORUM DIRECTLY INPUTS TO BOARD Invi/Māori are not represented within the Governors Group, and instead have a statutorily prescribed direct relationship with the Board.	as a Government Policy Statement (GPS), Letter of Expectation (LOE) and Statement of Intent (SOI). This statutory framework will include prohibitions on share transfer, divesting ownership, sale of assets and dividend payments for a given entity. For that reason, options of direct ownership of the water services entities by iwi/Māori have not been explored. up, we wi/Māori have raised opportunity for co-governance as a mechanism to achieve strategic influence. However, in the proposed entities traditional governance levers are more limited that other governance structures. I have therefore analysed a broader range of options for iwi/Māor to influence the strategic framework within which the entities operate.	
BOARD ARRANGEMENTS What are the Board competency requirements?	NO SPECIFIC COMPETENCY No specific Treaty or Te Ao Māori competency required of Directors.	GENERAL TREATY OF WAITANGI COMPETENCY A specific requirement for Treaty of Waitangi competency	MĀTAURANGA MĀORI, TIKANGA MĀORI AND TE AO MĀORI COMPETENCY A specific competency requirement related to prescribed areas of Te Ao Māori competency. A specific competency related to Mātauranga Māori knowledge. It is proposed that the competency based professional Board for each water servic appointed by an Independent Selection Panel. A central way for Te Mana o Te Wai to be embedded as an operating principal of t ensure that the Board is adequately competent both as a Treaty partner, and with a specific competency related to Mātauranga Māori knowledge.		edded as an operating principal of the entity is to to took tooth as a Treaty partner, and with expertise in	

Three Waters Reform Programme

NOT GOVERNMENT POLICY

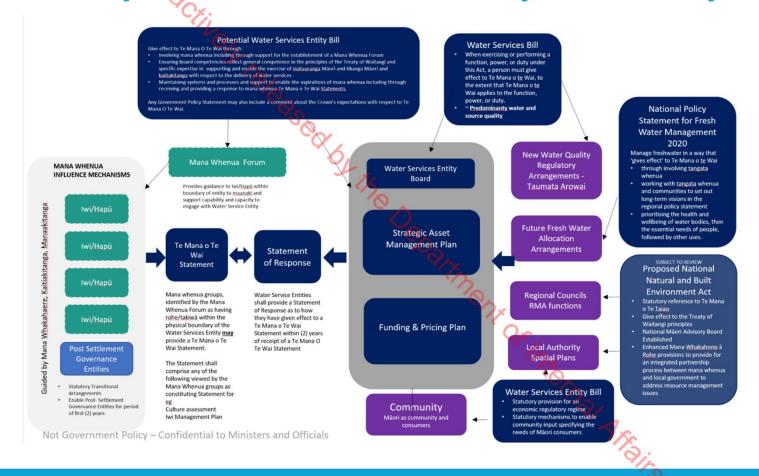
Suite of tools continued

Design Feature	Option 1	Option 2	Option 3	Option 4	Comments
ESTABLISHING MANA WHENUA INTERESTS How would a multi-tegional entity identify which manawhenua have interest within their boundary?	MANA WHENUA - SELF DETERMINATION Mana-whenua groups are identified consistent with current RMA processes via mechanisms like Te Kahui Wai Maori.	MANA WHENUA – WITH SUPPORT FOR A KAUPAPA MĀORI APPROACH Mana whenua groups are identified through kaupapa Māori process once entities are established	POST SETTLEMENT GOVERNANCE ENTITIES Mana whenua interests are represented by post-settlement iwi authorities or through entities who are mandated for Treaty settlement purposes	TRANSITION: PSGES UNTIL A KAUPAPA MĀORI PROCESS CONFIRMS INTEREST A combined option whereby PSGEs and mandated entities through the Treaty settlement process operate as a mana- whenua forum for a transitional period until a kaupapa Maori process for mana- whenua can occur	The proposed water services entities will need to be significantly larger scale than current service delivery arrangements to provide scale benefits in service provision and infrastructure investment. Within the boundaries of each of these entities there will therefore be multiple rohe/takiwā. Consistent with the conclusions of the Randerson Review, engagement with iwi/Māori has highlighted that kaitiakitanga as it relates to the provision of water services often operates at a hapû or whânau level. It is also important to ensure that the proposed entities are not in a position of determining who represents mana-whenua interests. Officials from Ministry for the Environment are actively considering options to improve RMA tools related to mana whenua involvement into a single integrated partnership process. The proposed entities will operate within the environmental regulatory system, however it will also be important that they have a direct relationship with mana whenua given the significance of water from a Te Ao Mãori perspective.
KAITIAKITANGA MECHANISM How will hopo/whônau level be oble to influence the water services entities outcomes?	EXISTING MECHANISMS Rely on existing mechanisms such as input into spatial plans and mechanisms the Resource Management Act (and its replacement) to adequately address environmental effects.	NEW STATUTORY REQUIRED PLANS Require water services entities to prepare statutory plans that addressed Te Mana o Te Wai.	TE MANA O TEWAL STATEMENTS AND RESPONSE Enable mana whenua to provide a statement of mana whenua (with flexibility to determine form) and require water entities to reasonably respond to that statement	-7r	Consistent with feedback, Te Mana o Te Wai is richly experienced in place and kaitiakitanga is more likely to be exercised at a hapū/whānau level. The ability to connect governance with delivery on the ground will require the proposed water services entities to make a difference in place at a hapū/whānau level. This will primarily be achieved through the preparation of asset management plans and investment decision making tools. Rather than statutorily prescribe the requirements of the plan, our preference to enable manawhenua to provitise their capacity and capability to this Kaupapa through a flexible mechanism where the onus of a reasonable response shifts to the entity.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Preferred options were based on system analysis



Three Waters Peform Programme

NOT COVERNMENT POLICY

Council Agenda 3 February 2022- OPEN Page 95 of 406

Core mechanisms

DESIGN FEATURE	DESCRIPTION	OPPORTUNITY FOR IWI/MĀORI
1/L	Rights & Interests of Iwi/Māori will be recognised and provided for in service-delivery arrangements for the new Three Waters system	Uphold existing Treaty Settlement arrangements, including through transition and the standing-up of new entities
To.	Te Mana o Te Wai will be recognised and provided for in service-delivery arrangements for the new Three Waters system	Each entity will be required to give effect to Te Mana o Te Wai both in legislation and as articulated by mana whenua over a defined waterbody
4	A Mana Whenua Group for each of the four entities will be established to guide strategic performance expectations alongside local government	Each Mana Whenua Group will have equal voting rights to local government and the new entities will have statutory obligations to fund and ensure Mana Whenua participation
	Legislation will broadly describe Te Mana o Te Wai, however the emphasis is that mana whenua define what Te Mana o Te Wai means to their specific location. Operationally, a statement can take the form of an Iwi Management Plan, Cultural Impact Statement or the like	Provides an instrument for mana whenua to prioritise their capacity and capability to participate in the new system and recognises the role of whānau and hapū in providing kaitiakitanga activities
€ 1854 CO 1864 CO 186	The Independent Selection Panel will be responsible for appointing entity board governors based on key competencies	Each entity board will be required to have collective competencies in Treaty of Waitangi, mātauranga Māori, tikanga Māori and te ao Māori
	The Independent Selection Panel will be required to appoint to the entity boards, one or more individuals with specific expertise	An individual or a number of individuals will be required to have expertise in the exercise of kaitiakitanga, tikanga & mātauranga Māori relating to delivering water services
	Mana whenua will have an increasing role in both submitting and providing advice on the new entities will be guided in interpreting these statements by mana whenua	Entities will fund and support capability and capacity for mana whenua to participate

Three Waters Peform Programme

NOT COVERNMENT POLICY

Treaty partnership – that the governance framework for each WSE is set up to give effect to the Crown's Treaty obligations by giving effect to the principle of partnership with iwi/Māori across the rone/takiwā served by that WSE, including by:

a. ensuring that mana whenua from within the geographic area covered by a WSE have joint oversight of the WSE together with the relevant local authorities

Bottom lines

The Working Group TOR sets out the Government's bottom lines

- b. integration within a wider system of iwi/Māori rights and interests in water
- c. reflecting a Te Ao Māori perspective
- d. supporting clear accountability of the WSE to iwi/Māori
- e. improving outcomes for iwi/Māori at a local level (e.g. by addressing inequities in access to quality three waters service delivery)
- f. enabling iwi/Māori to have rights and mechanisms of influence over the WSE that correspond to those provided to the local authorities served by the WSE.

AND

Good governance – that the Board governing the WSE:

a. has board members that collectively have competence relating to the Treaty of Waitangi, mātauranga Māori, tikanga Māori, and Te Ao Māori.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Reflections on advice to date

- 1. Rights and interests are well established and will be significant to the reform process
- Systems based approach is really important, not just relying on traditional governance levers
 - Good Treaty response is more than representation
 - Te Mana o Te Wai in inherently experienced locally, but strong interest is well established at an iwi level and in enshrined in key Settlement Acts
- Complexity of addressing connections with individual settlements will be a significant issue for the legislative and establishment phase
- 4. Connections with parallel reforms will become much more direct as the detail is understood

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Ngā mihi, Thank you Reform Programme Webpage: www.dia.govt.nz/Three-Waters-Reform-Programme

Three Waters Reform Programme

Briefing to the Representation, Governance and Accountability Working Group

ALTERNATIVE MODELS

17 December 2021

www.dia.govt.nz/Three-Waters-Reform-Programme



Outline

Item 9

Attachment 2

- Regulatory environment for three waters service delivery
- Government policy decisions
- Alternative structural options considered
 - Models that informed entity design
- Non-structural options considered
- Other relevant issues

NOT GOVERNMENT POLICY

Three Waters Reform Programme

2

Council Agenda 3 February 2022- OPEN



Attachment 2

Three pillars of reform in three waters

Establishment of Taumata Arowai

- Taumata Arowai 'went live' in early November as the dedicated drinking water regulator to administer the regulatory regime and 'shine a light' on performance of the three waters system.
- Taumata Arowai takes over the role the Ministry of Health has played in regulating safe drinking water across New Zealand.
- Taumata Arowai will also shine a light on the national performance of wastewater, stormwater and trade waste (regulated by regional councils).

Regulatory reform

- The Water Services Act gives Taumata Arowai the legal authority to carry out its duties as New Zealand's dedicated water regulator.
- Taumata Arowai will enforce current drinking water standards and have oversight of compliance with wastewater and stormwater regulations, including setting wastewater infrastructure performance standards.

Service delivery reform

In addition to the establishment of the new service delivery entities, this includes the introduction of an economic regulator to drive efficiencies and investment for consumers and a consumer protection regime.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

The status quo is already changing

- It has become clear that New Zealand's three waters sector is facing a significant crisis, and will continue to do so without major, transformational reform. Even those councils in relatively good shape now will face investment challenges likely beyond their means in the next 30 years
- The combination of health, environmental and economic regulation will ensure all New Zealanders' three waters services meet community/consumer expectations
- Councils will be regulated as suppliers and will face increased pressures to demonstrate compliance and increased transparency of system performance
- Enforcement of wastewater standards (permitted discharges to the environment) will be a big driver investment required and future costs
- In the absence of service delivery reform, Councils will also assume significant contingent liabilities associated with new obligations to ensure safe drinking water in their communities, including for private and community schemes that face problems complying
- The service delivery reforms are designed to ensure that meeting the expectations of our communities will be affordable across New Zealand

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Council obligations under the Water Services Act

As suppliers of drinking water

- Duty to provide safe drinking water and meet drinking water standards, and obligations to act when water is not safe or fails to meet standard. Key provisions include:
 - Suppliers need to register with Taumata Arowai
 - Local authority suppliers will need a drinking water safety plan and a source water risk management plan
 - Water suppliers must give effect to Te Mana o te Wai
- Taumata Arowai has significant compliance and enforcement powers, including powers to direct suppliers and enter into enforceable undertakings with suppliers
- Officers, employees and agents of suppliers will have a duty to exercise professional due diligence
- Complying with these new requirements is expected to require significant capital and operating expenditure by local authorities (including paying levies for operation of the regulatory system)

In relation to private and community supplies

- Duty to ensure communities have access to drinking water if existing suppliers face significant problems in complying with drinking water standards including:
 - Requirements to work with suppliers and consumers to identify solutions
 - Intervention responsibilities if a supplier is unable to meet standards, including potentially taking over management and operations of private or community supplies
- In rural communities, this could represent a significant risk (contingent liability) for local authorities
- Local authorities will be required to make assessments of drinking water, wastewater and sanitary services to ensure communities have access to safe drinking water
- Local authorities will need to assess drinking water services available to communities at least once every three years, including private and community supplies (excluding domestic self-supplies)

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Taumata Arowai's oversight of three waters environmental performance

The Water Services Act 2021 gives Taumata Arowai oversight powers relating to the environmental performance of three waters infrastructure including in relation to:

- Monitoring and reporting on environmental performance of three waters services
- Setting of environmental performance measures and targets
- Development of wastewater environmental performance standards
- Requirements for wastewater network risk management plans

Taumata Arowai's oversight of environmental performance of drinking water networks will commence on 15 November 2021.

Oversight of wastewater and stormwater networks will commence in late 2023.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Annual report on environmental performance

Taumata Arowai will publish an annual report on environmental performance of three waters networks and operators. This will provide transparency about:

- the environmental performance of networks and network operators;
- compliance with standards, conditions, or requirements (including resource consents); and
- extent to which network operators are avoiding, remedying or mitigating any adverse environmental effects arising from the networks.

This will also enable Taumata Arowai to produce advice on best practice.

Taumata Arowai has powers to require network operators to produce information and keep records – this will mean it has a good evidence base for its annual report.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Environmental performance measures & targets

Taumata Arowai can develop environmental performance measures and targets for networks, which network operators will have to report against.

Environmental performance measures and targets for wastewater networks may include:

- · discharges to air, water, or land;
- biosolids and any other by-products from wastewater;
- energy use; or
- waste introduced to a network by a third party, such as trade waste.

Taumata Arowai must consult network operators, regional councils and anyone else deemed appropriate when developing these measures or targets.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

~

o wot

Attachment 2

Wastewater environmental performance standards

Taumata Arowai can develop wastewater environmental performance standards.

Wastewater environmental performance standards may relate to:

- discharges to air, water, or land;
- biosolids and any other by-products from wastewater;
- energy use; or
- waste introduced to a network by a third party, such as trade waste.

New consents - a consent authority must not grant a new consent contrary to a wastewater environmental performance standard, and must include as a condition of granting the consent, requirements that are no less restrictive than is necessary to give effect to the wastewater environmental performance standard.

Wastewater bylaws - if a territorial authority makes new bylaws regulating a wastewater network the bylaws must give effect to any wastewater environmental performance standards made under section 135A of that Act

Taumata Arowai must consult network operators, regional councils and anyone else deemed appropriate when developing these measures or targets.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Wastewater network risk management plans

Wastewater Network operators must prepare and implement a risk management plan.

Wastewater network risk management plans must:

- Identify and assess risks and hazards that relate to wastewater networks;
- Demonstrate how risks and hazards will be managed, monitored, or eliminated;
 and
- Contain information on how environmental performance measures, standards or targets will be met.

Wastewater network operators must review their risk management plans every 5 years.

Three Waters Reform Programme

NOT GOVERNMENT POLICY



Council Agenda 3 February 2022- OPEN Page 111 of 406

Economic regulation and consumer protections

Economic regulation plays a critical role in protecting and enhancing the long-term interests of consumers and providing high-quality performance information.

The Government is considering regulatory safeguards to ensure that consumers and communities receive efficient and affordable three waters services that meet their needs both now and into the future. Key areas for consideration include:

- Economic regulation to help consumers from problems that can occur when businesses have a lot of market power. This could involve requiring the entities to disclose certain information, directly regulating the price and quality of services, and setting a strong efficiency challenge for regulated businesses.
- Consumer protection, to incorporate the voices of consumers and communities should be incorporated
 throughout the design of the three waters regulatory system, to ensure it is responsive and accountable. This
 could involve requiring the entities to meet minimum service levels, providing protections for vulnerable
 consumers, or establishing a consumer disputes resolution scheme.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Attachment 2

Consultation underway on economic regulation and consumer protection

- MBIE are currently engaging on the new economic regulation regime and consumer protection mechanisms. This consultation closes on 20 December.
- Key proposals being considered include to:
 - Introduce information disclosure regulation so consumers are able to assess how the performance of their Water Service Entity compares to others;
 - Introduce economic regulation to control price and quality of services in the long term interest of consumers;
 - Require economic regulator to set a strong efficiency challenge to ensure that water services are as
 affordable as possible, and incentivise high quality consumer engagement; and
 - Enable a consumer protection regulator to set minimum service level and provide protections for vulnerable consumers
 - · Establish a dedicated three waters consumer dispute resolution scheme

Three Waters Reform Programme

NOT GOVERNMENT POLICY



Attachment 2

Resource management system planning interface

- Entities will have a statutory objective to support and enable housing and urban development
- They will be required to be active participants in planning processes led by local government, and the development of natural and built environment plans will need to be informed by a full understanding of cost associated with water infrastructure to support growth
- Entities will consult local government and communities on how investment should be prioritised, and take this into account before finalising plans (including reporting on how community feedback has been incorporated into decision making)
- Entities will be accountable for delivering on asset management plan that incorporates provision for growth and development plans of local authorities
- WSEs will also be consent holders under the new system, and will be required to comply with consent requirements and seek new consents when they expire or when undertaking network expansion

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Technical reference group to advice on resource management and planning interfaces

- Feedback received from local government indicates there are a number of areas of concern relating to the interface between the service delivery reforms and the resource management reforms
 - For example, we have heard concerns that local authorities will lose control over water infrastructure investment decisions that are required to support growth plans
- The concurrent nature of the resource management and three waters service delivery reforms creates practical challenges in achieving statutory alignment, but there is time to work through this:
 - The Natural and Built Environments Bill and Strategic Planning Bill are expected to progress as an omnibus package
 - The two Water Services Entities Bills would proceed separately from but in parallel with the resource management reforms
- A technical reference group is being established to undertake detailed work to ensure the interface between resource management reform (and associated legislation) and the new Water Services Entities is well integrated

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Originally Proposed Aproach

Cabinet policy decisions and the provisions within the draft Bill together comprise the Originally Proposed Approach referenced in the Terms of Reference.

Consistent with the Terms of Reference, the Working Group is expected to review and analyse the work already carried out by Government officials, review and analyse feedback from local authorities and iwi/Māori, and review and build on work undertaken by iwi/Māori and the local government sector, in seeking to identify a strengthened approach and in making recommendations to the Minister of Local Government.

Council Agenda 3 February 2022- OPEN

Cabinet decisions guiding the Bill

Key Cabinet decisions relate to:

- Aggregation of all three water services into four publicly owned entities and the boundaries of these entities
- Transfer of asset ownership
- Safeguards against privatisation
- Representative oversight and competency-based boards
- Rights and interests of iwi/Māori recognised and provided for
- Community and consumer voice provided for
- System oversight and stewardship strengthened
- An "all-in" approach

These decisions are to be reflected in a Water Services Entities Bill

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Scope of the Bill

- Legal form, ownership and boundaries
- Objectives and principles of the entities
- Governance arrangements
- Mana whenua interests and joint oversight
- operation and obligations of entities (setting direction, planning, reporting)
- financial & accountability arrangements
- safeguards against privatisation
- local democracy
- Crown intervention safeguards
- transitional arrangements relating to establishment & governance

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Legal form, ownership and boundaries

- Water services entities will be a new public service delivery model.
- Each entity will be a body corporate owned collectively by the territorial authorities in its service delivery area.
- The Bill will define the service areas for each entity through reference to territorial authority districts, or parts of districts.
- The service area of the southern water services entity will be the takiwā of Ngāi Tahu, as described in section 5 of Te Runanga o Ngai Tahu Act 1996.

ဖ

NOT GOVERNMENT POLICY

54

Three Waters Reform Programme

Attachment 2

Entity functions and objectives

- The functions of a water services entity will be to provide safe, reliable, and efficient drinking water, wastewater and stormwater services in its area.
- The objectives of a water entity will be to:
 - deliver water services and related infrastructure in an efficient and financially sustainable manner;
 - protect and promote public health and the environment;
 - support and enable housing and urban development;
 - operate in accordance with commercial and best business practices;
 - act in the best interests of present and future consumers and communities;
 - give effect to Te Mana o te Wai, to the extent Te Mana o te Wai applies to the duties and functions of the entity;
 - deliver water services in a sustainable and resilient manner that seeks to mitigate the effects of climate change and natural hazards.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Operating principles

- The operating principles of an entity will be:
 - developing and sharing capability and technical expertise with other water services entities and across the water services sector;
 - being innovative in the design and delivery of water services and infrastructure;
 - being open and transparent including in relation to calculation and setting of prices, determining levels of service to consumers and communities, and reporting on performance;
 - partnering and engaging early and meaningfully with Māori, including to inform how the water services
 entity can give effect to Te Mana o te Wai, and understand, support and enable the exercise of
 mātauranga, tikanga, and kaitiakitanga;
 - giving effect to Treaty settlement obligations, to the extent the obligations apply to the duties and functions of an entity
 - partnering and engaging early and meaningfully with territorial authorities and their communities;
 - co-operating with, and supporting, other water services entities, infrastructure providers, local authorities, and the transport sector

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Governance arrangements

- Entities will have a two-tier governance arrangement comprising:
 - a regional representative group, which provides joint oversight of the entity by an equal number of representatives of the territorial authority owners and mana whenua from within the entity's service area; and
 - corporate governance by an independent, competency-based, professional board.
- Appointments to and removals from the will be made by a board appointment committee which is part of the regional representative group. This represents a change from proposals in June.
- The board appointment committee will be responsible for preparing and maintaining an appointment and remuneration policy for the board.
- Board members will be accountable to the regional representative group for performing their duties as members.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Constitution of regional representative group

- The Bill sets out that each regional representative group will have a constitution setting out:
 - its composition, and how the appointment of representatives from territorial authority owners and mana whenua will occur;
 - how it will make decisions and its internal procedure; and
 - the number of members.
- The Working Group could contemplate the development of a proforma constitution, alongside
 other advice and recommendations on a strengthened model of representation, governance and
 accountability.
- The Bill provides that the minimum number of members of the regional representative group is 6. The maximum is the number of territorial authority owners in the service area of the entity, with an equal number of mana whenua representatives. This represents a change from June decisions.
- The first constitution of an entity would be set out in regulations, following engagement by the Minister with the entity's territorial authority owners and mana whenua in its service area.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Reporting and accountability

- The regional representative group must make a **statement of strategic and performance expectations** not more than every three years.
- The purpose of a statement of strategic and performance expectations is to:
 - state the regional representative group's objectives and priorities for the entity; and
 - inform and guide the decisions of the board.
- The board of a water services entity *must give effect to* the statement of strategic and performance expectations
- The Bill requires the board to prepare and adopt:
 - a statement of intent setting out the forecasted service performance and budget of the entity
 - an asset management plan and funding and pricing plan, which will cover a 10-year period;
 - an infrastructure strategy, covering a 30-year period.
 - an annual report setting out the actual performance and audited financial statements for the entity.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Te Mana o te Wai

- One of the objectives of a water services entity is to give effect to Te Mana o te Wai to the extent it
 applies to the duties and functions of the entity.
- This is consistent with the approach across all legislation relating to water services, including in the Taumata Arowai-Water Services Regulator Act 2020, and on those who perform or exercise functions, powers and duties under the Water Services Act 2021.
- Mana whenua whose rohe or takiwā includes a freshwater body in the service area of an entity can make a Te Mana o te Wai statement for water services.
- The board of an entity must respond to this statement within 2 years, and the response must include a plan for how the entity intends to fulfil its objective to give effect to Te Mana o te Wai

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Relationship to Treaty Settlements

- To ensure that Treaty settlements are enduring, the Bill will provide that:
 - where there is inconsistency between the legislation and a Treaty settlement obligation, the Treaty settlement obligation prevails; and
 - an operating principle of entities is to give effect to Treaty settlement obligations, to the extent the obligations apply to the duties and functions of an entity

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Consumer and Community Engagement

- A water services entity must:
 - establish one or more consumer forums to assist with consumer and community engagement, helping
 gather consumer views and understand consumer needs, expectations and service requirements; and
 - prepare an annual consumer stocktake, and
 - engage with its consumers and communities on its asset management plan, funding and pricing plan, and infrastructure strategy.
- In exercising these functions, a water services entity must be guided and informed by the following consumer engagement principles:
 - communication to consumers should be clear and appropriate, and recognise the different communication needs of consumers;
 - the entity should be openly available for consumer feedback and seek a diversity of consumer voices;
 - the entity should clearly identify and explain the role of consumers in the engagement process;
 - the entity should consider the changing needs of consumers over time, and ensure engagement will be
 effective in the future; and
 - the entity should prioritise the importance of consumer issues to ensure that the entity is engaging with issues that are important to consumers

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Attachment 2

Safeguards against privatisation

- The Bill will contain a prohibition on the provision of equity returns or dividends to territorial authority owners.
- The Bill will provide for safeguards against privatisation or loss of control of the water services entities and its assets. In particular, the Bill provides for:
 - collective territorial authority ownership of the entities, to ensure there is appropriate
 oversight and influence on behalf of the communities;
 - joint oversight of entities by mana whenua;
 - clear legislative protections against loss of ownership or control based on provisions in the Local Government Act 2002, which are that an entity must not use water services assets as security for any purpose, divest its ownership in a water service, or sell or lose control of significant infrastructure;
 - a requirement that, for a divestment proposal to proceed, it must have support from 75 per cent of both an entity's regional representative group and a poll of the electors in its service area.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Government Policy Statement

- The Bill enables the Minister to make a government policy statement setting out the Government's overall direction and priorities for water services, to inform and guide agencies involved in, and the activities necessary and desirable for, water services.
- A water services entity must give effect to the statement when performing its functions.
- A Government policy statement must include:
 - the Government's overall direction for water services, which must include a multi-decade outlook:
 - the Government's priorities for water services:
 - how the Government expects other agencies to support that direction and those priorities:
 - the Government's expectations in relation to Māori interests, partnering with mana whenua, and giving effect to Te Mana o te Wai:
 - how the Government expects water services entities to take into account the well-being of communities.
- The GPS may also include the Government's expectations in relation to the contribution of water services entities to the outcomes sought by the Government in the following areas: public health; the environment: housing and urban development; climate change mitigation and adaptation; water security; resilience to natural hazards.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Attachment 2

Crown monitoring and intervention

- The Bill enables the Minister to appoint a department as a Crown monitor.
- The role of the monitor is to:
 - act as a steward to provide oversight to the water services system from a whole-of-government perspective
 - tender advice to Ministers, and assist the Minister to carry out the Minister's role under the legislation.
- The Bill will contains a Crown intervention framework, providing the Minister with powers of intervention based on a graduated risk regime, including:
 - circumstances where there is a significant or persistent failure by a water services entity to perform 1 or more of its functions or give effect to a government policy statement,
 - failure to demonstrate prudent financial management, or
 - to deal with a state of emergency.
- The Minister's powers of intervention include:
 - the appointment of a Crown Review Team;
 - · the appointment of a Crown Observer; and
 - as a last resort, the appointment of a Crown Manager

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Transition and Establishment Arrangements

- Schedule 1 of the Bill contains the transition and establishment arrangements, including:
 - establishment entities, which will make the preparatory arrangements for full operation; and
 - a national transition unit based in the Department of Internal Affairs, with statutory oversight powers needed as part of the transition;
 - transitional provisions relating to employment of the three waters workforce, including employment security by transferring existing employment positions to the relevant water services entity.

Three Waters Reform Programme

NOT GOVERNMENT POLICY



Key entity design features

- Several key entity design features are required to deliver on the Government's reform objectives:
 - balance sheet separation from local authorities, to provide entities with the financial capacity to meet the infrastructure deficit and future investment needs
 - entities should have financial and operational autonomy, including independent and competency-based governance arrangements
 - entities must be able to borrow in their own right, as newly established public entities, independent of local government debt restrictions, and the legislative decision-making framework (under the Local Government Act 2002)
 - the purpose of the entities is expected to relate to the provision of water services, but entities will need to have an express commercial objective to enable effective economic regulation
 - entities must be publicly owned, with mechanisms to protect against privatisation; and
 - entities will be statutory entities, that is, designed and established by legislation.
- There are a high number of permutations when it comes to the entity design options available to the Government. As the basis for assessing options, officials developed a base case which was compared against several alternative scenarios.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Attachment 2

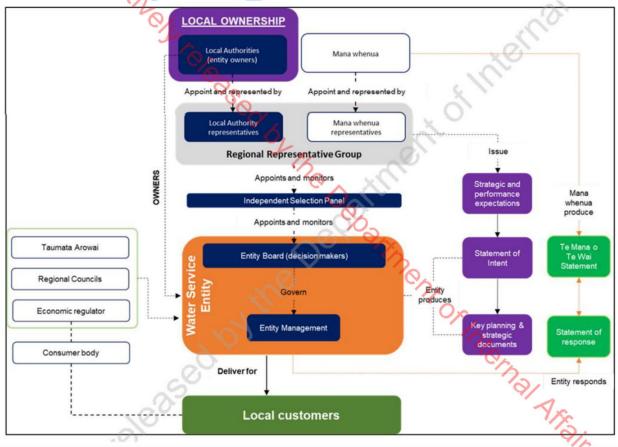
Development of base case

- The base case structure was identified through detailed planning and analysis, and domestic and international precedents, including:
 - TasWater
 - The Victorian Urban (regional) model
 - Scottish Water.
 - Welsh Water
 - · Ontario Clean Water Agency
 - Council Controlled Organisations e.g., Watercare.
 - Statutory entities (e.g., ACC, Kāinga Ora, Ports of Auckland and Waka Kotahi New Zealand Transport Agency).
- No existing entity internationally or domestically with the characteristics, capability, and capacity to deliver
 water infrastructure in the way contemplated by the Reform Programme, taking account of the particular New
 Zealand-specific context.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Base case entity design structure



Three Waters Reform Programme

NOT COVERNMENT POLICY

Attachment 2

Alternative scenarios

- Six scenarios were constructed with varying levels of local authority and Crown influence over the governance arrangements, as well the number of entities, and various options for Crown support:
 - 1. Base Case as described above
 - 2. Lower degree of Governor influence no Letter of Expectations and Board not required to consider comments on Statement of Intent
 - 3. Higher degree of Governor influence representatives group approves the Statement of Intent and can appoint and remove board members directly (no independent selection panel)
 - **4. Provision of Central Government support** –entities benefit from a Crown liquidity facility similar to that for the Local Government Funding Agency
 - **5. Alternative ownership structure** shareholding ownership structure, with local authorities having a proportional shareholding (based on asset values) and voting rights.
 - **6. Greater number of entities** 13 entities across the country, with each entity covering a smaller group of local authorities. This scenario essentially tests smaller entities, and more concentrated ownership and governance arrangements.
- These scenarios were tested with Standard and Poor's via an <u>International Public Finance Rating Engagement</u>

 <u>Service</u> because achieving balance sheet separation and appropriate credit worthiness are crucial for ensuring the entities' long-term financial sustainability and ability to fund current and future investment needs.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Scenarios	Improves economic efficiency	Balance sheet separation and supports financially sustainable system	Improves infrastructure delivery	Improved decision making and competency based governance arrangements	Ease of implementation
Base case	√√	11	√ √	11 0	0
(Preferred option)	Combination of economic regulation, reasonably sized entities, operational and financial autonomy, and policy clarity should lead to improved efficiency.	Standard and Poor's has indicated the base case is likely to be considered separate from local authority balance sheets, and have minimal to no impact on the Crown and the Local Government Funding Agency.	Entities able to invest in infrastructure effectively and responsively, taking into account broader interests of local authorities.	Entity structure provides much higher degree of independent governance and the utilisation of a director selection process that drives independent, competency-based appointment to enable improved decision-making and better governance. Balances political influence with operational independence for entity board.	Legislation and bespoke arrangements required to effect reform programme from status quo arrangements.

Three Waters Reform Programme

NOT COVERNMENT DOLLCY

Scenarios	Improves economic efficiency	Balance sheet separation and supports financially sustainable system	Improves infrastructure delivery	Improved decision making and competency based governance arrangements	Ease of implementation
Scenario two – low governor influence	Combination of economic regulation, reasonably sized entities, operational and financial autonomy, and policy clarity should lead to improved efficiency.	Standard and Poor's has indicated the base case is likely to be considered separate from local authority balance sheets, and have minimal to no impact on the Crown and the Local Government Funding Agency.	Legislation and regulatory landscape guides delivery. Local authorities able to contribute to direction but cannot mandate infrastructure delivery. Onus on entity to balance requirements of multiple stakeholders. Risk that entities may have weakened accountability to local communities balanced by regulatory environment, consumer voice, and entity accountability.	Entity structure provides much higher degree of independent governance and the utilisation of a director selection process that drives independent, competency-based appointment to enable improved decision-making and better governance.	Legislation and bespoke arrangements required to effect reform programmo from status quo arrangements.

Scenarios	Improves economic efficiency	Balance sheet separation and supports financially sustainable system	Improves infrastructure delivery	Improved decision making and competency based governance arrangements	Ease of implementation
icenario ihree – high governor nfluence	Combination of economic regulation, reasonably sized entities, operational and financial autonomy, and policy clarity should lead to improved efficiency. However, greater levers for political influence may result in entities operating at a less efficient level.	Scenario three represents an increased level of council influence over the entity board compared with the base case. This is likely to result in status quo balance sheet treatment of the entity's liabilities assessed as being contingent liabilities on local authority balance sheets.	Infrastructure delivery likely to be subject to similar levels of political pressure to current state. Risk that investment decisions do not reflect need / are suboptimal. Similar to the status quo position.	Risk that greater political influence might dilute the benefits of creating operationally and financially independent water service entities when it comes to decision-making, particularly around pricing and investment.	Legislation and bespoke arrangements required to effect reform statuarrangem

Three Waters Reform Programme

NOT COVERNMENT DOLLCY

scenarios	Improves economic efficiency	Balance sheet separation and supports financially sustainable system	Improves infrastructure delivery	Improved decision making and competency based governance arrangements	Ease of implementation
cenario our – entral overnment upport	Combination of economic regulation, reasonably sized entities, operational and financial autonomy, and policy clarity should lead to improved efficiency.	Standard and Poor's has indicated the base case is likely to be considered separate from local authority balance sheets, and have minimal to no impact on the Crown and the Local Government Funding Agency. Crown support arrangements provides entities with a credit ratings uplift that could better support delivery of current and future investment needs compared to the base case and two.	Entities are able to invest in infrastructure effectively and responsively, taking into account broader interests of local authorities. Onus on entity to balance requirements of multiple stakeholders.	Entity structure provides much higher degree of independent governance and the utilisation of a director selection process that drives independent, competency-based appointment to enable improved decision-making and better governance. Balances political influence with operational independence for entity board.	Legislation and bespoke arrangements required to effect reform programm from status quo arrangements. Increased level of Crown support draws from status quo arrangements. No increased implementation risk associated with this characteristic.

Three Waters Peform Programme

NOT COVERNMENT POLICY

Scenarios	Improves economic efficiency	Balance sheet separation and supports financially sustainable system	Improves infrastructure delivery	Improved decision making and competency based governance arrangements	Ease of implementation
icenario 5 – ilternative ownership tructure	Combination of economic regulation, reasonably sized entities, operational and financial autonomy, and policy clarity should lead to improved efficiency. Risk of contingent liabilities appearing on local authority balance sheets may impede efficiency gains or restrict investment.	Depending on shareholding structure adopted, this scenario may represent a level of council influence over the entity, resulting in the entity's liabilities assessed as being contingent liabilities on local authority balance sheets.	Due to potential shareholding structure, there is a risk that investment is focused on metro areas, ignoring other areas of need. This be partially mitigated by regulation.	Risk that council weightings might lead to politicised or sub-optimal investment decisions, particularly where a single council had a large shareholding.	Legislation and bespoke arrangements required to effect reform programme from status quo arrangements. Additional complexity required to give effect to shareholding arrangements, particularly as investmen levels vary across local authority areas — shareholdings may need to adjust overtime.

Three Waters Reform Programme

NOT COVERNMENT DOLLCY

scenarios	Improves economic efficiency	Balance sheet separation and supports financially sustainable system	Improves infrastructure delivery	Improved decision making and competency based governance arrangements	Ease of implementation
icenario 6 – nigher number of ntities	As per WICS analysis, a 13-entity scenario is likely to lead to significant efficiency savings being left on the table.	Standard and Poor's has indicated the base case is likely to be considered separate from local authority balance sheets and have minimal to no impact on the Crown and the Local Government Funding Agency.	Legislation and regulatory landscape guides delivery. Local authorities able to contribute to direction but cannot mandate infrastructure delivery. Onus on entity to balance requirements of multiple stakeholders. Potential issues and inefficiencies from increased number of entities contributing to a lack of scale to ensure effective delivery.	Entity structure provides much higher degree of independent governance and the utilisation of a director selection process that drives independent, competency-based appointment to enable improved decision-making and better governance. Balances political influence with operational independence for entity board.	Legislation and bespoke arrangements required to effect reform programme from status quo arrangements. Increased number of entities also potentially adds to complexity in implementation phase.

Was a CCO Model considered?

Description

- Instead of the bespoke governance model, DI considered whether an entity design could be adopted that:
 - o Broadly mirrors the existing Council Controlled Organisation model
 - Retains levers for councillors to set local priorities and influence key decisions
 - O Provides for co-governance through some mana whenua representation (i.e. less than 50%)
 - O Could cover multiple councils though some models provide some councils with greater control than others (ie Auckland proposal)
 - An option identified has been to underpin this model with a Crown guarantee/indemnity to assist balance sheet separation

Rationale

- Seeks to address the perceived loss of local influence and voice, and risk identified by councils that the entity may not be able to serve the interests of a multi-regional population by:
 - o Reducing the size of the catchment that each entity needs to serve
 - \circ More closely aligning entity boundaries with existing regional communities of interest.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Was a CCO Model considered? (contd)

Benefits

- Makes use of a model that is familiar to local government and ratepayers
- Introduces some separation of governance and decisionmaking from councils

Limitations

- CCOs are unlikely to be viewed as sufficiently separate from local government to borrow at similar rates as other utilities
- Establishing CCOs requires the agreement of all councils with each required to engage separately with its constituents - this would take time and creates uncertainty about the outcome
- Addressing the above limitations would require legislative amendment to Local Government Act (likely to take just as long as creating new legislation)
- Does not materially improve governance oversight or the incentives on council decision-making in relation to water infrastructure and services (Wellington Water has been highlighted as an example of how different council views on priorities and charging has limited its ability to plan and invest strategically in its network)
- Crown indemnity is unlikely to meet bottom lines

Three Waters Reform Programme

NOT GOVERNMENT POLICY

What about a regional option?

Description

• Instead of the proposed 4-entity model adopt a regional-council based model using existing regional council boundaries (with some consolidation for unitary councils) to identify each entity's catchment.

Rationale

- Seeks to address the perceived loss of local influence and voice, and risk identified by councils that the entity may not be able to serve the interests of a multi-regional population by:
 - Reducing the size of the catchment that each entity needs to serve
 - More closely aligning entity boundaries with existing regional communities of interest.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Item 9

What about a regional model? (contd)

Benefits

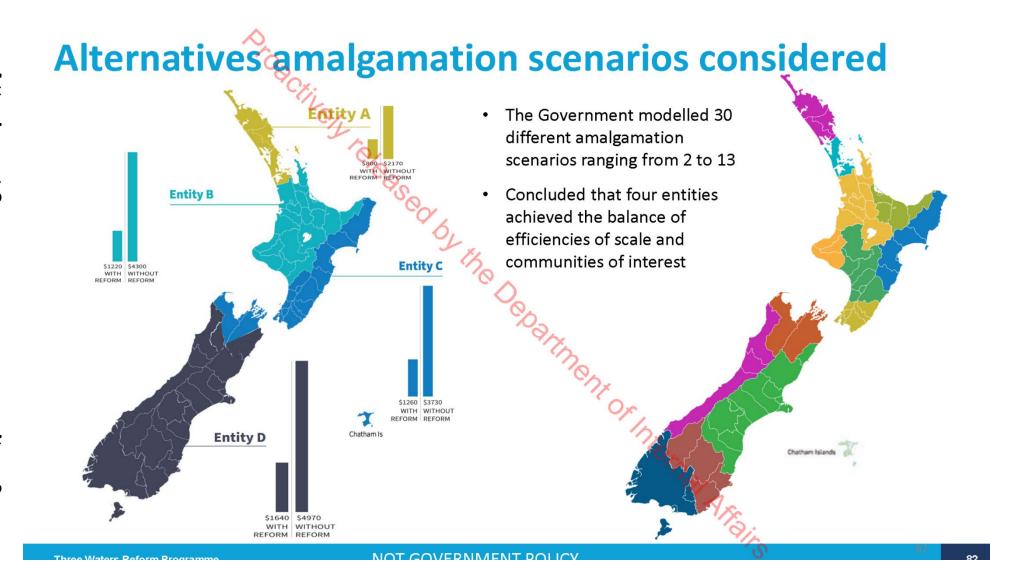
- More identifiable communities of interest
- · Aligns with regional council catchments
- Potentially more manageable number of representative interests for both Councils and manageable number of

Limitations

- Would prevent scale benefits to sparsely populated areas
- Likely to result in greater regional price and quality variations
- Could allow mergers over time, however is a slower more costly route to achieve reform benefits
- Is inconsistent with some of the sectors own analysis including Tonkin and Taylor supporting the West Coast and Morrison Low supporting Otago/Southland

Three Waters Reform Programme

NOT GOVERNMENT POLICY



Council Agenda 3 February 2022- OPEN Page 148 of 406

83

A regional model would enable some scale benefits but greater household cost variation and would likely require further consolidation

Entity	Population served	Current average household cost (weighted average)	2051 average household cost without reform (weighted average	2051 average household cost with reform	Difference
Northland	96,853	\$1,700	\$6,500	\$3,760	-\$2,740 (-42%)
Auckland	1,629,000	\$1,060	\$1,910	\$760	-\$1,150 (-60%)
Waikato	364,799	\$1,410	\$4,260	\$1,660	-\$2,600 (-61%)
Bay of Plenty	276,769	\$1,320	\$3,660	\$1,610	-\$2,050 (-56%)
Hawke's Bay / Gisborne	173,606	\$830	\$5,630	\$2,870	-\$2,760 (-49%)
Taranaki	90,140	\$1,160	\$5,090	\$3,030	-\$2,060 (-40%)
Manawatū-Whanganui	216,782	\$860	\$4,850	\$2,090	-\$2,760 (-57%)
Wellington	516,518	\$930	\$2,690	\$1,190	-\$1,500 (-56%)
Marlborough, Nelson, Tasman	116,148	\$1,480	\$4,700	\$2,790	-\$1,910 (-41%)
West Coast	22,612	\$1,540	\$11,530	\$7,890	-\$3,640 (-32%)
Canterbury	585,122	\$990	\$11,530	\$1,430	-\$2,500 (-64%)
Otago	188,209	\$1,260	\$6,740	\$3,340	-\$3,400 (-50%)
Southland	68,408	\$1,010	\$6,610	\$4,440	-\$2,170 (-33%)

Three Waters Reform Programme NOT GOVERNMENT POLICY

Council Agenda 3 February 2022- OPEN Page 149 of 406



Council Agenda 3 February 2022- OPEN Page 150 of 406

Scottish Water



Background	 Scottish Water provides drinking water and wastewater services on behalf of the Scottish government. Scotland also has a drinking water quality regulator, an Environmental Protection Agency, and an economic regulator which as part of its functions represents the interests of consumers. Scottish Water receives loans from the Scottish government or institutions approved by Scottish government 	
Purpose and objectives	 General purpose is to provide drinking water and wastewater services and is prescribed in primary legislation. Economic, efficient, and effective exercise of functions including reasonable steps to develop commercial value of assets and expertise. Other objectives also focus on the interests of customers; supporting renewable energy; sustainable development; public access to land; and health outcomes. 	
Legal form	 Owned by the Scottish government (Scottish Ministers). Statutory corporation with the powers and functions comprehensively defined in empowering legislation. No ability to transfer or divest ownership, and no provision for shareholders. 	
Governance	 The Chair and other Non-Executive Members are appointed by Scottish Ministers. Executive Members are appointed by Scottish Water after receiving consent to their appointment from Scottish Ministers. The CE appointment is approved by Scottish Government. Executive Board appointments are based on merit and candidates will be considered against objective criteria. Duty on directors to ensure financial statements are correct, commercially prudent, and safeguard the assets of the business 	
Strategy	 Scottish water has a high control relationship between Scottish Ministers and board Operates within a strategic framework set by Ministers. Ministers can direct the board (subject to appropriate safeguards in certain circumstances) and approve corporate plan and business plan. Body corporate responsible for budget and employs staff Annual reports and financial accounts are prepared by board and tabled in Parliament. 	
Accountability	 Directly accountable to Ministers, and through Ministers to Parliament. Preparation of a Customer Standards Code approved by WICS and a consultation code. As Scottish Water is not a company registered under the Companies Act, the Financial Conduct Authority (FCA) listing rules are not applicable and an Annual Consultative Meeting with stakeholders is held in place of an Annual General Meeting. 	

IN CONFIDENCE - NOT GOVERNMENT POLICY

Victoria Water Corporations



Background	 Urban (Regional) Water Corporations in Victoria provide water and sewerage services in regional cities and towns across the state. Victoria has a drinking water quality regulator, an Environmental Protection Agency, and an economic regulator which as part of its functions represents the interests of consumers. Victoria water corporations receive loans from the state government via the State Capital Programme. 	
Purpose and objectives	 Primary interests related to the entities purpose are set out in the statement of obligations to the Government Owned Businesses. Operate as efficiently as possible consistent with sound commercial practice. Manage its business operations to maintain the long-term financial viability of the Corporation. Manage water resources in a sustainable manner that enhances environmental outcomes and amenity in urban and rural landscapes. Effectively integrate economic, environmental and social objectives into business operations. Expressed via a Via a Statement of Obligations, Water Service Agreement, and an Annual Letter of Expectations. 	
Legal form	 Owned by State Government. Ownership is expressed directly through the primary legislation. 	
Governance	 The board of a water corporation typically consists of seven non-executive directors with a presiding chair, plus the managing director of the water corporation who is appointed by the board. The Minister for Water appoints all directors, including the chair. 	
Strategy	 The Minister of Water sets performance expectations through a Letter of Expectation, which outlines policy areas that warrant attention within a given planning year. The Minister appoints directors, can give directions, request information and initiate reviews. Strategy is advanced by the Board and the company consistent with the Statement of Obligations and the LOE. 	
Accountability	 The board of a public entity is accountable to the responsible Minister for conducting its functions. The Corporation must develop and make available to the public: terms of reference for the role of customer committees; and open and transparent processes under which the Corporation will engage customers and the community in its planning processes 	

IN CONFIDENCE - NOT GOVERNMENT POLICY

TasWater



Background	 Formed as an incorporated company following the amalgamation of three Tasmanian Water and Sewerage Corporations which were owned by local government in their respective regions. From commencement, TasWater has been owned by Tasmania's 29 councils, with the State Government also becoming a shareholder in early 2019 	
Purpose and objectives	 Principal objectives are provided for in primary legislation and include: efficiently provide water and sewerage functions, encourage water conservation, the demand management of water and the re-use of water on an economic and commercial basis, and to be a successful business. Commercially, TasWater is expected to operate with good commercial practice with sustainable returns to its councils shareholders. Other objectives include encouraging water conservation and the promotion of economic development. 	
Legal form	 Governed by the Corporations Act 2001. Owned by Tasmania's 29 councils and the State Government and act as shareholders. Members are precluded from disposing of shares by statute. Dividends may be paid to the Council shareholders as determined by the Board. The Crown is not entitled to any dividend. 	
Governance	 Each member of Tas Water must appoint a person as their representative to the Owners' representative group (ORG). A Selection Committee (comprised of 5 Council & 1 Crown owner representatives) reviews the appointment of Directors. Board is made up of a Chairman and six non-executive directors. The Board is skills based, independent and appointed by the Board Selection Committee, under delegation from the ORG. 	
Strategy	 The Board approves the strategy for the company through 10 year long-term strategic plans. Under the Corporations Act, Tas Water must also develop a corporate plan (which is subject to consultation with stakeholders and voted on at the AGM) which identifies strategic and operational plans over a 5 year period. A Letter of Expectations communicates the shareholders performance expectations and strategic priorities to the Board. 	
Accountability	 The Board is ultimately accountable to the ORG. Tasmanian Economic Regulator establishes and administers a Customer Service Code. TasWater is required to meet the customer-related standards, procedures, practices and conditions for regulated services as set out by the code. Consumers have recourse to the Ombudsman if dissatisfied with how a complaint has been dealt with by Tas Water. 	

IN CONFIDENCE - NOT GOVERNMENT POLICY

Dŵr Cymru Welsh Water



Background	 Welsh Water is a 'not-for-profit company' which has been owned by Glas Cymru since 2001. Welsh Water does not have shareholders, and any financial surpluses are reinvested in the business for the benefit of customers. 		
Purpose and objectives	 To provide high quality and better value drinking water drinking water and environmental services to enhance the wellbeing of their customers and the communities they serve. The Welsh Water model combines commercial rigour and discipline of a corporate entity, with access to competitively priced finance, whilst having a single focus on acting in the best interests of consumers. 		
Legal form	 Welsh Water is a company limited by guarantee which has no shareholders and its corporate governance functions are the responsibility of the Board. Membership is made up of individuals drawn from across their supply area (or have a strong connection with it) who carry out a governance role. As there are no shareholders, any dividend declared is reinvested back into the business. 		
Governance	 The Board comprises a majority of independent non-executive directors and its members. Members have no financial stake in the business and play a secondary governance role. They are selected by an independent selection panel. Members are not representatives of outside stakeholder groups but are unpaid individuals whose duty it is to promote the good running of the company in the interests of consumers. Members at any time shall not exceed 200. The Board can also dismiss members. The Company may by resolution appoint or remove any person who is willing to act to be a Director. There are competency based appointments to Board by Board nomination committee. 		
Strategy	 Every 5 years the Board develops a detailed business plan which is subject to customer consultation. This plan is also submitted to Ofwat as part of the Price Review process. A longer term 25 year plan is ensures that the Board can continue to provide excellent and affordable services well into the future. These plans sit within the wider context of the Welsh Government's Wellbeing of Future Generations Act 2015. 		
Accountability	 Members hold the board to account through the AGM process. Members are crucial to the continued good governance by ensuring that the people leading the company are clearly and demonstrably accountable. 		
	IN CONFIDENCE - NOT GOVERNMENT POLICY 88		





Background	 Watercare is a Council-controlled organisation (CCO) fully owned by Auckland Council. Watercare became a CCO in 2012 when the Auckland supercity was established. 	
Purpose and objectives	 Provide essential water and wastewater services, protect public health and help communities to flourish. Manage operations efficiently with a view to keeping the overall costs of water supply and wastewater services to its customers (collectively) at the minimum levels consistent with the effective conduct of its undertakings and the maintenance of the long-term integrity of its assets. The objectives, obligations and rules relating to Watercare are prescribed in the Local Government (Auckland Council) Act 2009. 	
Legal form	 Watercare is a limited liability company registered under the Companies Act 1993. Ownership by Auckland Council is expressed directly in legislation (LGACA). 	
Governance	 Auckland Council appoints directors, (The Appointments, Performance Review and Value for Money Committee). The Board of directors appoints the CE. Board members hold office at the pleasure of the council and may be removed at any time by council resolution. All board appointments will be made on the basis of the skills, knowledge and experience which the board as a whole requires to be effective. 	
Strategy	 The role of the council is to set the strategic direction, plans and expectations for CCOs. The Governing Body is responsible for developing plans and strategies that CCOs must give effect to. Each CCO is required by statute to give effect to the aspects of the Long-term Plan relevant to it. The expectation that CCOs will adhere to, give effect to and act consistently with council policies, plans and strategies is addressed through annual review via the letters of expectation and statement of intent process, the Long-term Plan processes and the quality policy guidelines Auckland Council. 	
Accountability	 The Board of Watercare is accountable to the Governing Body of Auckland Council. The CCO Accountability Policy (which is part of the Long-term Plan) sets out how the council expects each CCO to contribute to achieving the outcomes of the Auckland Plan 2050 and the associated Development Strategy, along with several other relevant strategies and plans. A customer contract sets out Watercare's obligations to its customers and customer responsibilities. That contract is a legally binding document. 	

IN CONFIDENCE - NOT GOVERNMENT POLICY

Crown Entity Company (CRI)



Background	 Examples of Crown Entity Companies in NZ include Radio NZ, ESR, AgResearch, and TVNZ. Crown Research Institutes (CRIs(are the most prevalent examples of Crown Entity Companies (of which there are 7 currently). 	
Purpose and objectives	 Usually prescribed in the primary legislation. Also have principles for operation which are similar to those in SOEs (with some notable differences) 	
Legal form	 Incorporated under the Companies Act as limited liability companies and wholly owned by the Crown. Maintain long-term financial viability. Have a range of non-commercial objectives (eg. pursue excellence, be a good employer, sense of social responsibility) A Crown entity company must have a constitution. Ownership is held equally between 2 shareholding Ministers. One of these must be the Minister of Finance. As set out in Letters of Expectation. Shareholder Ministers decisions are joint. Some items would require approval of full Cabinet. 	
Governance	 Directors of CRIs are appointed by the Governor-General, on the recommendation of the responsible Ministers, in the case of a Director of an independent Crown entity. The shareholding Ministers may remove a director by shareholder resolution in accordance with the Companies Act 1993. There are range of reasons for disqualifying people from being Directors. The board of a statutory entity must ensure that the statutory entity performs its functions: (a) efficiently and effectively; (b) in a manner consistent with the spirit of service to the public; (c) in collaboration with other public entities 	
Strategy	 Each year, the shareholding Ministers lay out their expectations for the Crown Research Institutes in an 'Operating Framework'. Shareholding Ministers must participate in the process of setting the company's strategic direction and performance expectations and monitoring the company's performance. 	
Accountability	 Board members are accountable to the 2 shareholding Ministers for performing their duties. Crown entity companies are accountable to shareholders through obligations set out in the Companies Act 1993. Crown entity companies are directly accountable to customers because customers make decisions about whether or not to fund the company's work based on the quality of its outputs. (for example, providing research grants to a CRI). Crown entity companies are generally not providing a monopoly service so are accountable via normal market mechanisms. 	
	IN CONFIDENCE - NOT GOVERNMENT POLICY	

Ontario Clean Water Agency



	Ontario Clean Water Agency Agence Ontarienne Des Eaux	
Background	 OCWA is an operational enterprise agency established in 1993 under the Capital Investment Plan Act (CIPA). As a service company, it does not own the water assets. Provides operation, maintenance and management services for more than 450 water and waste water treatment facilities in the province on behalf of about 200 municipalities. Can also provide financing for municipalities investing in capital infrastructure. This can help those clients spread out major expenditures over a number of years to help them better manage their cash flow. 	
Purpose and objectives	 Main objectives are to: assist municipalities, the Government of Ontario and other persons to provide water and sewage works by financing, planning, developing, building and operating those works and services, financing and promoting the development of new technologies, and c out their activities in a way that protects human health and the environment. It sells goods and services to the public in a commercial manner. 	
Legal form	 Provincial government is the owner of OCWA which is established in primary legislation. When ordered to do so by the Minister of Finance, a corporation shall pay into the Consolidated Revenue Fund such of its surplus funds as are determined by the Minister of Finance. Monitoring and ownership agency is the Ministry of the Environment. 	
Governance	 Administered by a Board of Directors, the members of which are appointed by the Lieutenant-Governor-in-Council on the recommendation of the Premier of Ontario and the Minister of the Environment, Conservation and Parks. The Board is comprised of both public servants and independent members. The basis of competency for directors is extensive including the ability to communicate, knowledge of the sector, and experience and ability to objectively balance competing interests. 	
Strategy	The Board is responsible for the overall supervision of the affairs of OCWA including setting strategic direction, monitoring agency performance and ensuring appropriate systems and controls are in place.	
Accountability	 The Board is accountable to the Provincial Legislature through the Minister of the Environment, Conservation and Parks. Report on facility performance to employees, clients and stakeholders. Produce a three-year Business Plan that is submitted annually to the Minister of Environment, Conservation and Parks for approval and posted publicly. Have annual attest audits conducted by the Office of the Auditor General and periodic Value for Money audits. Accountability to consumers lies with the municipality. 	

IN CONFIDENCE - NOT GOVERNMENT POLICY



Item 9

Alternatives to structural reform

- Throughout the last four years the Department has worked with local government, iwi/Māori and water industry experts to consider options for reform.
- Alternative options that were considered include the following, none of these options address all four of the underlying problems:
 - Sector-led reform (political and legislative barriers mean this will have a piecemeal and slow change)
 - A national three waters fund (increased operational burden with no clear revenue source)
 - Central government funding to close the infrastructure deficit (taxpayer funding to an inefficient system is unsustainable)
 - Regulatory reform only (unlikely to be affordable for some communities which will incentivise piecemeal change as communities struggle)
- An overview of these alternatives is appended to this pack. Comprehensive analysis can be found in the Department's Regulatory Impact Analysis online here: RIA
- The Department also commissioned the Water Industry Commission for Scotland to assess a wide variety of configurations and size entities (ranging from 2-16 entities) including regional boundaries. This series of analysis can be found online here: WICS Reports

Three Waters Reform Programme

NOT GOVERNMENT POLICY

1. Sector-led reform

- While some regions have undertaken investigations of local service delivery reform options such as the Hawke's Bay, limited progress has been made with these sector-led reforms
- There are also statutory barriers to aggregation of service delivery that are likely to limit the potential benefits of these reforms
- Continuing with a sector-led approach would require a significant, coordinated approach to reform, of a scale and extent not previously seen. There are no guarantees that reforms would be delivered consistently across the country
- Evidence suggests that political and economic barriers to sector-led reforms are high
- Proceeding with a sector-led approach to service delivery reform, or unconditional investment, would not
 guarantee that reform will occur or be achieved in a way that meets the objectives of reform or addresses
 root causes
- Without asset ownership, investment decisions will still be made by individual local authorities and subject
 to revenue and debt constraints and in the longer-term, inefficiencies will still be likely due to limits on scale

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Item 9

1.Sector-led reform continued

- It is likely that councils would need to establish multi-regional providers as council-controlled organisations (CCOs) as provided for through the Local Government Act 2002 (LGA).
- This approach would have some limitations, including:
 - current provisions in the LGA are not fit for this purpose, and present barriers to reform
 - It is likely to take as long to redesign and amend the existing legislative provisions, as it would to create bespoke provisions in new legislation (including some form of economic regulation)
 - establishing CCOs requires the agreement of all councils, each of which would need to undertake public consultation. This would take time and creates uncertainty about the outcome
 - o if the new entities were CCOs, this is likely to have implications for council financing arrangements
 - For example, they may not be sufficiently separate from local government to borrow at similar rates as other utilities
- Shared service models, which do not involve asset ownership, have a number of shortcomings. Wellington
 Water, for example, is still subject to decisions of council owners who retain asset ownership and have
 different views on relative priorities and charging which limit Wellington Water's ability to plan and invest
 strategically in its network

Three Waters Reform Programme

NOT GOVERNMENT POLICY

2. National three waters fund

- Officials have considered the option of establishing a national three waters fund, similar to the National Land Transport Fund (NLTF) that the New Zealand Transport Agency administers
- There are fundamental challenges with establishing a national three waters fund including:
 - this approach would not deliver the benefits of scale
 - The NLTF is sourced from road users through various charges, with local government coinvestment in addition to this (sourced largely from rates). However, there is no consistent user charge regime in place that would be amenable to a centralised collection of revenue without operational inefficiencies
 - A newly created national fund would also require machinery to administer it, either through the creation of a separate function within an existing entity or a completely new entity altogether. This adds to the costs and complexity associated with the fund.
- More importantly, even if the operational and administrative challenges noted above were
 addressed, a national fund would fail to address the other root causes we have identified, and any
 lift in investment levels would occur within a system that will continue to struggle from a lack of
 scale, capability, accountability and operational independence

Three Waters Reform Programme

NOT GOVERNMENT POLICY

tem 9

Attachment 2

3. Central Government funding

- Councils often call for more central government funding to help councils get on top of the \$120bn - \$185bn infrastructure deficit
- This would accelerate a closing of the infrastructure gap, however it has a reliance on taxpayers (many of whom are also ratepayers) to continue to fund a system that has systemic failings and inefficiencies
- This would not result in fundamental changes to how this critical infrastructure is procured, assets are managed, and services are operated and therefore would be unlikely to realise significant operating, capital and financial efficiencies
- This is not a sustainable long-term solution

Three Waters Reform Programme

NOT GOVERNMENT POLICY

4. Regulatory reforms only

- Officials have also examined the extent to which outcomes, objectives, and 'strategic shifts' can be achieved through regulatory reform alone
 - This would require a coordinated change in the regulatory system to strengthen the consideration of environmental impacts alongside the increased focus on public health that Taumata Arowai would bring
 - It would also require the introduction of economic regulation of local authority service provision, including much more stringent performance measurement, information disclosure, and protections for consumers than is currently the case
- This approach, on its own, will not achieve benefits of scale, greater flexibility to borrow, greater access to capital, long-term funding certainty, and greater capability and capacity
- It may encourage some sector-led service delivery reforms, but this is unlikely to be on the widespread scale that would be required to meet the added pressures introduced on the system
- While regulatory reform alone would not be sufficient to achieve the outcomes Ministers are seeking, it will
 form an important part of the overall reform pathway

Three Waters Reform Programme

NOT GOVERNMENT POLICY



Council Agenda 3 February 2022- OPEN Page 165 of 406



Council Agenda 3 February 2022- OPEN Page 166 of 406

Stormwater system is complex

Unlike drinking and wastewater, which operate as "closed networks", stormwater systems are "open systems" that are owned and operated by a number of public and private organisations.

A Stormwater Technical Working Group was established to identity future arrangements for the planning and management of stormwater services and how those services could be successfully delivered by the water services entities, whilst protecting and enhancing the relationship between the proposed water services entities and local authorities.

The Stormwater Technical Working Group Report identified key issues, risks, opportunities, and options associated with the transfer, and includes proposals for:

- the future arrangements for the transfer of stormwater assets and management of stormwater systems and infrastructure;
- managing the interface between the roles and functions of the proposed water
 services entities, local authorities, mana whenua, transport providers, and
 regional councils to work together to manage stormwater systems and
 functions; and
- an approach and timeframe for the transfer of responsibility for managing stormwater from local authorities to the water services entities.

Stormwater system is owned and operated by a number of public and private organisations

Public Land (parks, reserves, lakes and wetlands)

Private Land (farms and lifestyle blocks, areas of low,

density urban areas

Central, Regional and Local Households and Government Businesses

(includes swales, culverts, catch-pits, pipe networks)

NZTA, DOC, and Territorial Local Authorities

State Highways and Local Roads

Flood protection
infrastructure
(stops banks, stormwater
detention areas)

Stormwater pipe network
and Outlets

Regional Councils Territorial Authorities

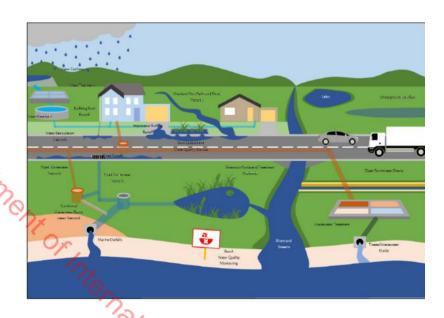
Catchment Management, Regulation by Regional
Councils

Three Waters Reform Programme

NOT GOVERNMENT POLICY

It is not practical to transfer all elements of the wider stormwater system to the proposed entities

- Most stormwater systems are made up of both a dedicated reticulated stormwater network and above ground, secondary, and overland flow paths.
- The infrastructure and assets that make up stormwater systems are diverse and can include pipes, swales, detention areas, ponds, wetlands, and urban (modified and unmodified) streams and rivers.
- The arrangements for managing stormwater systems and the outcomes they deliver are highly variable; and are strongly linked to underlying recreational, amenity, resilience, and transport outcomes.
- Unbundling the accountabilities for stormwater systems and services
 and the recreational, amenity, and transport outcomes from underlying
 land use outcomes is a key transfer challenge and priority.
- Following transfer of responsibilities, the proposed water service entities will need to continue to collaborate with local authorities and other key agencies.
- These arrangements should be formalised through interface frameworks/agreements that address underlying critical functions, levels of service, and how they will be prioritised and delivered.



Three Waters Peform Programme

NOT COVERNMENT DOLLCY

ব

Item 9

Attachment 2

Transfer principles and framework

- To following principles will guide the transfer of stormwater functions to new water service entities:
 - That water service entities should adopt a ki uta ki tai (Mountains to the Sea) perspective, applying an integrated catchment management approach that considers both stormwater quantity and quality
 - It must give effect to Te Mana o te Wai and work in partnership with tangata whenua and mana whenua
 - Existing ownership of the land and/or stormwater assets should be retained where possible
 - Stormwater management should be transferred at the same time as drinking water and wastewater functions
 - That the transfer of responsibilities should not leave "stranded" stormwater responsibilities with local authorities
 - The water service entities will have technical and operational capacity and capability which should be leveraged to support regional and territorial authorities
 - That the civil defence emergency management roles and responsibilities should remain at a local, regional, and national level, but new water service entities should have the obligations of lifeline utility operators
- There are three areas of focus within the framework for transferring stormwater functions :
 - The transfer of territorial authority stormwater assets to the water service entities
 - Future regulatory interfaces to maintain and operate the stormwater network
 - Managing the interfaces between agencies, land, and infrastructure

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Transfer of stormwater assets

- The transfer of territorial authority stormwater assets to the water service entities will be based on their predominant use and criticality for the operation of the stormwater system.
- If the function of the asset has stormwater as a predominate use, then it would transfer to water service
 entities.
- If the predominate use is not stormwater (such as a park or a road) but the asset or land is critical to the function of the stormwater system, then the water service entity and current owner must establish an agreement to manage the interface between the respective functions for the underlying use, and stormwater system.
- These interfaces and/or service level agreement must recognise the importance of all outcomes i.e. including the 'non-stormwater' critical functions.
- These asset transfer principles should be employed flexibly because there will be 'special cases' that will need to be managed on a case-by-case basis.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Item 9

Attachment 2

Future regulatory interfaces to maintain and operate the stormwater network

- Environmental outcomes and standards for stormwater discharges will continue to be regulated by regional councils.
- Water service entities will be responsible for managing the stormwater system to meet environmental standards that are set through planning and consent processes.
- Stormwater catchment management plans should be developed by water service entities to provide a framework for delivery against regulatory requirements
- Water service entities should have limited powers (like territorial authorities) to support them to maintain and operate stormwater system.

Three Waters Reform Programme

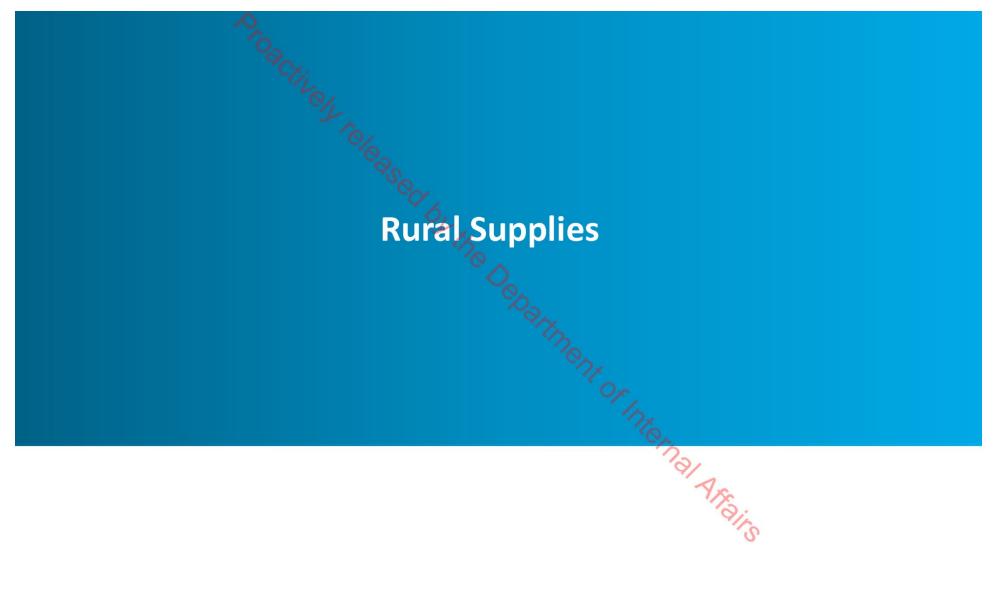
NOT GOVERNMENT POLICY

Managing the interfaces between agencies, land, and infrastructure

- The water service entity will not own all the assets or land that support the stormwater system to deliver outcomes.
- Any future arrangements will require ongoing collaboration between water service entities, local authorities, regional council, and road controlling authorities.
- This will mean that they will need to need to establish an interface and/or service level agreement (or other similar arrangements) with key public sector entities for the:
- · operating and maintenance activities; and
- · funding and future investment arrangements
- To ensure consistency, a national approach will be adopted to develop a framework to mandate interface and/or service agreements, but individual agreements should be defined through direct engagement between water service entities and respective local authorities and agencies

Three Waters Reform Programme

NOT GOVERNMENT POLICY



Council Agenda 3 February 2022- OPEN Page 173 of 406

Rural/small water supplies and the Reforms

- The reform proposals are about ensuring all New Zealanders have access to safe, affordable three waters services that meet the expectations of communities now and into the future
- We know that for some small/rural communities these services will become increasingly expensive into the future
- The three waters service delivery reform is proposing to reform council-owned drinking water, wastewater and stormwater supplies. It is not designed to reform privately owned supplies
- However, the Government acknowledges there are a range of rural water schemes that provide a combination of drinking water and stock water to rural communities and/or supplies that have mixed ownership
- Supplies of this nature exist throughout rural areas and are essential to the economy and local communities.

 Many were developed by central government funding in the 1970s, are funded and run by committees of farm users, and receive council expert assistance to run the supply
- Where there are existing service delivery arrangements between councils and community/rural schemes, the National Transition Unit will work with all parties through the transition period to identify these and ensure the services continue in the future system with appropriate agreements in place with the new entities (e.g., where private community operated services require technical assistance from the entities)

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Item 9

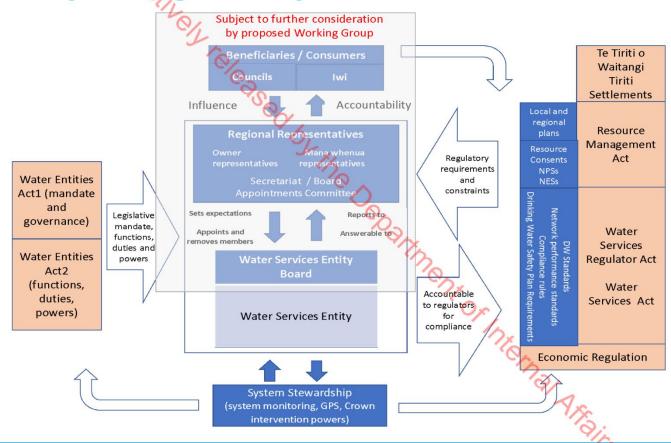
Rural Supplies and the Water Services Act

- Under the Water Services, Act, drinking water quality safeguards are being extended to all drinking water suppliers, including small/rural suppliers. Key features of the Act that impact on small/rural supplies include:
 - The Government is committed to ensuring all New Zealanders have access to safe, quality drinking water whether they
 live in a community of two households or two hundred thousand households
 - Single household self-suppliers will be exempt from compliance requirements
 - A foundation of the Act is that regulation from this point forward needs to be proportionate to the scale, complexity, and
 risk profile of a supply
 - This means that, for small supplies or those in rural areas, the new system will have mechanisms that are simple and costeffective
 - The new water regulator, Taumata Arowai is working with rural and agricultural suppliers, and in particular farmers who supply neighbours, on practical, cost-effective solutions such as point of entry devices, including UV filters
 - The Act also has provisions which are flexible and enable small suppliers like farmers, marae, or small batch communities to put in place arrangements that suit themselves and their neighbours. For example, requiring users of their supply to install their own end-point treatment devices and maintain
 - Small suppliers including rural suppliers such as farmers will have up to seven years to comply with the new requirements

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Summary of regulatory environment for WSEs



Three Waters Reform Programme

NOT GOVERNMENT POLICY



Three Waters Reform Programme

Overview of Water Services Entities Bill – governance, accountability and representation arrangements

www.dia.govt.nz/Three-Waters-Reform-Programme

New Zoot and Governmen



Outline

- The purpose of these slides is to provide an overview of the Water Services Entities Bill.
- The focus of the material is the governance, accountability and representation arrangements in the Bill that fall within the Working Group's terms of reference.
- Other areas are covered briefly so the Working Group has a full overview of the core features of the Bill.
- The aim will be to cover this material in 10 15 minutes and allow the remaining time for discussion.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Overview

- The Water Services Entities Bill will establish 4 publicly owned entities to provide drinking water, wastewater and stormwater services in place of local authorities.
- It is the first bill in a suite of legislation, and contains the ownership, governance and accountability arrangements for the entities, and the primary relationships between entities and territorial authorities, mana whenua and the Crown.
- Further legislation will be necessary to:
 - provide the functions and powers relating to service delivery;
 - implement the new arrangements (for example, transfer assets, liabilities and contracts);
 - make any changes to preserve Treaty settlements or other arrangements between mana whenua and councils;
 - establish economic regulation and consumer protection regimes; and
 - make detailed changes to other legislation (for example, the Local Government Act 2002).

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Item 9

Attachment 2

Core aspects of legal form

- Water services entities are a new statutory body. The legislation draws on the Crown Entities Act 2004 and the Local Government Act 2002.
- Each entity is a body corporate. It is a separate legal entity that is collectively owned by the territorial authorities in its service area (clause 13).
- A water service entity can do anything that is authorised by the Bill or that a natural person can do, as long as it is for the purpose of performing its functions, which are to provide safe, reliable and efficient drinking water, wastewater and stormwater services (clause 12, 14, 15, and 16).
- The service area and territorial authority owners for each entity are set out in Schedule 2. This schedule names each entity the name can however be changed (regulations can change the name in the Act).

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Giving effect to the Treaty of Waitangi

Clause 4 sets out the arrangements in the Bill that recognise and respect the Crown's responsibility to give effect to the principles of the Treaty of Waitangi. These include:

- An objective of each entity is to give effect to Te Mana o te Wai to the extent it applies to water services (clause 10(f)). Mana whenua can make a Te Mana o te Wai statement for water services, and an entity must respond with a plan for how it will give effect to this objective (clauses 121 123).
- Treaty settlement obligations if the Bill is inconsistent with a Treaty settlement obligation, the Treaty settlement obligation prevails (clause 9). An operating principle of each entity is to give effect to Treaty settlement obligations that relate to water services (clause 12(e)) this is an enduring requirement.
- A water services entity must have the capability and capacity to give effect to the principles of the Treaty of Waitangi and engage meaningfully with mana whenua (clauses 12(d) and 62(a)).
- The board appointment committee and board must collectively have knowledge and experience in the principles of the Treaty of Waitangi and perspectives of te ao Māori (clauses 33, 48 and 62(b)).

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Item 9

Attachment 2

Summary of governance structure

- Each entity has a two-tier governance structure.
- The **regional representative group** provides the strategic oversight and direction for the entity and appoints and removes the board through its **board appointment committee** (clauses 24 46).
- The regional representative group must perform its powers, functions and duties for the benefit of all communities in the entities' service area (clause 36).
- The **board** is the governing body of the entity, and provides independent, competency-based corporate governance (clauses 47 77).
- The board is directly accountable to the regional representative group for its collective duties, which are to ensure that the entity acts in a manner consistent with its objectives, functions, operating principles, and statement of intent, and has the capability and capacity to give effect to the principles of the Treaty and engage meaningfully with mana whenua (clauses 61, 62 and 68).
- Both regional representatives and board members must disclose conflicts of interest (clauses 80 92).

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Strategic direction, planning, and reporting

The regional representative group sets the strategic direction for the entity through a **statement of strategic and performance expectations** (clauses 116 - 120). This states the objectives, priorities, and outcomes for the entity. The board must give effect to the statement of strategic and performance expectations.

The board must maintain corporate planning and reporting documents:

- an annual statement of intent sets the strategic intentions, forecasted expenditure, and performance expectations over a 3 year period (clauses 124 – 127);
- an annual report contains the actual expenditure and performance of the entity (clauses 137 143). This is audited by the Office of the Auditor-General;
- 3 yearly asset management and funding and pricing plans set the infrastructure plan and financial strategy for the entity over a ten year period (clauses 128 132). A 3 yearly infrastructure strategy sets the infrastructure strategy over a 30 year period (clauses 134 136);
- the board must consult the regional representative group on all these documents, and must engage with consumers and communities on them in a transparent way Schedule 3.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Item 9

Attachment 2

Regional representative group - constitution

- The Bill provides flexible arrangements for each regional representative group.
- There must be a equal number of territorial authority and mana whenua representatives on each group. The minimum number of representatives is 6, and the maximum is twice the number of territorial authority owners (clause 24).
- Other aspects of the regional representative group are set through its **constitution**, which sets out how appointments are made, how decision-making occurs, and other matters such as committees. It is a very open and flexible model that can be tailored to the characteristics of each entity (clause 36 43).
- The **first constitution for each entity** is made through regulations, following engagement with the territorial authority owners and mana whenua (clauses 41 and 180).
- On establishment, the group can amend its constitution by a 75% majority. The Minister of Local Government has a "last resort" power of veto over changes to a constitution (clause 42).

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Changes made to proposal to respond to feedback

The governance, accountability and representation arrangements in the Bill include a number of changes to the original Government proposal. These are designed to respond to council feedback received during the eight-week engagement. In summary, these are:

- greater flexibility for each regional representative group to determine its own arrangements through a constitution – this differs from the original proposal, which required a number of matters to be hard wired in primary legislation;
- board appointments and removals are made by a committee of the regional representative group – the original proposal was for these powers to be exercised by an arms-length 'independent selection panel';
- there is direct accountability for duties imposed on the board to the regional representative group members may be removed for failure to carry out these duties;
- the board is required to give effect to the statement of strategic and performance expectations issued by the regional representative group this provides more direct influence for the group over the entity's operation.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Item 9

Attachment 2

Overview of other matters

- There are very strong protections against privatisation based on long-standing provisions in the Local Government Act 2002, which are that an entity must not divest its ownership or lose control of significant infrastructure clause 96. In addition, if a divestment proposal is to proceed, it must have support from both 75% of an entity's regional representative group and the electors in its services area Schedule 3.
- Each entity must establish consumer forums, and conduct an annual engagement stocktake (clauses 176 – 177). These requirements are in addition to engagement with consumers and communities on an asset management plan, funding and pricing plan, and infrastructure strategy.
- A **government policy statement** can set the whole-of-government direction and strategic priorities for water services that covers all entities and regulators (clauses 110 120).
- A department will be a **whole-of-system monitor**, and there are **Crown intervention** powers based on existing powers in the Local Government Act 2002 (clauses 150 175).
- The transition and establishment arrangements are set out in Schedule 1.

Three Waters Reform Programme

NOT GOVERNMENT POLICY

Meeting notes from 17 December 2021 will be uploaded here following confirmation at the following Working Group meeting.

DRAFT FOR CONSULTATION

Water Services Entities Bill

Government Bill

Explanatory note

General policy statement

This Bill is a stand-alone Bill that establishes 4 publicly owned water services entities that will provide safe, reliable, and efficient water services in place of local authorities. The Bill contains the ownership, governance, and accountability arrangements relating to those entities, and provides for transitional arrangements during an establishment period. The entities will commence delivery of services on 1 July 2024.

Introduction

New Zealand faces a significant infrastructure challenge in relation to the drinking water, wastewater, and stormwater services that are currently delivered by territorial authorities. Water services are an essential building block for communities. Public health and well-being, better environmental outcomes, economic growth and job creation, housing and urban development, climate change, resilience to natural hazards, and the rights and interests of iwi and Māori all depend on better outcomes for those services.

The investment needed over the next 30 to 40 years to maintain and upgrade New Zealand's water infrastructure to a standard required to address the infrastructure challenge is unaffordable for most communities under the current arrangements.

By providing for the establishment of 4 water services delivery entities, this Bill paves the way for improved, effective, and efficient management of water services delivery and infrastructure so that New Zealanders will have access to safe, reliable and affordable drinking water, and wastewater and stormwater services that meet their environmental and cultural expectations.

Relationship to other proposed legislation

This Bill is just 1 component of a comprehensive package to reform water services that are currently provided by local authorities. The Bill will need to be followed by further legislation to provide for—

- additional, detailed implementation arrangements for the entities and service delivery, including provisions relating to the transfer of assets and liabilities from local authorities to new water services entities:
- specific powers, functions, and responsibilities of the new water services entities, and pricing and charging arrangements:
- economic regulation and consumer protection regimes relating to the new water services system:
- any changes to Treaty settlement legislation that are required to ensure that settlement obligations are carried forward from territorial authorities to the new water services entities:
- detailed changes to the Local Government Act 2002, the Water Services Act 2021, and other legislation to transfer service delivery arrangements to the new water services entities.

Legal form and ownership by territorial authorities

Water services entities are a new public service delivery model. Each entity will be a body corporate owned collectively by the territorial authorities in its service delivery area.

The Bill defines the service area for each entity through reference to territorial authority districts, or parts of districts. The service area of the Southern Water Services Entity is the takiwā of Ngāi Tahu, as described in section 5 of Te Runanga o Ngai Tahu Act 1996.

Function, objectives, and operating principles

The function of a water services entity will be to provide safe, reliable, and efficient drinking water, wastewater, and stormwater services in its area. The objectives of an entity will be to—

- deliver water services and related infrastructure in an efficient and financially sustainable manner:
- protect and promote public health and the environment:
- support and enable housing and urban development:
- operate in accordance with best commercial and business practices:
- act in the best interests of present and future consumers and communities:
- give effect to Te Mana o te Wai, to the extent that it applies to the duties and functions of the entity:

deliver water services in a sustainable and resilient manner that seeks to mitigate the effects of climate change and natural hazards.

The operating principles of a water services entity will be—

- developing and sharing capability and technical expertise with other water services entities and across the water services sector:
- being innovative in the design and delivery of water services and infrastructure:
- being open and transparent, including in relation to calculation and setting of prices, determining levels of service delivery to consumers and communities, and reporting on performance:
- partnering and engaging early and meaningfully with Māori, including to inform how the water services entity can give effect to Te Mana o te Wai, and understand, support, and enable the exercise of mātauranga, tikanga, and kaitiakitanga:
- giving effect to Treaty settlement obligations, to the extent that the obligations apply to the duties and functions of an entity:
- partnering and engaging early and meaningfully with territorial authorities and their communities:
- co-operating with, and supporting, other water services entities, infrastructure providers, local authorities, and the transport sector.

Governance arrangements

Water services entities will have a 2-tier governance arrangement comprising—

- a regional representative group, which provides joint oversight of an entity by an equal number of representatives of the territorial authority owners and mana whenua from within the entity's service area; and
- corporate governance by an independent, competency-based, professional board.

Appointments to, and removals from, the board will be made by a board appointment committee that is part of the regional representative group. The board appointment committee is also responsible for preparing and maintaining an appointment and remuneration policy for the board. Board members are accountable to the regional representative group when performing their duties as members.

Constitution of regional representative group

Each regional representative group will have a constitution setting out—

- its composition, and how the appointment of representatives from territorial authority owners and mana whenua will occur:
- how it will make decisions and regulate its internal procedure:

the number of its members. The Bill provides that the minimum number of
members of the regional representative group is 6. The maximum is the number of territorial authority owners in the service area of the entity, with an equal
number of mana whenua representatives.

The first constitution of each regional representative group will be set out in regulations, after the Minister engages with the entity's territorial authority owners and mana whenua in its service area.

Conflict of interest

The Bill contains provisions on conflicts of interest. The provisions apply to members of the board and regional representatives and include—

- a requirement to keep an interest register:
- the obligation of board members and regional representatives to disclose relevant interests:
- the consequences of being interested, such as the exclusion of a board member or a regional representatives who is interested from participating in decision making relating to the interest.

Statement of strategic and performance expectations

The regional representative group must make a statement of strategic and performance expectations at least once every 3 years. The purpose of a statement of strategic and performance expectations is to—

- state the regional representative group's objectives and priorities for the entity:
- inform and guide the decisions of the board.

The board of a water services entity must give effect to the statement of strategic and performance expectations.

Reporting and accountability

The Bill requires the board to prepare and adopt—

- a statement of intent setting out the forecast service performance and budget of the entity, along with an annual report setting out the actual performance and audited financial statements for the entity:
- an asset management plan and funding and pricing plan, which will cover a 10year period:
- an infrastructure strategy, covering a 30-year period.

Te Mana o te Wai

One of the objectives of a water services entity is to give effect to Te Mana o te Wai to the extent that it applies to the duties and functions of the entity. This is consistent with the approach across all legislation relating to water services, including the Taumata Arowai—the Water Services Regulator Act 2020, and on those who perform or exercise functions, powers, and duties under the Water Services Act 2021.

Mana whenua whose rohe or takiwā includes a freshwater body in the service area of an entity can make a Te Mana o te Wai statement for water services. The board must respond to the statement within 2 years, and the response must include a plan for how the entity intends to fulfil its objective to give effect to Te Mana o te Wai.

Relationship to Treaty settlements

To ensure that Treaty settlements are enduring, the Bill provides that,—

- where there is inconsistency between the legislation and a Treaty settlement obligation, the Treaty settlement obligation prevails:
- an operating principle of entities is to give effect to Treaty settlement obligations, to the extent that the obligations apply to the duties and functions of an entity.

Consumer and community engagement

A water services entity must-

- establish 1 or more consumer forums to help gather consumer views and understand consumer needs, expectations, and service requirements:
- prepare an annual consumer stocktake:
- engage with its consumers and communities on its asset management plan, funding and pricing plan, and infrastructure strategy.

In performing those functions, a water services entity must be guided and informed by the following consumer engagement principles:

- communication to consumers should be clear and appropriate, and recognise the different communication needs of consumers:
- the entity should be openly available for consumer feedback and seek a diversity of consumer voices:
- the entity should clearly identify and explain the role of consumers in the engagement process:
- the entity should consider the changing needs of consumers over time, and ensure that engagement will be effective in the future:
- the entity should prioritise the importance of consumer issues to ensure that the entity is engaging with issues that are important to consumers.

Safeguards against privatisation

The Bill sets out strong safeguards against privatisation or loss of control of water services and significant infrastructure. In particular, the Bill provides for—

- collective territorial authority ownership of entities, to ensure appropriate oversight and influence on behalf of the communities:
- joint oversight of entities by mana whenua:

- clear legislative protections against loss of ownership or control based on provisions in the Local Government Act 2002, which are that an entity must not use water services assets as security for any purpose, divest its ownership in a water service, or sell or lose control of significant infrastructure:
- a requirement that, for a divestment proposal to proceed, it must have support from 75% of both an entity's regional representative group and a poll of the electors in its service area.

The Bill provides that territorial authority owners may not receive profits from the entity, and have no beneficial interest in the security of an entity. The constitution must not give regional representatives rights or interests in assets of an entity.

Government policy statement

The Bill enables the Minister to make a Government policy statement setting out the Government's overall direction and priorities for water services, to inform and guide agencies involved in, and the activities necessary and desirable for, water services. A water services entity must give effect to the statement when performing its functions.

Crown monitoring and intervention

The Bill enables the Minister to appoint a department as a Crown monitor. The role of the monitor is to—

- act as a steward to provide oversight to the water services system from a whole-of-government perspective:
- tender advice to Ministers, and assist the Minister to carry out the Minister's role under the legislation.

The Bill contains a Crown intervention framework, providing the Minister with powers of intervention based on a graduated risk regime, including—

- circumstances where there is a significant or persistent failure by a water services entity to perform 1 or more of its functions or give effect to a Government policy statement:
- a water services entity's failure to demonstrate prudent financial management:
- a state of emergency.

The Minister's powers of intervention are based on existing powers in the Local Government Act 2002 and include the appointment of a Crown review team, a Crown observer, or, as a last resort, a Crown manager.

Transition and establishment arrangements

Schedule 1 of the Bill contains the transition and establishment arrangements, including—

 establishment entities, which will make the preparatory arrangements for full operation:

- the statutory oversight powers of the national transition unit (a business unit based in the Department of Internal Affairs) for the transition period:
- transitional provisions relating to employment of the water services workforce, including employment security by transferring existing employment positions to the relevant water services entity on terms that are no less favourable than existing terms.

Departmental disclosure statement

The Department of Internal Affairs is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at [PPU to insert URL and link] (if it has been provided for publication).

Regulatory impact statement

The Department of Internal Affairs produced a regulatory impact statement on 30 June 2021 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- https://www.dia.govt.nz/three-waters-reform-programme-cabinet-decisionsand-reform-proposals#cabinet-papers-and-minutes
- https://treasury.govt.nz/publications/informationreleases/ris

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for when the Bill comes into force. Regulation-making powers, transitional provisions, and other specified provisions of the Bill relating to the establishment of water services entities come into force on the day after Royal assent. The rest of the Bill comes into force by Order in Council no later than 1 July 2024.

Part 1 Preliminary provisions

Clause 3 sets out the purpose of the Bill. The purpose is to—

- establish 4 water services entities to provide water services in New Zealand:
- provide for their objectives, functions, service delivery areas, and governance arrangements.

Clause 4 sets out ways in which the Bill recognises and respects the Crown's responsibility to give effect to te Tiriti o Waitangi/the Treaty of Waitangi.

Clause 5 defines terms that are used in the Bill.

Clause 6 and Schedule 1 provide transitional, savings, and related provisions, including provisions that provide for—

- the establishment functions and objectives of water services entities:
- the establishment boards of water services entities to be appointed by the Minister;
- the appointment of an establishment chief executive for each water services entity:
- the reporting obligations of the water services entities during the establishment period:
- transitional provisions relating to the employment of employees of local government organisations who primarily undertake functions that are to be transferred from the local government organisations to the water services entities.

Clause 7 states that the Bill binds the Crown.

Clause 8 provides that if there is an inconsistency between a provision of the Bill and a Treaty settlement obligation, the Treaty settlement obligation prevails.

Part 2 Water services entities

Part 2 sets out key matters relating to the governance of water services entities, including—

- the objectives, functions, and operating principles of the water services entities:
- the Minister's role:
- the establishment and role of the regional representative group of each water services entity:
- the board of each water services entity and its members:
- provision for the appointment of a Crown monitor of a water services entity.

A significant number of provisions in *Part 2* are substantially similar to provisions in the Crown Entities Act 2004. However, a water services entity is not a Crown entity under that Act and the board of a water services entity is accountable to the regional representative group of the entity.

Subpart 1—Establishment of water services entities

Clause 9 provides for the establishment of a water services entity for each of the 4 service areas described in Parts 1 to 4 of Schedule 2.

Clause 10 sets out the objectives of the water services entities. These include—

• delivering water services and related infrastructure in an efficient and financially sustainable manner:

- protecting and promoting public health and the environment:
- supporting and enabling housing and urban development:
- operating in accordance with best commercial and business practices:
- giving effect to Te Mana o te Wai to the extent that it applies to the duties and functions of the entity:
- delivering water services in a sustainable and resilient manner that seeks to mitigate the effects of climate change and natural hazards.

Clause 11 sets out the functions of the water services entities. The general function of each water services entity is to provide safe, reliable, and efficient water services in its service area. The specific functions of the water services entities will be set out in a subsequent Bill.

Clause 12 sets out the operating principles of the water services entities. The operating principles of a water services entity are as follows:

- developing and sharing capability and technical expertise with other water services entities and across the water services sector:
- being innovative in the design and delivery of water services and infrastructure:
- being open and transparent, including in relation to calculation and setting of prices, determining levels of service delivery to consumers and communities, and reporting on performance:
- partnering and engaging early and meaningfully with Māori, including to inform how the water services entity can give effect to Te Mana o te Wai, and understand, support and enable the exercise of mātauranga, tikanga, and kaitiakitanga:
- giving effect to Treaty settlement obligations to the extent that the obligations apply to the duties and functions of an entity:
- partnering and engaging early and meaningfully with territorial authorities and their communities:
- co-operating with, and supporting, other water services entities, infrastructure providers, local authorities, and the transport sector.

Clauses 13 to 16 set out the status of water services entities and their core powers. In summary,—

- a water services entity is a body corporate (a separate legal entity):
- a water services entity may do anything authorised by legislation. It also may
 do anything that a natural person of full age and capacity may do (for example,
 enter into contracts). However, the entity may act only for the purpose of performing its functions.

Clause 13 also provides that a water services entity is owned collectively by its territorial authority owners but that it is not a council organisation, council-controlled organisation, or local government organisation for the purposes of the Local Govern-

ment Act 2002. Clause 147 also provides that territorial authority owners do not have any beneficial entitlement to, or beneficial interest in, the security of a water services entity.

Subpart 2—Validity of acts

Subpart 2 provides that—

- an act of a water services entity is invalid if it is an act that is contrary to an Act or is an act that is done otherwise than for the purpose of performing the entity's functions. However, in most cases this does not prevent a person (A) who is dealing with the entity from enforcing a transaction if the entity is doing a thing that a natural person of full age and capacity could do (for example, entering into a contract):
- it is irrelevant to the validity of an act that the act is not in the best interests of the entity:
- the entity may not assert against A that a person held out by the entity to be a board member, an employee, or an agent has not been duly appointed or does not have the authority that a person appointed to that position customarily has.

Subpart 3—Minister's role

Subpart 3 sets out the Minister's role in relation to the water services entities. In summary, the Minister's role is to oversee and manage the Crown's interests in, and relationship with, the water services entities and to fulfil any statutory responsibilities given to the Minister, including functions and powers—

- to issue a Government policy statement on water services:
- to appoint a Crown review team, Crown observer, or Crown manager.

Subpart 4—Regional representative groups

Establishment of regional representative group

Clauses 24 and 25 provide for—

- the establishment of a regional representative group for each water services entity:
- the regional representative group to consist of no fewer than 6 regional representatives, and an equal number of territorial authority representatives and mana whenua representatives:
- the role of each regional representative group to include functions and powers in relation to appointing and removing board members and participating in the setting of the relevant entity's strategic direction and performance expectations.

Appointment of regional representatives

Clauses 26 to 31 provide—

- for territorial authority representatives to be appointed to each entity's regional representative group by the territorial authority owners of the entity:
- for mana whenua representatives to be appointed to each entity's regional representative group by mana whenua of the rohe within the service area of the entity:
- for requirements before appointment as a regional representative.

The specific composition and appointment processes of each regional representative group will be provided for in the constitution for each regional representative group (see clause 37).

Collective duty of regional representative group

Clause 32 provides for a collective duty of the regional representative group. The consequences (if any) for breach of that duty will be provided for in the constitution of the regional representative group.

Board appointment committee

Clauses 33 to 35 require each regional representative group to appoint a board appointment committee. The main functions of the board appointment committee are to appoint and remove board members and prepare and maintain an appointment and remuneration policy for the board.

Constitution

Clause 36 requires each regional representative group to have a constitution.

Clauses 37 to 40 provide for the required content and effect of the constitution. The matters the constitution must contain include—

- the composition of the regional representative group and procedures for appointing territorial authority representatives and mana whenua representatives:
- the composition of and procedures for committees of the regional representative group (including the board appointment committee):
- the process for removing regional representatives from the regional representative group:
- decision-making procedures for the regional representative group.

Clause 41 provides that the first constitution of a regional representative group is the model constitution set out in regulations for the group.

Clauses 42 and 43 set out the process for amending or replacing the constitution of a regional representative group. A proposed constitution or proposed amendment to the constitution of a regional representative group must be approved by the Minister before it is effective.

Chairperson and deputy chairperson

Clause 44 provides that each regional representative group must elect or appoint a chairperson and deputy chairperson in accordance with the group's constitution.

Disputes

Clause 45 provides a process by which disputes are to be resolved if regional representatives disagree on a matter that they are required under the Bill to work together on, jointly develop, or agree.

Official information

Clause 46 applies Part 7 of the Local Government Official Information and Meetings Act 1987 to each regional representative group.

Subpart 5—Boards of water services entities

Role, membership, and accountability

Clauses 47 to 49 provide for—

- the board to be the governing body of the water services entity:
- the board to consist of no fewer than 6, and no more than 10, members:
- board members to be accountable to the regional representative group.

Appointment, removal, and conditions of board members

Clauses 50 to 60 provide—

- for board members to be appointed by the board appointment committee of the regional representative group:
- that the board appointment committee may only recommend a person who, in the committee's opinion, has the appropriate knowledge, skills, and experience to assist the entity to achieve its objectives and perform its functions:
- for board members to hold office for up to 5 years and that board members may be reappointed:
- for the board appointment committee to remove a board member from office at any time for just cause:
- for when board members cease to hold office.

Collective duties of board

Clauses 61 and 62 set out the collective duties of the board. The collective duties of the board of a water services entity are to—

- ensure that the entity acts consistently with its objectives, functions, operating principles, and current statement of intent:
- ensure that the entity maintains systems and processes to ensure that, for the purposes of carrying out its functions, it has the capacity and capability to give

effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi and engage with, and understand perspectives of, mana whenua:

 maintain systems and processes for the continuing education of all board members to enable them to gain knowledge of, and experience and expertise in relation to the principles of te Tiriti o Waitangi/the Treaty of Waitangi.

Individual duties of board members

Clauses 63 to 67 impose individual duties on board members, including duties—

- not to contravene, or cause the contravention of, or agree to the entity contravening, relevant legislation:
- to act with honesty and integrity:
- to act in good faith and not at the expense of the entity's interests:
- to act with reasonable care, diligence, and skill:
- to comply with requirements relating to the disclosure of information.

Effect of non-compliance with duties

Clause 68 and 69 provide that—

- the collective duties of the board are owed to the regional representative group:
- an individual board member is not liable for a breach of a collective duty. However, the board member may be removed from office in certain circumstances (for example, if they failed to take all reasonable steps to prevent the breach).

Clauses 70 and 71 provide that—

- the individual duties of the board members are owed to the regional representative group and the relevant water services entity:
- if a board member breaches an individual duty, the member may be removed from office and the entity may bring an action against them. A board member is otherwise not liable for a breach of an individual duty.

Clause 72 enables the Minister or a regional representative to apply to a court for an order restraining the board or a board member from contravening a statutory requirement.

Delegation

Clauses 73 to 76 allow the board of a water services entity to delegate any of the functions or powers of the entity or the board, either generally or specifically, to certain persons (for example, to the chief executive or another employee of the entity).

Board procedure

Clause 77 provides for the board to regulate its own procedure except as provided in this Bill and, in particular, to determine its own procedure for—

• appointing a chairperson and deputy chairperson:

- arrangements and requirements for meetings:
- the composition and procedures of committees or subcommittees (if any).

Subpart 6—General provisions relating to regional representatives and board members

Qualifications

 ${\it Clause}$ 78 provides for the qualifications of regional representatives and board members

Reliance on information and advice

Clause 79 allows board members and regional representatives to rely on information and advice given by certain persons. Board members and regional representatives must still act in good faith, make proper inquiries, and have no knowledge that the reliance is unwarranted.

Conflict of interest disclosure rules

Clauses 80 to 92 set out rules that require a board member who is interested in a matter relating to a water services entity or a regional representative who is interested in a matter relating to a regional representative group to disclose the interest. The interests include, for example, where the member or regional representative may derive a financial benefit from a matter or has a financial interest in a person to whom the matter relates. In summary,—

- the nature and extent of the interest must be disclosed in an interests register as soon as practicable after the board member or regional representative (as applicable) becomes aware that they are interested:
- a board member must not vote or take part in any discussion or decision about the matter or otherwise participate in any activity of the entity that relates to the matter (unless the chairperson or a deputy chairperson of the board gives permission to act):
- a regional representative must not vote or take part in any discussion or decision about the matter or otherwise participate in any activity of the regional representative group that relates to the matter (unless the chairperson or a deputy chairperson of the group gives permission to act):
- the entity may avoid certain acts done in breach of the rules. However, the entity may not avoid an act if the entity receives fair value:
- the rights of certain innocent third parties are protected if the entity avoids a matter.

Vacancies in membership

Clause 93 provides that a vacancy in the membership of the board or regional representative group of an entity does not affect its powers or functions.

Part 3 Operation of water services entities

Independence of water services entities

Clause 94 provides that the Bill does not authorise a Minister, a territorial authority owner, a mana whenua representative, or the regional representative group to direct a water services entity, or a board member or an employee of the entity, to require the performance or non-performance of a particular act, or the bringing about of a particular result, in respect of a particular person or persons.

Obligation to hold specified meetings in public

Clause 95 requires the board to hold at least 2 board meetings during each financial year that are open to the public.

Obligation to maintain ownership and control of water services and significant assets

Clause 96 requires a water services entity to continue to provide water services and maintain its capacity to meet its obligations under the Bill. The obligation on water services entities under this clause is substantially similar to the obligation on local government organisations under section 130 of the Local Government Act 2002.

Contracting out of water services

Clauses 97 and 98 provide for the circumstances in which a water services entity may, despite clause 96, enter into—

- a contract for an aspect of the operation of all or part of a water service:
- a joint arrangement with 1 or more other water services entities or other bodies for the purposes of providing water services.

Employees of water services entities

Clause 99 provides for the employment of the chief executive of each water services entity. The chief executive of a water services entity is appointed by the board of the entity.

Clause 100 requires each water services entity to operate a personnel policy that complies with the principle of being a good employer.

Protections from liability

Clause 101 defines terms used in the provisions relating to protections from liability.

Clause 102 protects board members and employees from the liabilities of a water services entity.

Clause 103 provides that—

- a board member of a water services entity is immune from civil liability, in respect of an excluded act or omission, to the entity or any other person unless it is also a breach of an individual duty (see clauses 63 to 67):
- an employee is immune from civil liability to any person in respect of an excluded act or omission.

Clause 103(3) provides that the protections do not prevent a court from making certain orders or affect any right to apply for judicial review.

Clauses 104 to 106 provide that a water services entity may only indemnify or effect insurance for a board member or employee in respect of acts or omissions for which the person is protected from liability.

Dealings with third parties

Clause 107 provides for how a water services entity may enter into contracts or other enforceable obligations.

Clause 108 identifies a water services entity's head office as its address for service in New Zealand.

Official information

Clause 109 applies Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987 to each water services entity.

Part 4 Financial and accountability matters

Subpart 1—Government policy statement on water services

Subpart 1 provides for a Government policy statement on water services. The purpose of a Government policy statement is to—

- state the Government's overall direction and priorities for water services:
- inform and guide agencies involved in, and the activities necessary or desirable for, water services.

Clause 113 provides that a water services entity must give effect to the Government policy statement when performing its functions.

Clause 114 provides for the process for amending a Government policy statement.

Clause 115 requires the Minister to present a copy of a Government policy statement to the House of Representatives as soon as practicable after issuing it and requires. Clause 115(2) requires the department to publish the statement on its website.

Subpart 2—Regional representative group's statement of strategic and performance expectations

Subpart 2 provides for a statement of strategic and performance expectations to be issued by the regional representative group. The purpose of a statement of strategic and performance expectations for a water services entity is to—

- state the regional representative group's objectives and priorities for water services in the entity's service area; and
- inform and guide the decisions and actions of the board of the entity.

Clause 118 provides that the board of a water services entity must give effect to the statement of strategic and performance expectations for the entity when performing its functions.

Clause 119 requires the board of an entity to publish the regional representative group's statement of strategic and performance expectations on the entity's website.

Clause 120 requires an entity's regional representative group to annually review the performance of the entity's board in giving effect to the statement of strategic and performance expectations.

Subpart 3—Te Mana o te Wai statements for water services

Subpart 3 provides for mana whenua whose rohe or takiwā includes a freshwater body in a water services entity's service area to be able to provide the entity with Te Mana o te Wai statements for water services. A water service entity must respond to a Te Mana o te Wai statement and include in its response a plan that sets out how the entity intends to fulfil its objective of giving effect to Te Mana o te Wai to the extent that it applies to the duties and functions of the entity.

Clause 123 requires the board of a water services entity to publish its response to a Te Mana o te Wai statement as soon as practicable after the response is issued and, in any event, within 2 years of receiving the statement to which the response relates.

Subpart 4—Reporting obligations

Planning: statement of intent

Clauses 124 to 127 require the board of a water services entity to annually provide a statement of intent for the entity. The purpose of a water services entity's statement of intent is to promote the public accountability of the entity by setting out the entity's strategic intentions and providing a base against which the water services entity's actual performance can later be assessed.

Planning: asset management plan

Clauses 128 to 130 require the board of an entity to provide an asset management plan to the entity's regional representative group at least once in every 3-year period. The asset management plan must cover a period of not less than 10 consecutive financial years.

Planning: funding and pricing plan

Clauses 131 to 133 require the board of an entity to provide a funding and pricing plan to the entity's regional representative group at least once in every 3-year period. The funding and pricing plan must cover a period of not less than 10 consecutive financial years and include a financial strategy for the years covered by the plan.

Planning: infrastructure strategy

Clauses 134 to 136 require the board of an entity to provide an infrastructure strategy to the entity's regional representative group at least once in every 3-year period. In summary, the strategy must cover a period of at least 30 consecutive financial years and identify—

- significant infrastructure issues for the water services entity over the period covered by the strategy:
- the principal options for managing those issues and the implications of those options.

Reporting: annual report

Clauses 137 to 145 require a water services entity to provide an annual report to the entity's regional representative group after each financial year. An entity must publish a copy as soon as practicable after it has been provided to the regional representative group and, in any event, no later than 20 working days after receiving the audit report provided by the Auditor-General under clause 142.

Subpart 5—Other provisions for financial management

Bank accounts

Clause 146 provides for requirements relating to the bank accounts of water services entities.

Prohibition on equity returns

Clause 147 provides that territorial authority owners—

- do not have any beneficial entitlement to, or a beneficial interest in, the security of a water services entity; and
- must not receive any equity return, directly or indirectly, from a water services entity.

Subpart 6—Accounting records

Clause 148 requires the board of a water services entity to ensure that proper accounting records are kept.

Subpart 7—Borrowing

Clause 149 permits a water services entity to borrow or enter into incidental arrangements, within or outside New Zealand, in currency other than New Zealand currency.

Part 5 Monitoring

Subpart 1—Monitor

Appointment and role of monitor

Clause 150 provides for the Minister to appoint a department as the monitor for the purposes of the Bill. The monitor's role is to assist the Minister to carry out their role (see clause 23) and to perform and exercise certain functions and powers, including administering appropriations and legislation and tendering advice to ministers.

Monitor's information-gathering power

Clauses 151 to 154 provide for-

- the monitor's power to request information from a water services entity:
- good reasons for an entity to refuse to provide information requested:
- civil proceedings relating to non-compliance with an information request.

Subpart 2—Minister's powers to intervene

Subpart 2 provides for the power of the Minister to appoint a Crown review team, a Crown observer, or a Crown manager (a ministerial body).

Clause 155 defines problem, for the purposes of the Minister's powers to intervene, as a matter, circumstance, or failure that has actual or probable adverse consequences for consumers or communities in a water services entity's service area and includes—

- a matter or circumstance relating to the management or governance of the entity that detracts from, or is likely to detract from, its ability to give effect to its purpose:
- a significant or persistent failure by the entity to perform 1 or more of its functions or duties under the Bill or to give effect to a Government policy statement.
- the consequences of a state of emergency:
- a failure by the entity to demonstrate prudent management of its revenues, expenses, assets, liabilities, investments, or general financial dealing.

Crown review team

Clauses 156 and 157 provide for the power to appoint a Crown review team. In summary, the Minister may appoint a Crown review team if—

- the water service entity, without good reason, has not provided the information requested by the monitor by the stated or agreed date:
- the Minister believes on reasonable grounds that a problem relating to the
 water services entity may exist and the water services entity is unable or
 unwilling to effectively address the problem or another ministerial body has
 recommended the appointment:
- the Minister has received a written request to do so from the water services entity or the entity's regional representative group.

Crown observer

Clauses 158 and 159 provide for the power to appoint a Crown observer. In summary, the Minister may appoint a Crown observer in relation to a water services entity on the entity's request or if the Minister believes, on reasonable grounds, that a problem relating to a water services entity exists and—

- the appointment of a Crown observer is necessary to enable, or better enable, the Minister to effectively address the problem; or
- the appointment of a Crown observer is necessary to enable, or better enable, the Minister to monitor the water services entity's progress in addressing the problem; or
- another ministerial body has recommended the appointment.

Crown manager

Clauses 160 and 161 provide for the power to appoint a Crown manager. The Minister may appoint a Crown manager in relation to a water services entity on the entity's request or if the Minister believes, on reasonable grounds, that a problem relating to a water services entity exists and—

- the nature and extent of the problem is such that the entity is unlikely to effectively address the problem without the appointment of a Crown manager; or
- the entity has not, without good reason, adequately implemented a recommendation of any other ministerial body in relation to the problem; or
- another ministerial body has recommended the appointment.

Subpart 3—General provisions applying to Minister's powers to intervene

Subpart 3 provides for general provisions relating to the appointment of a ministerial body, including—

- notification and publication requirements:
- requirements for reports produced by ministerial bodies:
- remuneration and expenses of ministerial appointees:

- recovery from the relevant water service entity of expenses incurred for the appointment of a ministerial appointee:
- protection from liability for members of a Crown review team, a Crown observer, or a Crown manager.

Part 6 Miscellaneous provisions

Subpart 1—Engagement provisions

Clause 176 provides for engagement requirements relating to—

- the preparation of a water service entity's response to Te Mana o te Wai statements:
- the development of a model constitution for each entity:
- the preparation of asset management plans, funding and pricing plans, and infrastructure strategies.

Clauses 177 to 179 provide for engagement requirements relating to consumers, including requirements for the chief executive of a water services entity to—

- establish 1 or more consumer forums:
- annually prepare a consumer engagement stocktake.

Subpart 2—Regulations

Clause 180 provides for the power to make regulations, including to provide for—

- a model constitution for each regional representative group that will be the first constitution of the group under *clause 41*:
- financial and non-financial disclosure requirements relating to the statement of intent, asset management plan, funding and pricing plan, and infrastructure strategy:
- additional transitional and savings provisions concerning the coming into force
 of the Bill, including transitional reporting obligations that apply to local government organisations and water services entities.

Subpart 3—Amendments to other Acts

Subpart 3 provides for amendments to other Acts.

Schedules

Schedule 1 provides for transitional and savings provisions (see clause 6).

Schedule 2 describes the service area of each water services entity.

Schedule 3 provides for the process each water services entity must follow when preparing a statement of intent, asset management plan, funding and financing plan, or infrastructure strategy.

Schedule 4 provides for the process a water services entity must follow if proposing to do anything that would have the effect of the entity divesting ownership or other interest in a water service or losing control of, selling, or disposing of significant infrastructure that would result in the entity being unable to meet its obligations to continue to provide water services or maintain its capacity to do so (a **divestment proposal**).

A divestment proposal may be implemented only if-

- a regional representative group resolves to refer a divestment proposal to a poll by a vote of no less than 75% of the regional representatives present and voting:
- at least 75% of the votes cast in the poll are in favour of the proposal.

Hon Nanaia Mahuta

Water Services Entities Bill

Government Bill

Contents

		Page
1	Title	9
2	Commencement	9
	Part 1	
	Preliminary provisions	
3	Purpose	10
4	Te Tiriti o Waitangi/the Treaty of Waitangi	10
5	Interpretation	11
6	Transitional, savings, and related provisions	14
7	Act binds the Crown	14
8	Treaty settlement obligations prevail	14
	Part 2	
	Water services entities	
	Subpart 1—Establishment of water services entities	
9	Water services entities established	14
10	Objectives of water services entities	14
11	Functions of water services entities	14
12	Operating principles	15
13	Status of water services entities	15
14	Core things water services entities can do	16
15	Other things water services entities can do	16
16	Acts must be for purpose of functions	16
	Subpart 2—Validity of acts	
17	Acts in breach of statute are invalid	16
18	Some natural person acts protected	16
	Consultation draft	1

19	Limits on protection of natural person acts	17
20	Acts that are not in best interests of water services entity	17
21	Dealings between water services entities and other persons	17
22	Interpretation for sections 13 to 21	18
	Subpart 3—Minister's role	
23	Minister's role	18
	Subpart 4—Regional representative groups	
	Establishment of regional representative group	
24	Establishment and membership of regional representative group	19
25	Role of regional representative group	19
	Appointment of regional representatives	
26	Method of appointing territorial authority representatives to	19
	regional representative group	
27	Method of appointing mana whenua representatives to regional	20
28	representative group Requirements before appointment as regional representative	20
29	Validity of regional representatives' acts	20
30	Validity of appointments	21
31	Resignation of regional representatives	21
	Collective duty of regional representative group	
32	Collective duty of regional representative group	21
	Board appointment committee	
33	Regional representative group must appoint board appointment	21
2.4	committee	22
34 35	Functions of board appointment committee Board appointment committee must prepare board appointment	22 22
33	and remuneration policy	22
	Constitution	
36	Regional representative group must have constitution	22
37	What constitution must contain	23
38	Constitution must not give regional representatives rights or	24
	interests in assets of water services entity	
39	Constitution may contain other matters not inconsistent with Act	24
40	Effect of constitution	24
41	First constitution of regional representative group	24
42	Process for amending or replacing constitution	24
43	Minor or technical amendments	25
	Chairperson and deputy chairperson	
44	Appointment of chairperson and deputy chairperson	25

	Disputes	
45	Disputes between regional representatives	25
	Official information	
46	Application of Local Government Official Information and Meetings Act 1987 to regional representative group	26
	Subpart 5—Boards of water services entities	
	Role, membership, and accountability	
47	Board's role	26
48	Membership of board	26
49	Accountability of board members to regional representative group	26
	Appointment, removal, and conditions of board members	
50	Method of appointing board members	27
51	Criteria for appointments by board appointment committee	27
52	Requirements before appointment as board member	27
53	Term of office of board members	28
54	Validity of board members' acts	28
55	Validity of appointments of board members	28
56	Removal of board members	28
57	Process for removal	29
58	No compensation for board member's loss of office	29
59	Resignation of board members	29
60	Board members ceasing to hold office	29
	Collective duties of board	
61	Board must act consistently with objectives, functions, operating principles, and statement of intent	30
62	Collective duties relating to te Tiriti o Waitangi/the Treaty of Waitangi	30
	Individual duties of board members	
63	Duty of board members to comply with relevant legislation	30
64	Duty of board members to act with honesty and integrity	30
65	Duty of board members to act in good faith and not at expense of water services entity's interests	30
66	Duty of board members to act with reasonable care, diligence, and skill	31
67	Duty not to disclose information	31
	Effect of non-compliance with duties	
68	Accountability for collective board duties	31
69	Board member's liability for breach of collective duty	31
70	Accountability of board members for individual duties	32
71	Board member's liability for breach of individual duty	32
	Consultation draft	3

72	Court actions requiring or restraining board or board members	32
	Delegation	
73	Board's ability to delegate	33
74	Powers of delegate	33
75	Effect of delegation on water services entity or board	34
76	Revocations of delegations	34
	Board procedure	
77	Appointment of chairperson and board procedure	34
	Subpart 6—General provisions relating to regional representatives and board members	
	Qualifications	
78	Qualifications of regional representatives and board members	35
	Reliance on information and advice	
79	When regional representatives and board members may rely on certain information and advice	35
	Conflict of interest disclosure rules	
80	Water services entity must keep interest registers for entity and regional representative group	36
81	When person is interested	36
82	Obligation of board member to disclose interest	37
83	Obligation of regional representative to disclose interest	37
84	What must be disclosed	38
85	Consequences of being interested in matter	38
86 87	Consequences of failing to disclose interest Permission to act despite being interested in matter	39 39
88	Permission must be disclosed in annual report	39
89	Entity may avoid certain acts done in breach of conflict of interest rules	40
90	What is fair value	40
91	Onus of proving fair value	40
92	Effect of avoidance on third parties	40
	Vacancies in membership	
93	Vacancies in membership of board or regional representative group	41
	Part 3	
	Operation of water services entities	
	Independence of water service entities	
94	Safeguarding independence of water services entities	41
	Obligation to hold specified meetings in public	
95	Board must hold 2 public meetings each financial year	41
4	Consultation draft	

Council Agenda 3 February 2022- OPEN

	Obligation to maintain ownership and control of water services and significant assets	
96	Obligation to maintain water services	42
	Contracting out of water services	
97 98	Contracts relating to provision of water services Joint arrangements for purpose of providing water services	43 43
	Employees of water services entities	
99	Employment of chief executive	44
100	Water services entity to be good employer	45
	Protections from liability	
101	Definitions for protections from liability	45
102	Protections for board members and employees from liabilities of water services entity	46
103	Immunity from civil liability	46
104	Indemnities in relation to excluded act or omission	46
105	Insurance for liability of board member or employee	47
106	Breach of indemnity and insurance limits	47
	Dealings with third parties by water services entities	
107	Method of contracting	47
108	Address for service	48
	Application of Local Government Official Information and Meetings Act 1987	
109	Official information	48
	Part 4	
	Financial and accountability matters	
	Subpart 1—Government policy statement on water services	
110	Minister may issue Government policy statement on water services	48
111	Purpose and content of Government policy statement	48
112	Preparation or review of Government policy statement	49
113	Water services entities to give effect to Government policy statement	49
114	Amending Government policy statement	49
115	Obligation to publish and present Government policy statement	50
	Subpart 2—Regional representative group's statement of strategic and performance expectations	
116	Regional representative group must issue statement of strategic and performance expectations	50
117	Purpose and content of statement of strategic and performance expectations	50

Consultation draft

118	Water services entity to give effect to statement of strategic and	51
	performance expectations	
119	Obligation to publish statement of strategic and performance expectations	51
120	Obligation of regional representative group to review board	51
	performance	
	Subpart 3—Te Mana o te Wai statements for water services	
121	Mana whenua may provide Te Mana o te Wai statements for water services	51
122	Water services entity must respond to Te Mana o te Wai statement	52
	for water services	
123	Obligation to publish response to Te Mana o te Wai statement for	52
	water services	
	Subpart 4—Reporting obligations	
	Planning: statement of intent	
124	Purpose of statement of intent	52
125	Board must prepare statement of intent	53
126	Content of statement of intent	53
127	Board must publish statement of intent	54
	Planning: asset management plan	
128	Board must prepare asset management plan	54
129	Content of asset management plan	54
130	Obligation to publish asset management plan	54
	Planning: funding and pricing plan	
131	Board must prepare funding and pricing plan	55
132	Content of funding and pricing plan	55
133	Obligation to publish funding and pricing plan	56
	Planning: infrastructure strategy	
134	Board must prepare and adopt infrastructure strategy	56
135	Content of infrastructure strategy	56
136	Obligation to publish infrastructure strategy	56
	Reporting: annual report	
137	Obligation to prepare and publish annual report	57
138	Form and content of annual report	57
139	Form and content of statement of service delivery performance	58
140	Annual financial statements	59
141	Statement of responsibility	59
142	Audit report	59
143	Disclosure of payments in respect of board members and	60
	employees	

Water Services Entities Bill

144	Information to be prepared in accordance with generally accepted	61
145	accounting practice Insurance of assets	61
143	Subpart 5—Other provisions for financial management	01
	Bank accounts	
1.46		-
146	Bank accounts of water services entities	62
	Prohibition on equity returns	
147	Territorial authority owners have no beneficial interest in security of water services entity or right to equity return	63
	Subpart 6—Accounting records	
148	Board must ensure that proper accounting records are kept	64
	Subpart 7—Borrowing	
149	Borrowing in foreign currency	64
	Part 5	
	Monitoring	
	Subpart 1—Monitor	
	Appointment and role of monitor	
150	Appointment and role of monitor	64
	Monitor's information-gathering power	
151	Monitor's power to request information	65
152	Good reason for refusing to supply requested information	65
153	Civil proceedings relating to non-compliance with information request	65
154	Content of notice	66
	Subpart 2—Minister's powers to intervene	
155	Meaning of problem for purposes of subpart	66
	Crown review team	
156	Minister may appoint Crown review team	67
157	Appointment of Crown review team	68
	Crown observer	
158	Minister may appoint Crown observer	68
159	Appointment of Crown observer	69
	Crown manager	
160	Minister may appoint Crown manager	70
161	Appointment of Crown manager	71

Consultation draft

/

Water Services Entities Bill

	Subpart 3—General provisions applying to Minister's power to intervene	
162		71
163	Application Minister may consult	71
164	Minister must publish list of matters	71
165	Minister must have regard to published list	72
166	Notice of proposed appointment of ministerial body	72
167	Notice of appointment of ministerial body	73
168	Information to Minister	74
169	Final report of ministerial body	74
170	Remuneration and expenses of ministerial appointees	74
171	Recovery of expenses from water services entity	75
172	Minister may terminate appointment of ministerial body or ministerial appointee	75
173	Protection from liability for ministerial appointees	75
174	Disclosure of information held by water services entity	76
175	Decisions and directions of Crown manager remain in force	76
	Part 6	
	Miscellaneous provisions	
	Subpart 1—Engagement	
176	Engagement requirements	76
	Consumer engagement	
177	Consumer forum	77
178	Consumer engagement stocktake	78
179	Principles of engagement	78
	Subpart 2—Regulations	
180	Regulations	78
100		70
	Subpart 3—Amendments to other Acts	
	Amendments to Goods and Services Tax Act 1985	
181	Principal Act	79
182	Section 2 amended (Interpretation)	79
183	Section 6 amended (Meaning of term taxable activity)	79
	Amendments to Income Tax Act 2007	
184	Principal Act	79
185	New section CW 38C inserted (Water services entities)	80
	CW 38C Water services entities	80
186	Section YA 1 amended (Definitions)	80
	Amendment to Local Government Official Information and Meetings Act 1987	
187	Principal Act	80
8	Consultation draft	

	Water Services Entities Bill	cl 2
188	Schedule 2 amended	80
	Amendment to Ombudsmen Act 1975	
189	Principal Act	80
190	Schedule 1 amended	80
	Amendment to Public Audit Act 2001	
191	Principal Act	81
192	Schedule 1 amended	81
	Amendment to Public Records Act 2005	
193	Principal Act	81
194	Section 4 amended (Interpretation)	81
	Schedule 1	82
	Transitional, savings, and related provisions	
	Schedule 2	96
	Water Service Entities and their service areas	
	Schedule 3	99
	Preparation of planning documents	
	Schedule 4	105
	Divestment proposals	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Water Services Entities Act 2021.

2 Commencement

- (1) The following provisions come into force on the day after the date of Royal assent:
 - (a) sections 3, 4(a), (b), and (e), and 5 to 8 (preliminary provisions):
 - (b) **subparts 1 to 3, 5, and 6 of Part 2** (which relate to the establishment of water services entities and the roles of the Minister, Crown monitor, and board):
 - (c) **sections 99 and 100** (which relate to the employment of the chief executive and other employees):
 - (d) sections 128 to 133 (which relate to requirement to prepare and adopt an asset management plan and a funding and pricing plan):
 - (e) section 180 (which contains regulation-making powers):
 - (f) **Schedule 1** (which contains transitional, savings, and related provisions).
- (2) The rest of this Act comes into force—

Consultation draft

- (a) on a date to be appointed by the Governor-General by Order in Council;
 or
- (b) to the extent not brought into force earlier, on 1 July 2024.
- (3) An Order in Council made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

Part 1 Preliminary provisions

3 Purpose

The purpose of this Act is to—

- (a) establish 4 water services entities to provide water services in New Zealand; and
- (b) provide for their objectives, functions, service delivery areas, and governance arrangements.

4 Te Tiriti o Waitangi/the Treaty of Waitangi

In order to recognise and respect the Crown's responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi, this Act provides,—

- (a) in **section 10**, that the objectives of each water services entity include giving effect to Te Mana o te Wai to the extent that it applies to the entity's functions, powers, and duties:
- (b) in section 12, that the operating principles of a water services entity include—
 - (i) partnering and having early and meaningful engagement with $M\bar{a}ori;$ and
 - (ii) giving effect to Treaty settlement obligations to the extent that the obligations apply to the duties and functions of the entity:
- (c) in **section 24**, that there must be mana whenua representation on each entity's regional representative group:
- (d) in **sections 33 and 48**, that the board appointment committee of each regional representative group and the board of each entity must include members who, collectively, have knowledge and expertise in relation to—
 - (i) the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (ii) perspectives of mana whenua, mātauranga, tikanga, and te ao Māori:
- (e) in section 62, that the board of each water services entity must—

Consultation draft

- ensure that the water services entity maintains systems and processes to ensure that, for the purpose of carrying out its functions, it has the capacity and capability to—
 - (A) give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (B) engage with, and understand perspectives of, mana whenua; and
- (ii) maintain systems and processes for the continuing education of all board members to gain knowledge of, and experience and expertise in relation to, the principles of te Tiriti o Waitangi/the Treaty of Waitangi:
- (f) in **section 122**, that the board of each water services entity must respond to Te Mana o te Wai statements for water services issued to the entity by mana whenua.

5 Interpretation

In this Act, unless the context otherwise requires,—

board means members of the board of a water services entity who number not less than the required quorum acting together as a board

board appointment committee means a committee of a regional representative group appointed under **section 33**

board member—

- (a) means a member of the board appointed under section 48; and
- (b) has, for the purposes of **sections 102 to 106**, the extended meaning set out in **section 101**

claimant group, in relation to the definitions of Treaty settlement Act and Treaty settlement deed, means a group of Māori with Treaty of Waitangi claims against the Crown, whether or not those claims have been lodged with, or heard by, the Waitangi Tribunal under the Treaty of Waitangi Act 1975

committee means-

- in relation to a regional representative group, a committee appointed under the constitution of a regional representative group (including the board appointment committee); and
- (b) in relation to a board, a committee appointed in accordance with procedures of the board determined under **section 77**

constitution means, in relation to a regional representative group,—

- (a) the group's first constitution as provided for in **section 41**; or
- (b) if the regional representative group has amended the group's first constitution or adopted a new constitution under **section 42**, the constitution as adopted or amended under that section

Consultation draft

department means the department for the time being responsible for the administration of this Act

drinking water has the meaning set out in section 6 of the Water Services Act 2021

employee, in relation to a water services entity,—

- (a) includes the chief executive of the entity other than for the process of determining terms and conditions under section 99; and
- (b) has, for the purposes of **sections 102 to 106**, the extended meaning set out in **section 101**

financial year means the 12 months ending on the close of 30 June 2022

funding and pricing plan means the funding and pricing plan prepared by the board under section 131

generally accepted accounting practice has the meaning set out in section 8 of the Financial Reporting Act 2013

Government policy statement means a Government policy statement on water services issued by the Minister under section 110

local authority has the meaning set out in section 5 of the Local Government Act 2002

mana whenua representative means a mana whenua representative appointed to a regional representative group under section 27

Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

ministerial appointee means a person appointed under subpart 2 of Part 5 as a member of a Crown review team, as a Crown observer, or as a Crown manager

ministerial body means a Crown review team, a Crown observer, or a Crown manager appointed under subpart 2 of this Part

monitor means the department appointed under section 150

natural person act has the meaning set out in section 22

regional representative means a territorial authority representative or mana whenua representative

regional representative group means, in relation to a water services entity, the regional representative group established for the entity under section 24

regulations means regulations made under section 180

service area means, in relation to a water services entity, the area identified in **Schedule 2** as the service area of the entity

Te Mana o te Wai has the meaning set out in the National Policy Statement for Freshwater Management issued in 2020 under section 52 of the Resource Man-

agement Act 1991 and any statement issued under that section that amends or replaces the 2020 statement

Te Mana o te Wai statement for water services means a statement provided by mana whenua to a water services entity under section 121

territorial authority has the meaning set out in section 5 of the Local Government Act 2002

territorial authority owners means, in relation to a water services entity, the territorial authorities listed in the part of **Schedule 2** that relates to the entity

territorial authority representative means a territorial authority representative appointed to a regional representative group under section 26

Treaty of Waitangi claim means a claim within the meaning of section 6 of the Treaty of Waitangi Act 1975, whether that claim was submitted or not to the Waitangi Tribunal

Treaty settlement Act means—

- (a) an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975; and
- (b) any other Act that provides redress for Treaty of Waitangi claims, including Acts that provide collective redress or participation arrangements for claimant groups whose claims are, or are to be, settled by another Act

Treaty settlement deed means a deed or other agreement—

- (a) that is signed for and on behalf of the Crown by 1 or more Ministers of the Crown and by representatives of a claimant group; and
- (b) that is in settlement of the Treaty of Waitangi claims of the members of that group, or in express anticipation, or on account, of that settlement

Treaty settlement obligations means obligations under any of the following:

- (a) Treaty settlement Acts:
- (b) Treaty settlement deeds

water services means services relating to water supply, wastewater, and stormwater

water services entity or entity means a water services entity established under section 9

water supply includes—

- (a) drinking water supply as defined in section 9 of the Water Services Act 2021; and
- (b) firefighting water supplies as defined in section 6 of the Fire and Emergency New Zealand Act 2017.

Consultation draft

6 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

7 Act binds the Crown

This Act binds the Crown.

8 Treaty settlement obligations prevail

If a provision of this Act is inconsistent with a Treaty settlement obligation, the Treaty settlement obligation prevails.

Part 2 Water services entities

Subpart 1—Establishment of water services entities

9 Water services entities established

This section establishes the water services entities named in **Parts 1 to 4 of Schedule 2**.

10 Objectives of water services entities

The objectives of each water services entity are to—

- (a) deliver water services and related infrastructure in an efficient and financially sustainable manner:
- (b) protect and promote public health and the environment:
- (c) support and enable housing and urban development:
- (d) operate in accordance with best commercial and business practices:
- (e) act in the best interests of present and future consumers and communities:
- (f) give effect to Te Mana o te Wai to the extent that it applies to the duties and functions of the entity:
- (g) deliver water services in a sustainable and resilient manner that seeks to mitigate the effects of climate change and natural hazards.

Compare: 2020 No 52 s 8

11 Functions of water services entities

The functions of each water services entity are—

- (a) to provide safe, reliable, and efficient water services in its area; and
- (b) any functions that are incidental and related to, or consequential on, its functions set out in paragraph (a).

Consultation draft

Attachment 3

The operating principles of a water services entity for the purposes of **section** 61 are—

- (a) developing and sharing capability and technical expertise with other water services entities and throughout the water services sector; and
- (b) being innovative in the design and delivery of water services and water services infrastructure; and
- (c) being open and transparent, including in relation to—
 - (i) the calculation and setting of prices; and
 - (ii) determining levels of service delivery to communities and consumers; and
 - (iii) reporting on the performance of the water services entity; and
- (d) partnering and engaging early and meaningfully with Māori, including to inform how the water services entity can—
 - (i) give effect to Te Mana o te Wai; and
 - (ii) understand, support, and enable the exercise of mātauranga Māori, tikanga Māori, and kaitiakitanga; and
- (e) giving effect to Treaty settlement obligations to the extent that the obligations apply to the duties and functions of the entity; and
- (f) partnering and engaging early and meaningfully with territorial authorities and their communities; and
- (g) co-operating with, and supporting, other water services entities, infrastructure providers, local authorities, and the transport sector.

13 Status of water services entities

- (1) A water services entity—
 - (a) is a body corporate; and
 - (b) is accordingly a legal entity separate from the entity's board members, the entity's employees, the Crown, the entity's regional representative group, and the entity's territorial authority owners; and
 - (c) continues in existence until it is dissolved by an Act.
- (2) A water services entity is owned collectively by its territorial authority owners.
- (3) Despite subsection (2), a water services entity is not—
 - (a) a council organisation or a council-controlled organisation as those terms are defined in section 6 of the Local Government Act 2002; or
 - (b) a local government organisation as defined in section 124 of the Local Government Act 2002.

Compare: 2004 No 115 s 15

Consultation draft

14 Core things water services entities can do

A water services entity may do anything that is authorised by this Act.

Compare: 2004 No 115 s 16

15 Other things water services entities can do

- (1) A water services entity may do anything that a natural person of full age and capacity may do.
- (2) **Subsection (1)** applies except as provided in this Act or another Act or rule of law

Compare: 2004 No 115 s 17

16 Acts must be for purpose of functions

A water services entity may do an act under **section 14 or 15** only for the purpose of performing its functions.

Compare: 2004 No 115 s 18

Subpart 2—Validity of acts

17 Acts in breach of statute are invalid

- (1) An act of a water services entity is invalid, unless section 18 applies, if it is—
 - (a) an act that is contrary to, or outside the authority of, this Act; or
 - (b) an act that is done otherwise than for the purpose of performing the entity's functions.
- (2) **Subsection (1)** does not limit any discretion of a court to grant relief in respect of a minor or technical breach.

Compare: 2004 No 115 s 19

18 Some natural person acts protected

- (1) **Section 17**, or any rule of law to similar effect, does not prevent a person dealing with a water services entity from enforcing a transaction that is a natural person act unless the person dealing with the entity had, or ought reasonably to have had, knowledge—
 - (a) of an express restriction in an Act that makes the act contrary to, or outside the authority of, the Act; or
 - (b) that the act is done otherwise than for the purpose of performing the entity's functions.
- (2) A person who relies on **subsection (1)** has the onus of proving that they did not have, and ought not reasonably to have had, the knowledge referred to in that subsection.
- (3) A water services entity must report, in its annual report, each transaction that the entity has performed in the year to which the report relates that was invalid under **section 17** but enforced in reliance on this section.

(4) This section does not affect any person's other remedies (for example, remedies in contract) under the general law.

Compare: 2004 No 115 s 20

19 Limits on protection of natural person acts

Section 18 does not limit—

- (a) section 72 (which provides for orders to require or restrain acts); or
- (b) the board of a water services entity bringing an action against a board member who voted for or otherwise authorised the act for breach of their individual duties as a board member; or
- (c) a board member who voted for or otherwise authorised the act being removed from office for breach of the individual duties of board members or the collective duties of the board; or
- (d) an application, in accordance with the law, for judicial review; or
- (e) section 89.

Compare: 2004 No 115 s 21

20 Acts that are not in best interests of water services entity

It is irrelevant to the validity of an act that the act is not, or would not be, in the best interests of a water services entity.

Compare: 2004 No 115 s 22

21 Dealings between water services entities and other persons

- (1) A water services entity may not assert against a person dealing with the entity that—
 - (a) a person held out by the water services entity to be a board member, an employee, or an agent of the entity (as the case may be)—
 - (i) has not been duly appointed in that capacity or has ceased to be appointed in that capacity; or
 - (ii) does not have the authority to exercise a power which, given the nature of the entity, a person appointed to that capacity customarily has authority to exercise; or
 - (iii) does not have the authority to exercise a power that the entity holds them out as having; or
 - (b) a document issued on behalf of the water services entity by a board member, an employee, or an agent of the entity with actual or usual authority to issue the document is not valid or genuine.
- (2) However, a water services entity may assert any of those matters if the person dealing with the entity had, or ought reasonably to have had, knowledge of the matter.

Consultation draft

Nothing in this section affects a person's right to apply, in accordance with the law, for judicial review.

Compare: 2004 No 115 s 23

22 Interpretation for sections 13 to 21

In sections 13 to 21, unless the context otherwise requires,—

act includes a transfer of property, rights, or interests to or by a water services entity

do includes—

- (a) to do an act; and
- (b) to have a capacity; and
- (c) to have or exercise a power, right, or privilege

natural person act-

- (a) means an act that a natural person of full age and capacity can do (whether or not the act is something that is also authorised by an Act);
- (b) includes entry into a contract for, or relating to,—
 - (i) acquisition of financial products or borrowing:
 - (ii) the purchase, leasing, or sale of, or other dealings with, property:
 - (iii) the employment, or engagement of the services, of a person

person dealing-

- (a) means the other party to the transaction, if the act of the water services entity is a transaction; and
- (b) includes a person who has acquired property, rights, or interests from a water services entity.

Compare: 2004 No 115 s 24

Subpart 3—Minister's role

23 Minister's role

The role of the Minister is to oversee and manage the Crown's interests in, and relationship with, the water services entities and to fulfil any statutory responsibilities given to the Minister, including the following functions and powers:

- (a) to issue a Government policy statement on water services under section110:
- (b) to appoint a Crown review team to perform functions under section 156 in relation to a water services entity in the circumstances described in that section:

18

- (c) to appoint a Crown observer to perform functions under section 158 in relation to a water services entity in the circumstances described in that section:
- (d) to appoint a Crown manager to perform functions under section 160 in relation to a water services entity in the circumstances described in that section.

Subpart 4—Regional representative groups

Establishment of regional representative group

24 Establishment and membership of regional representative group

- (1) This section establishes a regional representative group for each water services entity.
- (2) Each regional representative group consists of—
 - (a) no fewer than 6 regional representatives; and
 - (b) no more than twice the number of territorial authority owners of the entity.
- (3) Each entity's regional representative group must include an equal number of—
 - (a) territorial authority representatives; and
 - (b) mana whenua representatives.

25 Role of regional representative group

The role of a water services entity's regional representative group is to fulfil the statutory responsibilities given to it, including functions and powers in relation to—

- (a) appointing and removing the entity's board members under this Part; and
- (b) participating in the process of setting the entity's strategic direction and performance expectations under **subpart 4 of Part 4**; and
- (c) reviewing the performance of the entity under section 120; and
- (d) approving the appointment and remuneration policy prepared by its board appointment committee under **section 35**.

Appointment of regional representatives

26 Method of appointing territorial authority representatives to regional representative group

(1) The territorial authority owners of a water services entity must appoint territorial authority representatives to the regional representative group of the water services entity in accordance with the regional representative group's constitution.

Consultation draft

- (2) The territorial authority owners must appoint only persons who are—
 - (a) elected members or chief executives of a territorial authority owner of the water services entity; or
 - (b) senior managers of a territorial authority owner that, in the collective opinion of the territorial authority owners, have the appropriate knowledge, skills, and experience to assist the regional representative group in performing its role (see section 25).

27 Method of appointing mana whenua representatives to regional representative group

Mana whenua whose rohe or takiwā is within the service area of a water services entity must appoint mana whenua representatives to the regional representative group of the water services entity in accordance with the regional representative group's constitution.

28 Requirements before appointment as regional representative

- (1) Before a person is appointed as a regional representative, the person must—
 - (a) consent in writing to the appointment; and
 - (b) certify that they are not disqualified from being a regional representative (see section 78); and
 - (c) disclose the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the water services entity.
- (2) A disclosure under subsection (1)(c) must be made,—
 - (a) in the case of a proposed appointment as a territorial authority representative, to the entity's territorial authority owners:
 - (b) in the case of a proposed appointment as a mana whenua representative, to the mana whenua whose rohe or takiwā is within the entity's service area.
- (3) As soon as practicable after becoming aware of a failure to comply with **subsection (1)(c)**, the regional representative group must notify the monitor.

Compare: 2004 No 115 s 31

29 Validity of regional representatives' acts

The acts of a person as a regional representative, chairperson, or deputy chairperson of the regional representative group are valid even though—

- (a) a defect existed in the appointment of the person; or
- (b) the person is or was disqualified from being a regional representative; or
- (c) the occasion for the person acting, or for their appointment, had not arisen or had ended.

Compare: 2004 No 115 s 34

30 Validity of appointments

- (1) The appointment of a person as a regional representative, chairperson, or deputy chairperson of a regional representative group is not invalid only because a defect existed in the appointment of the person.
- (2) This section does not apply to a defect in the qualifications for appointment of a regional representative, chairperson, or deputy chairperson (if any).

Compare: 2004 No 115 s 35(1), (2)(a)

31 Resignation of regional representatives

- A territorial authority representative may resign from office by written notice to the entity's territorial authority owners signed by the territorial authority representative.
- (2) A mana whenua representative may resign from office by written notice to the mana whenua whose rohe or takiwā is within the entity's service area signed by the mana whenua representative.
- (3) A resignation under subsection (1) or (2) is effective—
 - (a) on receipt of the notice by the territorial owners or mana whenua (as applicable); or
 - (b) at any later time specified in the notice.

Compare: 2004 No 115 s 44

Collective duty of regional representative group

32 Collective duty of regional representative group

The regional representative group of a water services entity must perform or exercise its powers, functions, and duties under this Act wholly or principally for the benefit of all communities in the entity's service area and, in doing so, must take into account—

- (a) the diversity of the communities, and the diversity of the communities' interests, within the entity's service area; and
- (b) the interests of future as well as current communities within the entity's service area.

Board appointment committee

33 Regional representative group must appoint board appointment committee

- (1) Each regional representative group must appoint a board appointment committee.
- (2) The regional representative group must appoint members to the board appointment committee who, collectively, have knowledge of, and experience and expertise in relation to,—

Consultation draft

- (a) performance monitoring and governance; and
- (b) network infrastructure industries; and
- (c) the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
- (d) perspectives of mana whenua, mātauranga, tikanga, and te ao Māori.
- (3) The regional representative group must not appoint a person as a member of the board appointment committee unless,—
 - (a) before appointment, the person discloses to the regional representative group the details of any interest the person may have if they were a member of that committee; and
 - (b) the person is a regional representative.

34 Functions of board appointment committee

The functions of the board appointment committee are—

- (a) to appoint and remove members of the board of a water services entity;
 and
- (b) to prepare and maintain an appointment and remuneration policy for the board; and
- (c) to perform or exercise any of the regional representative group's functions and powers that are delegated to the committee in relation to appointing and removing board members.

35 Board appointment committee must prepare board appointment and remuneration policy

- (1) The board appointment committee must prepare and maintain an appointment and remuneration policy that provides for—
 - (a) the collective or individual experience, qualifications, skills, or expertise required of members of the water services entity's board in addition to those required by **section 51(2)**; and
 - (b) a remuneration and expenses framework for members of the entity's board
- (2) The regional representative group must—
 - (a) review the policy prepared by the board appointment committee; and
 - (b) if satisfied with the policy, approve it.

Constitution

36 Regional representative group must have constitution

Each regional representative group must have a constitution that complies with the requirements of this Act.

22

37 What constitution must contain

- (1) The constitution of a regional representative group must contain the following matters:
 - (a) how the group will perform or exercise its functions, powers, and duties under this Act:
 - (b) how a person ceases to be a regional representative:
 - (c) the composition and procedures of the group, including—
 - (i) the appointment of territorial authority representatives to the group (see section 26); and
 - (ii) the appointment of mana whenua representatives to the group (see section 27); and
 - (iii) the appointment of regional representatives to the board appointment committee (see section 33); and
 - (iv) the composition of any other committees and subcommittees; and
 - (v) the term of office of regional representatives; and
 - (vi) the process and grounds for removing regional representatives;
 - (vii) how the chairperson and deputy chairperson will be elected or appointed (see section 44):
 - (d) procedures for reviewing, amending, or replacing the constitution:
 - (e) arrangements and requirements for meetings of the group, and committees (including the board appointment committee) and subcommittees of the group, including—
 - (i) the intervals between meetings; and
 - (ii) the information that must be presented at meetings; and
 - (iii) when minutes are required to be kept; and
 - (iv) the manner of calling meetings; and
 - (v) the time within which, and manner in which, notices of meetings and notices of motion must be notified; and
 - (vi) the quorum and procedure for meetings, including decision-making procedures.
- (2) Decision-making procedures provided for under **subsection** (1)(e)(vi) may include voting procedures or procedures for the weighting of votes, or require consensus decision-making.

38 Constitution must not give regional representatives rights or interests in assets of water services entity

The constitution must not purport to confer on any regional representative any right, title, or interest (legal or equitable) in the assets of the water services entity.

39 Constitution may contain other matters not inconsistent with Act

The constitution may contain any other matters that are not inconsistent with this Act or any other Act.

40 Effect of constitution

- (1) A constitution of a regional representative group has no effect to the extent that it contravenes, or is inconsistent with, this Act or any other Act.
- (2) The constitution is binding, in accordance with its terms, as between—
 - (a) the regional representative group and each of its regional representatives; and
 - (b) the regional representative group and the territorial authority owners and mana whenua who have the right under the constitution to appoint and remove regional representatives to the group; and
 - (c) each of the group's regional representatives.
- (3) Subsection (2) is subject to the rest of this Act.

41 First constitution of regional representative group

The first constitution of a regional representative group is the model constitution set out in regulations for the group.

42 Process for amending or replacing constitution

- (1) A regional representative group may propose to amend the group's constitution or adopt a new constitution in the manner provided in this section.
- (2) A proposed amendment to the group's constitution or a proposed new constitution must be approved by the Minister before it is effective.
- (3) A draft constitution, or a proposed amendment to the group's constitution, must be—
 - (a) in writing; and
 - (b) approved at a general meeting of the group by a resolution passed by a 75% majority of all of the group's regional representatives; and
 - (c) otherwise proposed in accordance with its constitution.
- (4) The regional representative group must ensure that written notice of the draft constitution or proposed amendment is provided to the Minister.

24

- (5) If the Minister approves the amendment, it is effective immediately after that approval or at a later date in accordance with the terms of the resolution of the group under subsection (3)(b).
- (6) A proposed amendment to the group's constitution or a proposed new constitution has no effect if rejected by the Minister.
- (7) This section does not apply to an amendment of a type described in section 43(1).

43 Minor or technical amendments

- (1) A regional representative group may, in the manner provided by the constitution, amend the group's constitution under this section if the amendment—
 - (a) has no more than a minor effect; or
 - (b) corrects errors or makes similar technical alterations.
- (2) The regional representative group must, in accordance with its constitution, ensure that written notice of the amendment is sent to the monitor.
- (3) If no objection from the monitor is received within 20 working days after the date on which the notice is served (or any longer period specified in the group's constitution), the regional representative group may make the amendment.

Chairperson and deputy chairperson

44 Appointment of chairperson and deputy chairperson

Each regional representative group must elect or appoint one of its regional representatives as chairperson of the regional representative group and one of its regional representatives as deputy chairperson of the group in accordance with the group's constitution.

Disputes

45 Disputes between regional representatives

- (1) This section applies if a dispute arises between regional representatives on a matter that they are required under this Act to work together on, jointly develop, or agree.
- (2) The regional representatives—
 - (a) may by agreement undertake a binding process of dispute resolution; but
 - (b) if they do not reach agreement on a binding process, must undertake a non-binding process of dispute resolution.
- (3) Whether the regional representatives choose a binding process or a non-binding process, each regional representative must—
 - (a) jointly appoint an arbitrator or a mediator; and
 - (b) meet their own costs of the process.

Consultation draft

- (4) If the dispute remains unresolved after a non-binding process has been undertaken, the regional representatives may individually or jointly seek the assistance of the Minister.
- (5) The Minister, with a view to assisting the regional representatives to resolve the dispute, may—
 - (a) appoint, and meet the costs of, a Crown facilitator:
 - (b) direct the regional representatives to use a particular alternative dispute resolution process for that purpose.

Compare: 1991 No 69 s 58S

Official information

46 Application of Local Government Official Information and Meetings Act 1987 to regional representative group

Part 7 of the Local Government Official Information and Meetings Act 1987 applies to the regional representative group of a water services entity.

Subpart 5—Boards of water services entities

Role, membership, and accountability

47 Board's role

- (1) The board is the governing body of a water services entity, with the authority, in the entity's name, to exercise the powers and perform the functions of the entity.
- (2) All decisions relating to the operation of a water services entity must be made by, or under the authority of, the board in accordance with this Act.

 Compare: 2004 No 115 s 25

48 Membership of board

- (1) The board of a water services entity consists of no fewer than 6, and no more than 10, members.
- (2) The board appointment committee must appoint board members who, collectively, have knowledge of, and experience and expertise in relation to,—
 - (a) performance monitoring and governance; and
 - (b) network infrastructure industries; and
 - (c) the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (d) perspectives of mana whenua, mātauranga, tikanga, and te ao Māori.

49 Accountability of board members to regional representative group

- (1) Board members must comply with—
 - (a) the board's collective duties (see sections 61 and 62); and

- b) their individual duties as board members (see sections 63 to 67).
- (2) Board members of an entity are accountable to the entity's regional representative group for performing their duties as board members.

Compare: 2004 No 115 s 26

Appointment, removal, and conditions of board members

50 Method of appointing board members

- (1) Board members are appointed by a board appointment committee.
- (2) The appointment must be made by written notice to the board member (with a copy to the water services entity).
- (3) The notice must—
 - (a) state the date on which the appointment takes effect, which must not be earlier than the date on which the board member receives the notice; and
 - (b) state the term of the appointment.

Compare: 2004 No 115 s 28(2)

51 Criteria for appointments by board appointment committee

- (1) A board appointment committee must appoint board members under section 50 in accordance with the criteria for board members and the process for appointment under this Act (including the appointment and remuneration policy (if any) approved by the regional representative group under section 35).
- (2) The board appointment committee may only appoint a person who, in the committee's opinion, has the appropriate knowledge, skills, and experience to assist the water services entity to achieve its objectives and perform its functions.
- (3) In making an appointment, the board appointment committee must take into account the desirability of promoting diversity in the membership of the board.

 Compare: 2004 No 115 s 29

52 Requirements before appointment as board member

- (1) Before a person is appointed as a board member of a water services entity, the person must—
 - (a) consent in writing to the appointment; and
 - (b) certify that they are not disqualified from being a board member (see section 78); and
 - (c) disclose to the chairperson of the entity's regional representative group the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the entity.

Consultation draft

(2) The board of a water services entity must notify the chairperson of the entity's regional representative group of a failure to comply with **subsection (1)(c)** as soon as practicable after becoming aware of the failure.

Compare: 2004 No 115 s 31

53 Term of office of board members

- (1) A board member holds office for 5 years or any shorter period stated in the notice of appointment.
- (2) A board member may be reappointed.
- (3) A board member continues in office despite the expiry of their term of office until—
 - (a) the board member is reappointed; or
 - (b) the board member's successor is appointed; or
 - (c) the board appointment committee informs the board member by written notice (with a copy to the water services entity) that the board member is not to be reappointed and no successor is to be appointed at that time.
- (4) This section is subject to section 60.

Compare: 2004 No 115 s 32

54 Validity of board members' acts

The acts of a person as a member, chairperson, or deputy chairperson of the board are valid even if—

- (a) a defect existed in the appointment of the person; or
- (b) the person is or was disqualified from being a board member; or
- (c) the occasion for the person acting, or for their appointment, had not arisen or had ended.

Compare: 2004 No 115 s 34

55 Validity of appointments of board members

- (1) The appointment of a person as a member, chairperson, or deputy chairperson of the board is not invalid only because a defect existed in the appointment of the person.
- (2) This section does not apply to a defect in the qualifications for appointment of a member, chairperson, or deputy chairperson (if any).

Compare: 2004 No 115 s 35(1) and (2)(a)

56 Removal of board members

- (1) The board appointment committee may, at any time for just cause, remove a board member from office.
- (2) The removal must be made by written notice to the board member (with a copy to the water services entity).

Attachment 3

- (a) the date on which the removal takes effect which must not be earlier than the date on which the board member receives the notice; and
- (b) the reasons for the removal.
- (4) In this section, **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the board or the individual duties of members (depending on the seriousness of the breach).

Compare: 2004 No 115 ss 37, 39(1)-(3), 40

57 Process for removal

The board appointment committee may remove a board member with as little formality and technicality, and as much expedition, as is permitted by—

- (a) the principles of natural justice; and
- (b) a proper consideration of the matter.

Compare: 2004 No 115 s 41(a) and (b)

58 No compensation for board member's loss of office

A board member is not entitled to any compensation or other payment or benefit relating to them ceasing, for any reason, to hold office as a board member.

Compare: 2004 No 115 s 43

59 Resignation of board members

- (1) A board member may resign from office by giving written notice to the board appointment committee (with a copy to the water services entity) signed by the board member.
- (2) The resignation is effective on receipt of the notice by the board appointment committee or at any later time specified in the notice.

Compare: 2004 No 115 s 44

60 Board members ceasing to hold office

A board member ceases to hold office if the board member—

- (a) resigns in accordance with section 59; or
- (b) is removed from office in accordance with section 56; or
- (c) becomes disqualified from being a member under section 78(2).

Compare: 2004 No 115 s 45

Consultation draft

Collective duties of board

Board must act consistently with objectives, functions, operating principles, and statement of intent

The board of a water services entity must ensure that the entity acts in a manner consistent with its objectives, functions, operating principles, and current statement of intent.

Compare: 2004 No 115 s 49

62 Collective duties relating to te Tiriti o Waitangi/the Treaty of Waitangi

The board of a water services entity must—

- (a) ensure that the entity maintains systems and processes to ensure that, for the purpose of carrying out its functions, the entity has the capacity and capability to—
 - (i) give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (ii) engage with, and understand perspectives of, mana whenua; and
- (b) maintain systems and processes for the continuing education of all board members to gain knowledge of, and experience and expertise in relation to, the principles of te Tiriti o Waitangi/the Treaty of Waitangi.

Individual duties of board members

63 Duty of board members to comply with relevant legislation

A board member of a water services entity must not contravene, or cause the contravention of, or agree to the entity contravening, this Act or the Water Services Act 2021.

Compare: 2004 No 115 s 53

64 Duty of board members to act with honesty and integrity

A board member of a water services entity must, when acting as a board member, act with honesty and integrity.

Compare: 2004 No 115 s 54

65 Duty of board members to act in good faith and not at expense of water services entity's interests

A board member of a water services entity must, when acting as a board member, act in good faith and not pursue their own interests at the expense of the entity's interests.

Compare: 2004 No 115 s 55

30

66 Duty of board members to act with reasonable care, diligence, and skill

A board member of a water services entity must, when acting as a board member, exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account (without limitation)—

- (a) the nature of the entity; and
- (b) the nature of the action.

Compare: 2004 No 115 s 56

67 Duty not to disclose information

A board member of a water services entity who has information in their capacity as a board member that would not otherwise be available to them must not disclose that information to any person or make use of, or act on, that information, except—

- (a) in the performance of the entity's functions; or
- (b) as required or permitted by law; or
- in complying with the requirements for board members to disclose interests.

Compare: 2004 No 115 s 57(1)

Effect of non-compliance with duties

68 Accountability for collective board duties

- (1) The duties of the board and board members of a water services entity under sections 61 and 62 (collective duties) are duties owed to the entity's regional representative group.
- (2) If a board does not comply with any of its collective duties, the board appointment committee may remove all or any of the board members from office.
- (3) However, subsection (2) does not apply to a board member if—
 - (a) the board member did not know, and could not reasonably be expected to know, that the duty was to be or was being breached; or
 - (b) the board member took all reasonable steps in the circumstances to prevent the duty being breached.
- (4) The taking of reasonable steps does not require a board member to apply to a court for an order under **section 72**.
- (5) This section and **section 69** do not affect any other ground for removing a board member from office.

Compare: 2004 No 115 s 58(1)-(4), (7)

69 Board member's liability for breach of collective duty

(1) A board member of a water services entity is not liable for a breach of a collective duty under this Act.

Consultation draft

- (2) However, subsection (1) does not limit section 68(2).
- (3) Subsection (1) does not affect—
 - (a) anything else for which the board member may be liable under any other Act or rule of law arising from the act or omission that constitutes the breach; or
 - (b) the right to apply for a court order under section 72.

Compare: 2004 No 115 s 58(5), (6), (8)

70 Accountability of board members for individual duties

- (1) The duties of the board members of a water services entity under **sections 63 to 67** (**individual duties**) are duties owed to the entity and the entity's regional representative group.
- (2) If a board member does not comply with their individual duties, that board member may be removed from office (subject to any requirements in **sections 56 and 57** that are applicable to the board member).
- (3) A water services entity may bring an action against a board member for breach of any individual duty.
- (4) This section and **section 71** do not affect any other ground for removing a board member from office.

Compare: 2004 No 115 s 59(1)-(3), (5)

71 Board member's liability for breach of individual duty

- (1) A board member of a water services entity is not liable for a breach of an individual duty under this Act except as provided in **section 70(2) and (3)**.
- (2) **Subsection (1)**
 - (a) does not affect anything else for which the board member may be liable under any other Act or rule of law arising from the act or omission that constitutes the breach; or
 - (b) the right to apply for a court order under **section 72**.

Compare: 2004 No 115 s 59(4), (6)

72 Court actions requiring or restraining board or board members

- (1) The Minister or a regional representative may apply to a court for an order—
 - restraining the board or a board member of a water services entity from engaging in conduct that would contravene any requirement under this Act; and
 - (b) granting any consequential relief.
- (2) The court may make an order on the application subject to the following rules:
 - (a) an order may be made only if it is just and equitable to do so:
 - (b) no order may be made in respect of conduct that has been completed.

- (3) The court may, at any time before the final determination of an application under this section, make as an interim order any order that it is empowered to make as a final order.
- (4) This section is subject to section 94.

Compare: 2004 No 115 s 60(1), (3)-(5)

Delegation

73 Board's ability to delegate

- (1) The board of a water services entity may delegate any of the functions or powers of the entity or the board, either generally or specifically, to any of the following persons by resolution and written notice to the person or persons:
 - (a) a board member:
 - (b) the chief executive or any other employee of the entity:
 - (c) a committee:
 - (d) any class of persons comprising any of the persons listed in paragraphs (a) to (c).
- (2) **Subsection (1)** does not apply to any functions or powers specified in this Act as not being capable of delegation.
- (3) The board must not delegate the general power of delegation.

Compare: 2004 No 115 s 73

74 Powers of delegate

- A delegate to whom any functions or powers of a water services entity or its board are delegated—
 - (a) may, unless the delegation provides otherwise, perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the delegate were the entity or the board; and
 - (b) may delegate the function or power only—
 - (i) with the prior written consent of the board; and
 - (ii) subject to the same restrictions, and with the same effect, as if the subdelegate were the delegate.
- (2) A delegate who purports to perform a function or exercise a power under a delegation—
 - (a) is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation; and
 - (b) must produce evidence of their authority to do so, if reasonably requested to do so.

Compare: 2004 No 115 s 74

Consultation draft

75 Effect of delegation on water services entity or board

No delegation in accordance with this Act—

- (a) affects or prevents the performance of any function or the exercise of any power by a water services entity or its board; or
- (b) affects the responsibility of the board for the actions of any delegate acting under the delegation; or
- (c) is affected by any change in the membership of the board, or of any committee or class of persons, or by any change in a chief executive or other employee.

Compare: 2004 No 115 s 75

76 Revocations of delegations

- (1) A delegation under **section 73** may be revoked at will by—
 - (a) resolution of the board and written notice to the delegate; or
 - (b) any other method provided for in the delegation.
- (2) A delegation under **section 74(1)(b)** may be revoked at will by written notice of the delegate to the subdelegate.

Compare: 2004 No 115 s 76

Board procedure

77 Appointment of chairperson and board procedure

- (1) The board of a water services entity must determine its own procedure for—
 - (a) appointing 1 of its members to be its chairperson and another to be its deputy chairperson; and
 - (b) arrangements and requirements for board meetings, including—
 - (i) the intervals between meetings; and
 - (ii) the information that must be presented at meetings; and
 - (iii) when minutes are required to be kept; and
 - (iv) the manner of calling meetings; and
 - (v) the time within which, and manner in which, notices of meetings (including public meetings) and notices of motion must be notified; and
 - (vi) the quorum and procedure for meetings, including decision-making procedures; and
 - (c) the composition and procedures of committees or subcommittees of the
- (2) Except as provided in this Act, the board may also regulate its own procedure in relation to any other matters.

Consultation draft

Subpart 6—General provisions relating to regional representatives and board members

Qualifications

78 Qualifications of regional representatives and board members

- (1) A natural person who is not disqualified by this section may be a regional representative or a board member of a water services entity.
- (2) The following persons are disqualified from being a regional representative or a board member:
 - (a) a person who is an undischarged bankrupt:
 - (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, or the Financial Markets Conduct Act 2013, or the Takeovers Act 1993:
 - (c) a person who is subject to a property order under the Protection of Personal and Property Rights Act 1988:
 - (d) a person in respect of whom a personal order has been made under the Protection of Personal and Property Rights Act 1988 that reflects adversely on the person's—
 - competence to manage their own affairs in relation to their property; or
 - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of their personal care and welfare:
 - (e) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person:
 - (f) a member of Parliament.

Compare: 2004 No 115 s 30

Reliance on information and advice

79 When regional representatives and board members may rely on certain information and advice

(1) A regional representative or board member of a water services entity may, when acting as a regional representative or board member, rely on reports, statements, financial data, and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

Consultation draft

- (a) an employee of a water services entity whom the regional representative or board member believes on reasonable grounds to be reliable and competent in relation to the matters concerned:
- (b) a professional adviser or expert in relation to matters that the regional representative or board member believes on reasonable grounds to be within the person's professional or expert competence:
- (c) any other regional representative or board member or a committee on which the regional representative or board member did not serve in relation to matters within the designated authority of the regional representative, board member, or committee (as applicable).
- (2) This section applies to a regional representative or board member only if they—
 - (a) act in good faith; and
 - (b) make proper inquiry if the need for inquiry is indicated by the circumstances; and
 - (c) have no knowledge that the reliance is unwarranted.

Compare: 2004 No 115 s 61(1) and (3)

Conflict of interest disclosure rules

80 Water services entity must keep interest registers for entity and regional representative group

A water services entity must keep a separate interest register for each of the following:

- (a) interests of board members:
- (b) interests of regional representatives.

81 When person is interested

- (1) A person is **interested** in a matter if the person—
 - (a) may derive a financial benefit from the matter; or
 - (b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or
 - (c) may have a financial interest in a person to whom the matter relates; or
 - (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or
 - (e) is otherwise directly or indirectly interested in the matter.
- (2) However, a person is not interested in a matter—
 - because the person receives an indemnity, insurance cover, remuneration, or other benefits authorised under this Act or another Act; or

Consultation draft

- (b) if their interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in carrying out their responsibilities under this Act or another Act; or
- (c) only because they have past or current involvement in the relevant sector, industry, or practice.
- (3) In this section, matter means—
 - (a) in relation to a board member,—
 - (i) a water services entity's performance of its functions or exercise of its powers; or
 - (ii) an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the entity:
 - (b) in relation to a regional representative, a regional representative group's performance of its functions or exercise of its powers.

Compare: 2004 No 115 s 62

82 Obligation of board member to disclose interest

- (1) A board member who is interested in a matter relating to a water services entity must disclose details of the interest in accordance with **subsection (4)** as soon as practicable after the board member becomes aware that they are interested
- (2) A general notice of an interest in a matter relating to a water services entity, or in a matter that may in future relate to the entity, that is disclosed in accordance with **subsection (4)** is a standing disclosure of that interest for the purposes of this section.
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases.
- (4) A board member must disclose details of an interest in the interests register kept by the water services entity, and to—
 - the chairperson of the board or, if there is no chairperson or if the chairperson is unavailable or interested, the deputy chairperson of the board; or
 - (b) the regional representative group, if there is neither a chairperson nor a deputy chairperson of the board, or if both the chairperson and the deputy chairperson of the board are unavailable or interested.

Compare: 2004 No 115 ss 63, 64

83 Obligation of regional representative to disclose interest

(1) A regional representative who is interested in a matter relating to an entity's regional representative group must disclose details of the interest in accordance with **subsection (4)** as soon as practicable after the member becomes aware that they are interested.

Consultation draft

- (2) A general notice of an interest in a matter relating to a regional representative group, or in a matter that may in future relate to the group, that is disclosed in accordance with **subsection (4)** is a standing disclosure of that interest for the purposes of this section.
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases.
- (4) A regional representative must disclose details of an interest in the interests register kept by the water services entity, and to—
 - (a) the chairperson of the regional representative group or, if there is no chairperson or if the chairperson is unavailable or interested, the deputy chairperson of the group; or
 - (b) the monitor, if there is neither a chairperson nor a deputy chairperson of the regional representative group, or if both the chairperson and the deputy chairperson of the group are unavailable or interested.

Compare: 2004 No 115 ss 63, 64

84 What must be disclosed

The details that must be disclosed under sections 82 and 83 are—

- (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
- (b) the nature and extent of the interest (if the monetary value cannot be quantified).

Compare: 2004 No 115 s 65

85 Consequences of being interested in matter

- (1) A board member who is interested in a matter relating to a water services entity—
 - (a) must not vote or take part in any discussion or decision of the board or otherwise participate in any activity of the entity that relates to the matter; and
 - (b) must not sign any document relating to the entry into a transaction or the initiation of the matter; and
 - (c) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the board during which a discussion or decision relating to the matter occurs or is made.
- (2) A regional representative who is interested in a matter relating to a regional representative group—
 - (a) must not vote or take part in any discussion or decision of the group or otherwise participate in any activity of the group that relates to the matter; and

38

b) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the group during which a discussion or decision relating to the matter occurs or is made.

Compare: 2004 No 115 s 66

86 Consequences of failing to disclose interest

- (1) The board must notify the chairperson of the regional representative group of a failure by a board member to comply with **82 or 85(1)**, and the acts affected, as soon as practicable after becoming aware of the failure.
- (2) The regional representative group must notify the monitor of a failure by a regional representative to comply with **83 or 85(2)**, and the acts affected, as soon as practicable after becoming aware of the failure.
- (3) A failure to comply with **section 82, 83, or 85** does not affect the validity of an act or matter
- (4) However, **subsection (3)** does not limit the right of any person to apply, in accordance with law, for judicial review.

Compare: 2004 No 115 s 67

87 Permission to act despite being interested in matter

- (1) The chairperson of the board may, by prior written notice to the board, permit 1 or more board members, or board members with a specified class of interest, to do anything otherwise prohibited by **section 85** if the chairperson is satisfied that it is in the public interest to do so.
- (2) The deputy chairperson (if any) of the board may give a permission if there is no chairperson, or if the chairperson is unavailable or interested.
- (3) The chairperson of a regional representative group may, by prior written notice to the regional representative group, permit 1 or more regional representatives, or regional representatives with a specified class of interest, to do anything otherwise prohibited by **section 85** if the chairperson is satisfied that it is in the public interest to do so.
- (4) The deputy chairperson (if any) of a regional representative group may give a permission if there is no chairperson, or if the chairperson is unavailable or interested.
- (5) A permission may state conditions that the board member or regional representative must comply with.
- (6) A permission may be amended or revoked in the same way as it may be given. Compare: 2004 No 115 s 68(1)–(5)

88 Permission must be disclosed in annual report

The water services entity must disclose an interest to which a permission under section 87 relates in its annual report, together with a statement of who gave

the permission and any conditions or amendments to, or revocation of, the permission.

Compare: 2004 No 115 s 68(6)

89 Entity may avoid certain acts done in breach of conflict of interest rules

- (1) A water services entity may avoid a natural person act done by the entity in respect of which a board member was in breach of **section 85**.
- (2) However, the act of a board member—
 - (a) may be avoided only within 3 months of the affected act being notified to the chairperson of the regional representative group under **section 86**; and
 - (b) cannot be avoided if the entity receives fair value in respect of the act.
- (3) An act in which a board member is interested can be avoided on the ground of the board member's interest only in accordance with this section.

Compare: 2004 No 115 s 69

90 What is fair value

- (1) A water services entity is presumed to receive fair value in respect of an act that is done by the entity in the ordinary course of its business and on usual terms and conditions.
- (2) Whether a water services entity receives fair value in respect of an act must be determined on the basis of the information known to the entity and to the interested board member at the time the act is done.

Compare: 2004 No 115 s 70

91 Onus of proving fair value

- (1) A person seeking to prevent an act being avoided, and who knew, or ought reasonably to have known, of the board member's interest at the time the act was done, has the onus of establishing fair value.
- (2) In any other case, a water services entity has the onus of establishing that it did not receive fair value.

Compare: 2004 No 115 s 71

92 Effect of avoidance on third parties

The avoidance of an act under **section 89** does not affect the title or interest of a person to or in property that the person has acquired if the property was acquired—

- (a) from a person other than the water services entity; and
- (b) for valuable consideration; and

40

(c) without knowledge of the circumstances of the act under which the person referred to in paragraph (a) acquired the property from the entity.

Compare: 2004 No 115 s 72

Vacancies in membership

93 Vacancies in membership of board or regional representative group

- (1) The powers and functions of a water services entity are not affected by any vacancy in the membership of its board or regional representative group.
- (2) The powers and functions of an entity's regional representative group are not affected by any vacancy in membership of the entity's board or in the regional representative group.

Compare: 2004 No 115 s 77

Part 3 Operation of water services entities

Independence of water service entities

94 Safeguarding independence of water services entities

- (1) This Act does not authorise the Minister, a territorial authority owner, a territorial authority representative, a mana whenua representative, or a regional representative group to direct a water services entity, or a board member or an employee of a water services entity,—
 - (a) in relation to a statutorily independent function; or
 - (b) to require the performance or non-performance of a particular act, or to bring about of a particular result, in respect of a particular person or persons.
- (2) This section applies to all Government policy statements and statements of strategic and performance expectations issued under this Act.

Compare: 2004 No 115 s 113

Obligation to hold specified meetings in public

95 Board must hold 2 public meetings each financial year

- (1) The board of a water services entity must hold at least 2 meetings during each financial year that are open to members of the public (the **public board meetings**).
- (2) At least 1 of the public board meetings must be held after 1 July each year for the purpose of considering the entity's performance under its statement of intent in the previous financial year.
- (3) The board must—

Consultation draft

- (a) give public notice of the details of the public meeting at least 1 month before the meeting; and
- (b) allocate a reasonable amount of time for members of the public attending a public board meeting to address the board in relation to the subject matter of the meeting.
- (4) To the extent consistent with the requirements of this section, a public board meeting is subject to the rules and requirements that normally apply to the meetings of the board.
- (5) This section prevails in the event of any conflict between this section and the rules and requirements that normally apply to meetings of the board.

Obligation to maintain ownership and control of water services and significant assets

96 Obligation to maintain water services

- (1) A water services entity must continue to provide water services and maintain its capacity to meet its obligations under this Act.
- (2) In order to fulfil its obligations under this Act, a water services entity must not do any of the following:
 - (a) use water services assets as security for any purpose:
 - (b) divest its ownership or other interest in a water service except in accordance with **Schedule 4**:
 - (c) lose control of, sell, or otherwise dispose of, the significant infrastructure necessary for providing water services in its service area except—
 - (i) in accordance with **Schedule 4**; or
 - (ii) if, in doing so, the entity retains its capacity to meet its obliga-
- (3) In this section,—

significant infrastructure means any of the following:

- (a) water services assets that—
 - (i) are owned and operated by a water services entity for the purpose of delivering water services to consumers or communities in any part of the entity's service area; and
 - (ii) a water services entity needs to retain to—
 - (A) maintain its capacity to achieve its objectives; or
 - (B) fulfil its functions; or
 - (C) promote an outcome that the entity has identified as important to the current or future well-being of consumers or communities in the entity's service area; and

Attachment 3

intent water services assets includes existing or proposed assets used or proposed to be used by the water services entity to provide water services.

infrastructure identified by the water services entity as being material to

Compare: 2002 No 84 s 130(2), (3)(a), (b), (c)

Contracting out of water services

97 Contracts relating to provision of water services

- Despite section 96, a water services entity may enter into a contract for any (1) aspect of the operation of all or part of water services for a term not longer than 35 years.
- (2) If a water services entity enters into a contract under subsection (1), it must
 - continue to be legally responsible for providing the water services; and (a)
 - (b) maintain ownership of the infrastructure and assets relating to the water services; and
 - retain control over-(c)
 - the pricing of water services; and
 - (ii) developing policy related to the delivery of water services.
- This section does not prevent a water services entity entering into a contract (3) with 1 or more other water services entities if the purpose of the contract relates solely to water services.

Compare: 2002 No 84, s 136

98 Joint arrangements for purpose of providing water services

- (1) Section 96 does not prevent a water services entity from entering into, for the purpose of providing water services, a joint arrangement or joint water services entity arrangement for a term not longer than 35 years (except a concession or other franchise agreement relating to the provision of the water services or any aspect of the water services).
- Before a water services entity enters into a joint arrangement or joint water ser-(2) vices entity arrangement, it must have consulted in accordance with the procedures set out in Part 6 of the Local Government Act 2002 as if it were a local authority.
- If a water services entity enters into a joint arrangement under subsection (1), it must-
 - (a) continue to be legally responsible for providing the water services; and
 - (b) retain control over
 - the pricing of water services; and

Consultation draft

- (ii) developing policy related to water services; and
- (c) after the end of the joint arrangement, retain ownership of all the infrastructure associated with the water services, whether or not the infrastructure was—
 - provided by the water services entity at the beginning of the joint arrangement; or
 - (ii) developed or purchased during the joint arrangement; and
- (d) not sell or transfer ownership of any existing infrastructure associated with the water services, unless the water services entity reasonably believes that the sale is—
 - (i) incidental to the joint arrangement; and
 - (ii) desirable for the success of the joint arrangement.
- (4) In this section,—

concession or other franchise agreement means an agreement under which a person other than a water services entity is entitled to receive a payment from any person other than the water services entity for the supply of the water services

joint arrangement means an arrangement entered into by 1 or more water services entities with 1 or more bodies that are not water services entities for the purpose of providing water services or any aspect of a water service

joint water services entity arrangement means an arrangement entered into by 2 or more water services entities for the purpose of providing water services or any aspect of a water service.

Compare: 2002 No 84 ss 136 and 137

Employees of water services entities

99 Employment of chief executive

- (1) A chief executive of a water services entity is appointed by the entity's board.
- (2) The terms and conditions of employment of a chief executive must be agreed between the board and the chief executive.
- (3) When considering the terms and conditions of a chief executive, the board must have regard to all of the following (among any other relevant factors):
 - (a) the legal, commercial, and operational context of the entity:
 - (b) the person's knowledge, skills, experience, and performance:
 - (c) the public interest in prudent stewardship of public resources:
 - (d) relevant market information.
- (4) A failure to comply with this section does not invalidate the acts of a chief executive of a water services entity.

Compare: 2004 No 115 s 117

Consultation draft

Attachment 3

- (1) A water services entity must, if it employs employees,—
 - (a) operate a personnel policy that complies with the principle of being a good employer; and
 - (b) make the policy (including the equal employment opportunities programme) available to its employees; and
 - (c) ensure its compliance with the policy (including its equal employment opportunities programme) and report in its annual report on the extent of its compliance.
- (2) For the purposes of this section, a **good employer** is an employer who operates a personnel policy that contains provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—
 - (a) good and safe working conditions; and
 - (b) an equal employment opportunities programme; and
 - (c) the impartial selection of suitably qualified persons for appointment; and
 - (d) recognition of—
 - (i) the aims and aspirations of Māori; and
 - (ii) the employment requirements of Māori; and
 - (iii) the need for involvement of Māori as employees of the entity; and
 - (e) opportunities for enhancing the abilities of individual employees; and
 - recognition of the aims and aspirations, employment requirements, and cultural differences of ethnic or minority groups; and
 - (g) recognition of the employment requirements of women; and
 - (h) recognition of the employment requirements of persons with disabilities.
- (3) For the purposes of this section, an **equal employment opportunities programme** means a programme that is aimed at identifying and eliminating all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons.

Compare: 2004 No 115 s 118

Protections from liability

101 Definitions for protections from liability

In sections 102 to 106,—

board member includes a board member who is a board member at any time after the commencement of this section but who ceases to be a board member

Consultation draft

effect insurance includes pay, whether directly or indirectly, the costs of the insurance

employee includes a person who is an employee at any time after the commencement of this section but who ceases to be an employee

entity's functions includes any function that an Act confers separately on a board member or employee of the entity

excluded act or omission means an act or omission by the board member or employee in good faith and in performance or intended performance of the entity's functions

indemnify includes relieve or excuse from liability, whether before or after the liability arises, and **indemnity** has a corresponding meaning.

Compare: 2004 No 115 s 126

102 Protections for board members and employees from liabilities of water services entity

A board member or an employee of a water services entity is not liable for any liability of the entity by reason only of being a board member or an employee.

Compare: 2004 No 115 s 120

103 Immunity from civil liability

- A board member of a water services entity is not liable, in respect of an excluded act or omission,—
 - (a) to the entity, unless the excluded act or omission is also a breach of an individual duty under any of sections 63 to 67:
 - (b) to any other person.
- (2) An employee of a water services entity is not liable to any person in respect of an excluded act or omission.
- (3) Nothing in this section affects—
 - (a) the making of an order under section 72:
 - (b) the liability of any person that is not a civil liability:
 - (e) the right of any person to apply, in accordance with the law, for judicial review.

Compare: 2004 No 115 s 121

104 Indemnities in relation to excluded act or omission

A water services entity may only indemnify a board member or an employee in respect of an excluded act or omission (including costs incurred in defending or settling any claim or proceeding relating to that excluded act or omission).

Compare: 2004 No 115 s 122

Consultation draft

105 Insurance for liability of board member or employee

A water services entity may effect insurance cover for a board member or an employee of the entity in relation to their acts or omissions, except an act or omission that is—

- (a) in bad faith; or
- (b) not in the performance or intended performance of the entity's functions. Compare: 2004 No $115 \ s \ 123$

106 Breach of indemnity and insurance limits

- (1) A board member or an employee who is indemnified or insured by a water services entity in breach of this Act must repay to the entity the cost of providing or effecting that indemnity or insurance cover, to the extent that the indemnity or insurance cover exceeds that which could have been provided or effected under this Act.
- (2) The water services entity may recover the amount as a debt due in a court of competent jurisdiction.

Compare: 2004 No 115 s 125

Dealings with third parties by water services entities

107 Method of contracting

- (1) A contract or other enforceable obligation may be entered into by a water services entity as provided in this section.
- (2) An obligation that, if entered into by an individual, is required to be by deed may be entered into on behalf of a water services entity in writing, signed under the name of the entity, by 2 or more of its board members.
- (3) An obligation that, if entered into by an individual, is required to be in writing may be entered into on behalf of a water services entity in writing by a person acting under the entity's express or implied authority.
- (4) An obligation that, if entered into by an individual, is not required to be in writing may be entered into on behalf of a water services entity in writing or orally by a person acting under the entity's express or implied authority.
- (5) This section applies to a contract or other obligation—
 - (a) whether or not that obligation was entered into in New Zealand; and
 - (b) whether or not the law governing that obligation is the law of New Zealand.

Compare: 2004 No 115 s 127

Consultation draft

108 Address for service

The address for service in respect of a water services entity is the address of the head office of the entity.

Compare: 2004 No 115 s 130

Application of Local Government Official Information and Meetings Act 1987

109 Official information

Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987 apply to a water services entity as if the entity were a local authority.

Part 4 Financial and accountability matters

Subpart 1—Government policy statement on water services

110 Minister may issue Government policy statement on water services

- (1) The Minister may issue a Government policy statement on water services.
- (2) The Minister must review a Government policy statement no later than 3 years after the date on which it is issued and subsequently at intervals of no more than 3 years after the most recent review.
- (3) A Government policy statement may be issued under subsection (1) if—
 - (a) the Government policy statement is consistent with the objectives of water services entities under section 10; and
 - (b) the Minister has complied with section 112(b).
- (4) A Government policy statement issued under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

 Compare: 2019 No 50 s 22

111 Purpose and content of Government policy statement

- (1) The purpose of a Government policy statement is to—
 - (a) state the Government's overall direction and priorities for water services; and
 - (b) inform and guide agencies involved in, and the activities necessary or desirable for, water services.
- (2) A Government policy statement must include the following:
 - (a) the Government's overall direction for water services, which must include a multi-decade outlook:
 - (b) the Government's priorities for water services:

48

- (c) how the Government expects other agencies to support that direction and those priorities:
- (d) the Government's expectations in relation to Māori interests, partnering with mana whenua, and giving effect to Te Mana o te Wai:
- (e) how the Government expects water services entities to take into account the well-being of communities.
- (3) A Government policy statement may also include—
 - (a) the Government's expectations in relation to the contribution of water services entities to the outcomes sought by the Government in the following areas:
 - (i) public health:
 - (ii) the environment:
 - (iii) housing and urban development:
 - (iv) climate change mitigation and adaptation:
 - (v) water security:
 - (vi) resilience to natural hazards:
 - (b) any other matters the Minister considers relevant.

Compare: 2019 No 50 s 23

112 Preparation or review of Government policy statement

When preparing or reviewing a Government policy statement, the Minister must—

- (a) be satisfied that it promotes a water services system that contributes to the current and future well-being of New Zealanders; and
- (b) consult—
 - (i) the water services entities; and
 - (ii) other persons, and representative groups of persons, who have an interest in water services in New Zealand.

Compare: 2019 No 50 s 24

113 Water services entities to give effect to Government policy statement

A water services entity must give effect to any Government policy statement when performing its functions.

Compare: 2019 No 50 s 26

114 Amending Government policy statement

- (1) The Minister may amend a Government policy statement at any time.
- (2) **Sections 112 and 115** (which relate to the preparation and availability of a Government policy statement)—

Consultation draft

- (a) apply with the necessary modifications to an amendment to the Government policy statement; but
- (b) do not apply if the amendment to the Government policy statement is not significant.

Compare: 2019 No 50 s 29

115 Obligation to publish and present Government policy statement

- (1) As soon as practicable after issuing a Government policy statement, the Minister must—
 - (a) present a copy to the House of Representatives; and
 - (b) arrange for a copy to be given to each water services entity.
- (2) The department must make the Government policy statement publicly available as soon as practicable after it is issued by publishing a copy on an Internet site maintained by, or on behalf of, the department in a format that is readily accessible.

Compare: 2019 No 50 s 28

Subpart 2—Regional representative group's statement of strategic and performance expectations

116 Regional representative group must issue statement of strategic and performance expectations

- (1) The regional representative group of a water services entity must issue a statement of strategic and performance expectations for the entity.
- (2) The regional representative group must review a statement of strategic and performance expectations no later than 3 years after the date on which it is issued and subsequently at intervals of no more than 3 years after the most recent review.
- (3) The regional representative group may, following a review, issue a new statement of strategic and performance expectations that replaces the statement of strategic and performance expectations that was reviewed, in which case, the reviewed statement expires when it is replaced.

117 Purpose and content of statement of strategic and performance expectations

- (1) The purpose of a statement of strategic and performance expectations for a water services entity is to—
 - (a) state the regional representative group's objectives and priorities for water services in the entity's service area; and
 - (b) inform and guide the decisions and actions of the board of the entity.
- (2) A statement of strategic and performance expectations for a water services entity must—

- (a) include the following matters:
 - (i) the regional representative group's expectations and strategic priorities for the entity:
 - (ii) the outcomes the group expects to be achieved through the delivery of water services by the entity:
 - (iii) how the group expects the water services entity to fulfil its objectives, functions, and operating principles; and
- (b) require the entity to give effect to the objective under **section 10(a)** of delivering water services and related infrastructure in an efficient and financially sustainable manner.
- (3) A matter under subsection (2)(a) must not be inconsistent with the direction and priorities for water services in the Government policy statement (if any) issued under section 110.

118 Water services entity to give effect to statement of strategic and performance expectations

The board of a water services entity must give effect to the statement of strategic and performance expectations for the entity when performing its functions. Compare: 2019 No 50 s 26

119 Obligation to publish statement of strategic and performance expectations

- (1) The regional representative group of a water services entity must provide a copy of a statement of strategic and performance expectations to the board of the entity as soon as practicable after issuing it.
- (2) The board must make the statement of strategic and performance expectations publicly available as soon as practicable after it is issued by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.

120 Obligation of regional representative group to review board performance

The regional representative group of a water services entity must annually review the performance of the board in giving effect to the statement of strategic and performance expectations.

Subpart 3—Te Mana o te Wai statements for water services

121 Mana whenua may provide Te Mana o te Wai statements for water services

(1) Mana whenua whose rohe or takiwā includes a freshwater body in the service area of a water services entity may provide the entity with a Te Mana o te Wai statement for water services.

Consultation draft

- (2) Mana whenua who have provided a Te Mana o te Wai statement for water services under subsection (1)—
 - (a) may review the statement at any time; and
 - (b) following a review, may provide a new statement that replaces the statement that was reviewed, in which case, the reviewed statement expires when it is replaced.
- (3) A statement provided under **subsection (1) or (2)(b)** expires after 10 years.

122 Water services entity must respond to Te Mana o te Wai statement for water services

- (1) As soon as practicable after receiving a Te Mana o te Wai statement for water services under **section 121**, the board of a water services entity must—
 - (a) acknowledge receipt of the statement; and
 - (b) engage with the mana whenua who provided the statement in accordance with **section 176** in relation to the preparation of a response to the Te Mana o te Wai statement for water services.
- (2) A response to a Te Mana o te Wai statement for water services must include a plan that sets out how the water services entity intends to fulfil its objective of giving effect to Te Mana o te Wai to the extent that it applies to the duties and functions of the entity in response to the statement.

123 Obligation to publish response to Te Mana o te Wai statement for water services

The board of a water services entity must make its response to a Te Mana o te Wai statement for water services publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible—

- (a) as soon as practicable after it is issued; and
- (b) in any event, within 2 years of receiving the statement to which it relates.

Subpart 4—Reporting obligations

Planning: statement of intent

124 Purpose of statement of intent

The purpose of a statement of intent is to promote the public accountability of a water services entity by—

- (a) setting out the entity's strategic intentions; and
- (b) providing a base against which the water services entity's actual performance can later be assessed.

Compare: 2004 No 115 s 138

Attachment 3

125 Board must prepare statement of intent

- The board of a water services entity must provide to the regional representative (1) group a statement of intent that complies with this section and section 126.
- (2) The board must provide a statement of intent annually.
- (3) A statement of intent must
 - relate to at least the following 3 financial years; and (a)
 - be prepared in accordance with Part 1 of Schedule 3. (b)

126 Content of statement of intent

- A statement of intent for a water services entity must, for the period to which it (1) relates, set out
 - how the entity intends to fulfil its objectives, functions, and operating principles; and
 - (b) the outcomes the board expects to achieve through the delivery of water services; and
 - how the entity intends to give effect to-(c)
 - the expectations, strategic priorities, and outcomes outlined in the statement of strategic and performance expectations for the entity;
 - the direction and priorities in the Government policy statement; (ii)
 - (d) the nature and scope of the activities the entity proposes to undertake;
 - (e) significant work that the entity proposes to undertake; and
 - any actions the entity intends to take as part of a plan included in a response to a Te Mana o te Wai statement to fulfil the entity's objective to give effect to Te Mana o te Wai in response to the statement; and
 - how the entity proposes to approach consumer and community engage-(g) ment; and
 - a forecast statement of service delivery performance for water supply, (h) wastewater, and stormwater services, including non-financial performance measures and targets about the quality of the services to be deliv-
- A statement of intent must also include— (2)
 - the forecast financial statements for each financial year in the period to (a) which the statement of intent relates; and
 - (b) the financial statements for the financial year immediately preceding the period to which the statement of intent relates; and
 - a forecast of expenditure to be applied to— (c)

Consultation draft

- (i) meet additional demand from water supply, wastewater, and stormwater services; and
- (ii) improve the level of the service delivery performance; and
- (iii) replace existing assets.
- (3) For the purposes of this section, budgeted expenditure applied for 2 or all of the purposes in **subsection (2)** may be treated as if it were applied solely in relation to the primary purpose of the expenditure.

127 Board must publish statement of intent

The board of a water services entity must, as soon as practicable after providing a statement of intent to the entity's regional representative group, make the statement publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.

Planning: asset management plan

128 Board must prepare asset management plan

- (1) The board of a water services entity must provide an asset management plan to the entity's regional representative group at least once in every 3-year period.
- (2) The asset management plan must—
 - (a) cover a period of not less than 10 consecutive financial years; and
 - (b) comply with section 129; and
 - (c) be prepared in accordance with Part 2 of Schedule 3.

129 Content of asset management plan

An asset management plan for a water services entity must, for the period to which it relates, set out—

- (a) the investment priorities for the infrastructure assets of the entity; and
- (b) how the entity will—
 - (i) operate, maintain, and renew its infrastructure assets; and
 - (ii) provide new infrastructure assets; and
- (c) how the plan meets the proposed activities and intention of the entity set out in its statement of intent.

130 Obligation to publish asset management plan

As soon as practicable after an asset management plan is provided to the regional representative group, the chief executive of a water services entity

(a) make the plan publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible; and

(b) prepare and publish a report on how the entity considered consumer and community input into, and feedback on, the plan and incorporated it into the plan.

Planning: funding and pricing plan

131 Board must prepare funding and pricing plan

- (1) The board of a water services entity must provide a funding and pricing plan to the entity's regional representative group at least once in every 3-year period.
- (2) The funding and pricing plan must—
 - (a) cover a period of not less than 10 consecutive financial years; and
 - (b) comply with section 132; and
 - (c) be prepared in accordance with Part 3 of Schedule 3.

132 Content of funding and pricing plan

- A funding and pricing plan for a water services entity must, for the period to which it relates, set out—
 - (a) the sources of, and the entity's intended approach to, funding, revenue, and financing; and
 - (b) the entity's intended approach to pricing its services and charging consumers; and
 - (c) a financial strategy for all of the consecutive financial years covered by the funding and pricing plan.
- (2) A financial strategy must—
 - (a) include a statement of the factors that are expected to have a significant impact on the water services entity during the consecutive financial years covered by the strategy, including—
 - the expected changes in population and the use of land in the entity's service area, and the capital and operating costs of providing for those changes; and
 - (ii) the expected capital expenditure on network infrastructure that is required to maintain existing levels of service currently provided by the entity; and
 - (iii) other significant factors affecting the entity's ability to maintain existing levels of service and to meet additional demands for services; and
 - (b) specify the entity's policy on the giving of security for its borrowing;and

Consultation draft

(c) specify the entity's objectives for holding and managing financial investments and equity securities and its quantified targets for returns on those investments and equity securities.

Compare: 2002 No 84 s 101A(1), (3)(a), (c), (d)

133 Obligation to publish funding and pricing plan

As soon as practicable after a funding and pricing plan is provided to the regional representative group, the chief executive must—

- (a) make the plan publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible; and
- (b) prepare and publish a report on how the entity considered consumer and community input into, and feedback on, the plan and incorporated it into the plan.

Planning: infrastructure strategy

134 Board must prepare and adopt infrastructure strategy

- (1) The board of a water services entity must provide an infrastructure strategy to the entity's regional representative group at least once in every 3-year period.
- (2) The strategy must—
 - (a) cover a period of at least 30 consecutive financial years; and
 - (b) comply with section 135; and
 - (c) be prepared in accordance with Part 4 of Schedule 3.

135 Content of infrastructure strategy

- (1) An infrastructure strategy must identify—
 - (a) significant infrastructure issues for the water services entity over the period covered by the strategy; and
 - (b) the principal options for managing those issues and the implications of those options.
- (2) An infrastructure strategy must also, for the period to which it relates, outline how the water services entity intends to operate, maintain, and renew its existing infrastructure assets and provide for new infrastructure over the period covered by the strategy.

Compare: 2002 No 84 s 101B

136 Obligation to publish infrastructure strategy

The chief executive of a water services entity must, as soon as practicable after an infrastructure strategy is provided to the entity's regional representative group,—

Consultation draft

- (a) make the strategy publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible; and
- (b) prepare and publish a report on how consumer and community input into, and feedback on, the strategy was considered and incorporated into the strategy.

Reporting: annual report

137 Obligation to prepare and publish annual report

- (1) A water services entity must—
 - (a) as soon as practicable after the end of each financial year, prepare a report on the affairs of the water services entity; and
 - (b) provide the report to its regional representative group no later than 15 working days after receiving the audit report provided under section 142.
- (2) A water services entity must publish a copy of its annual report on an Internet site maintained by, or on behalf of, the entity—
 - (a) as soon as practicable after it has been provided to the regional representative group; and
 - (b) in any event, no later than 20 working days after receiving the audit report.

Compare: 2004 No 115 s 150(1)

138 Form and content of annual report

- (1) An annual report of a water services entity must contain the following information and reports in respect of the financial year to which it relates:
 - (a) information on operations that complies with subsection (2):
 - (b) a statement of service delivery performance in accordance with section 139:
 - (c) the annual financial statements for the entity in accordance with section 140:
 - (d) a statement of responsibility in accordance with **section 141**:
 - (e) an audit report in accordance with section 142:
 - (f) information on compliance with its obligation to be a good employer (including its equal employment opportunities programme) see section 100:
 - (g) information required by **section 143** (which relates to payments in respect of board members, chief executives, and employees during that financial year):

- (h) information on responses the board has made to Te Mana o te Wai statements during that financial year (see section 122):
- (i) information on any action that has been taken as part of a plan included in a response to a Te Mana o te Wai statement to fulfil the entity's objective to give effect to Te Mana o te Wai (see section 122):
- (j) information required by **section 18(3)** (which relates to the enforcement of certain natural person transactions):
- (k) information required by section 88 (which relates to permission to act despite being interested in a matter):
- (1) any matters that relate to or affect the entity's operations that the entity is otherwise required, or has undertaken, or wishes to report on in its annual report.
- (2) The annual report must provide the information that is necessary to enable an informed assessment to be made of the entity's operations for that financial year, including an assessment of the entity's progress in relation to its strategic intentions as set out in the most recent statement of intent, asset management plan, and funding and pricing plan.

Compare: 2004 No 115 s 151(1)(a)-(e), (g)-(k), (2)

139 Form and content of statement of service delivery performance

- (1) A statement of service delivery performance must, in relation to a water services entity and a financial year, contain the following information:
 - (a) a comparison of the actual performance achieved with the forecast statement of service delivery performance in the statement of intent (see section 126(1)(g)):
 - (b) whether any intended changes to the level of service delivery have been achieved:
 - (c) the reasons for any significant variation between the level of service delivery achieved and the intended level of service delivery:
 - (d) the actual revenue, operating expenditure, and capital expenditure for water supply, wastewater, and stormwater services, compared to the revenue, operating expenditure, and capital expenditure budgeted for those services in the statement of intent.
- (2) For the purposes of **subsection (1)(d)**, the statement must separately provide for actual and budgeted expenditure applied to—
 - (a) meet additional demand for the water supply, wastewater, and stormwater services:
 - (b) improve the level of service delivery performance:
 - (c) replace existing assets.

58

Attachment 3

For the purposes of this section, actual or budgeted expenditure for 2 or all of

- As soon as practicable after the end of each financial year, a water services (1) entity must prepare financial statements in relation to the entity for that financial year.
- The financial statements must— (2)
 - include any information or explanations needed to fairly reflect the financial operations and financial position; and
 - include the forecast financial statements prepared at the start of the (b) financial year for comparison with the actual financial statements.

Compare: 2004 No 115 s 154

141 Statement of responsibility

The statement of responsibility must-

- contain a statement of the signatories' responsibility for the preparation of the financial statements and statement of performance and for the judgments in them; and
- contain a statement of the signatories' responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting; and
- contain a statement that, in the opinion of the signatories, the financial statements and statement of performance for the financial year fairly reflect the financial position and operations of the water services entity; and
- (d) be dated and signed
 - by 2 board members on behalf of the board; and
 - by the chief executive. (ii)

Compare: 2004 No 115 s 155

142 Audit report

- (1) A water services entity must forward to the Auditor-General
 - the entity's annual financial statements and statement of service delivery performance; and
 - (b) any other information that the Auditor-General has agreed, or is required, to audit.
- (2) The Auditor-General must—

Consultation draft

- (a) audit the statements and information referred to in subsection (1); and
- (b) provide an audit report on those statements and that information to the water services entity.

Compare: 2004 No 115 s 156(1), (2)

143 Disclosure of payments in respect of board members and employees

- (1) The annual report must include, in respect of the water services entity,—
 - (a) a report on the remuneration that, in the financial year to which the report relates, was received by, or was payable to, each of the chief executive and each board member of the water services entity; and
 - (b) a report on the number of employees who were employed by the entity—
 - (i) on the last day of the financial year to which the report relates;
 - (ii) on the last day of the immediately preceding financial year, and
 - (c) the amount of any severance payments made in the financial year to any person who vacated office as the chief executive; and
 - (d) the number of employees of the entity to whom, in the financial year, severance payments were made and the amount of each severance payment (if any); and
 - (e) the details of any indemnity provided by the entity during the financial year to the chief executive, any board member, or any employee; and
 - (f) the details of any insurance cover effected by the entity during the financial year in respect of the liability or the costs of the chief executive, any board member, or any employee.
- (2) The report under **subsection (1)(a)** must include, in relation to the chief executive and each board member, the total annual remuneration (including the value of any non-financial benefits) that was paid to the person, or was payable to the person, in their capacity as a chief executive or as a board member of the entity during the financial year.
- (3) The report must state, as at the last day of the financial year,—
 - (a) the number of full-time employees; and
 - (b) the full-time equivalent number of all other employees; and
 - (c) the number of employees receiving total annual remuneration of less than \$100,000; and
 - (d) the number of employees receiving total annual remuneration of \$100,000 or more, expressed in bands of \$10,000.
- (4) If the number of employees in any band to which **subsection (3)(d)** applies is 5 or fewer, the number for that band must be combined with the next-highest

Consultation draft

band and the statement in the report in relation to that subsection must be adjusted accordingly.

(5) In this section,—

board member, chief executive, and employee include a person who was a board member, the chief executive, or an employee at any time after the commencement of this section but who is no longer a board member, the chief executive, or an employee

severance payment means any consideration that a water services entity has agreed to provide to an employee in respect of that employee's agreement to the termination of their employment, being consideration, whether of a monetary nature or otherwise, additional to any entitlement of that employee to—

- (a) any final payment of salary; or
- (b) any holiday pay; or
- (c) any superannuation contributions

total annual remuneration, in relation to an employee, a board member, or the chief executive of a water services entity, includes the value of any nonfinancial benefit that, during the year, was paid to the employee, board member, or chief executive, or was payable to the employee, board member, or chief executive, by the water services entity.

Compare: 2004 No 115 s 152; 2002 No 84 Schedule 10, cls 32, 32A, 33

144 Information to be prepared in accordance with generally accepted accounting practice

All information that is required by any provision of this subpart to be included in a statement of intent, a funding and pricing plan, an asset management plan, an infrastructure strategy, or an annual report must be prepared in accordance with generally accepted accounting practice if that information is of a form or nature for which generally accepted accounting practice has developed standards.

Compare: 2002 No 84 s 111

145 Insurance of assets

An annual report must state, as at the end of the financial year,—

- (a) the total value of all assets of the water services entity that are covered by insurance contracts and the maximum amount to which they are insured; and
- (b) the total value of all assets of the water services entity that are covered by financial risk sharing arrangements and the maximum amount available to the water services entity under those arrangements; and

Consultation draft

(c) the total value of all assets of the water services entity that are selfinsured and the value of any fund maintained by the water services entity for that purpose.

Compare: 2002 No 84 Schedule 10 cl 31A

Subpart 5—Other provisions for financial management

Bank accounts

146 Bank accounts of water services entities

- (1) A water services entity must ensure that all money received by the entity is paid, as soon as practicable after it is received, into 1 or more bank accounts that are established, maintained, and operated by the entity at 1 or more of the following:
 - (a) a registered bank or registered building society that satisfies a relevant credit-rating test specified in a notice in the *Gazette* published by the Minister of Finance; or
 - (b) a registered bank or registered building society that meets the conditions of any relevant approval given by the Minister of Finance by notice in the *Gazette*; or
 - (c) a bank outside New Zealand that meets the conditions of any relevant approval given by the Minister of Finance by notice in the *Gazette*; or
 - (d) a bank outside New Zealand if the conditions specified in **subsection** (2) are met.
- (2) The conditions referred to in **subsection (1)(d)** are as follows:
 - (a) the water services entity must be authorised to establish, maintain, and operate 1 or more bank accounts at 1 or more banks outside New Zealand—
 - (i) by the Minister of Finance in writing; or
 - (ii) by a notice in the *Gazette* published by the Minister of Finance; and
 - (b) the bank account or bank accounts must be of a type approved—
 - (i) by the Minister of Finance in writing; or
 - (ii) by a notice in the Gazette published by the Minister of Finance.
- (3) A water services entity must establish, maintain, and operate a bank account referred to in **subsection (2)** subject to—
 - (a) any conditions specified in a notice published in the *Gazette* by the Minister of Finance; and
 - (b) any conditions of the authorisation or approval given by the Minister of Finance.

Consultation draft

- (4) A water services entity must ensure that it does not establish, maintain, or operate a bank account other than as provided for in **subsection (1)**.
- (5) All money in a bank account at a registered bank or a registered building society must be denominated in New Zealand dollars unless the Minister of Finance allows otherwise.
- (6) A water services entity must properly authorise the withdrawal or payment of money from a bank account of the entity.
- (7) There is a period of grace if a bank account ceases to qualify under subsection (1) and,—
 - (a) during that period, the water services entity may continue to pay money into the bank account; but
 - (b) by the end of the period, the water services entity must have closed the account and paid all the money in the account into another bank account that qualifies under **subsection (1)**.
- (8) The period of grace ends on the earlier of—
 - (a) the date that is 2 months after the bank account ceases to qualify under **subsection (1)**; and
 - (b) the date that is specified by the Minister of Finance and notified to the water services entity.

Compare: 2004 No 115 s 158

Prohibition on equity returns

147 Territorial authority owners have no beneficial interest in security of water services entity or right to equity return

- (1) A territorial authority owner—
 - (a) does not have any beneficial entitlement to, or a beneficial interest in, the security of a water services entity; and
 - (b) must not receive any equity return, directly or indirectly, from a water services entity.
- (2) In this section,—

equity return means—

- (a) profits of the entity; or
- (b) distributions from the entity; or
- (c) any benefit derived, directly or indirectly, from a water services entity that represents, is calculated by reference to, or is determined by,—
 - (i) a share in or proportion of its capital; or
 - (ii) its surplus or residual economic value (after satisfying prior contractual claims); or

Consultation draft

(iii) its profitability or other indicator of its success

security has the meaning set out in section 6 of the Financial Markets Conduct Act 2013.

Compare: 2010 No 116 Schedule 2 cl 6

Subpart 6—Accounting records

148 Board must ensure that proper accounting records are kept

- (1) The board of a water services entity must cause accounting records to be kept that—
 - (a) correctly record and explain the transactions of the entity; and
 - (b) will, at any time, enable the financial position of the entity to be determined with reasonable accuracy; and
 - (c) will enable the board members of the entity to ensure that the financial statements of the entity comply with sections 140 and 144; and
 - (d) will enable the financial statements of the water services entity to be readily and properly audited.
- (2) The accounting records must be in written form or in a manner in which they are easily accessible and convertible into written form.

Compare: 2004 No 115 s 168

Subpart 7—Borrowing

149 Borrowing in foreign currency

A water services entity may borrow or enter into incidental arrangements within or outside New Zealand in currency other than New Zealand currency.

Part 5 Monitoring

Subpart 1—Monitor

Appointment and role of monitor

150 Appointment and role of monitor

- (1) The Minister may appoint a department to be the monitor.
- (2) The role of the monitor is—
 - (a) to act as a steward to provide oversight of the water services system from a whole of government perspective; and
 - (b) to assist the Minister to carry out the Minister's role (which is described in section 23); and

Consultation draft

- (c) to perform or exercise any or all of the following functions or powers:
 - (i) administering appropriations:
 - (ii) administering legislation:
 - (iii) tendering advice to Ministers:
 - (iv) any other functions or powers in this Act or another Act that may, or must, be performed by the monitor.
- (3) The monitor may exercise all powers that are—
 - (a) conferred on the monitor by this Act; or
 - (b) reasonably necessary for performing the monitor's functions and duties.

Compare: 2021 No 31 s 80

Monitor's information-gathering power

151 Monitor's power to request information

- The monitor may, by notice in writing, require a water services entity to provide it with information the monitor considers necessary to carry out its role under section 150.
- (2) An entity must provide the information—
 - (a) by the date specified in the notice; or
 - (b) by any other date the monitor has agreed to.

152 Good reason for refusing to supply requested information

- (1) A request for information made under **section 151** may be refused if—
 - (a) the withholding of the information is necessary to protect the privacy of a person (whether or not a natural person or a deceased person); or
 - (b) the supply of the information would limit the ability of the water services entity, or of any of its employees or board members, to act judicially or to carry out the statutorily independent functions of the entity, in relation to a particular matter.
- (2) A reason in subsection (1)(a) applies only if it is not outweighed by the monitor's need to have the information in order to discharge its duties and functions under this Act.
- (3) The information cannot be withheld other than for the reasons in **subsection** (1), and cannot be withheld at all if it could not properly be withheld under the Official Information Act 1982.

Compare: 2005 No 115 s 134

153 Civil proceedings relating to non-compliance with information request

 The monitor may apply to the High Court for an order if a person does not comply with section 151.

Consultation draft

- (2) If the court is satisfied that the person has not complied with **section 151**, the court may make either or both of the following:
 - (a) an order directing the person to comply with section 151:
 - (b) an order imposing a civil pecuniary penalty not exceeding \$50,000.
- (3) In addition to the orders referred to in **subsection (2)**, the court may make any other order that it considers appropriate in the circumstances, including an order directing the person to pay to the monitor the reasonable costs of the proceedings.

Compare: 2021 No 36 s 143

154 Content of notice

- (1) A notice under section 151 must state—
 - (a) the information required by the monitor; and
 - (b) the form in which the water services entity must provide the information; and
 - (c) the date by which the water services entity must provide the information.
- (2) The notice may require a water services entity to provide information—
 - (a) by instalments on specified dates:
 - (b) by instalments at specified intervals.

Compare: 2002 No 84 s 257(3), (5)

Subpart 2—Minister's powers to intervene

155 Meaning of problem for purposes of subpart

In this subpart, **problem** means a matter, circumstance, or failure that has actual or probable adverse consequences for consumers or communities in a water services entity's service area and includes—

- a matter or circumstance relating to the management or governance of the entity that detracts from, or is likely to detract from, its ability to give effect to its purpose; and
- (b) a significant or persistent failure by the entity—
 - (i) to perform 1 or more of its functions or duties under this Act; or
 - (ii) to give effect to a Government policy statement issued by the Minister under **section 110**; and
- (c) the consequences of a state of emergency (within the meaning of section 4 of the Civil Defence Emergency Management Act 2002) affecting, or recently affecting, the entity's service area; and
- (d) a failure by the entity to demonstrate prudent management of its revenues, expenses, assets, liabilities, investments, or general financial dealings; and

Consultation draft

Attachment 3

(e) a potential problem.

Crown review team

156 Minister may appoint Crown review team

- (1) The Minister may appoint a Crown review team to perform functions under this section if—
 - (a) the water services entity has received a notice under section 151 and, without good reason, has not provided the information required by the notice by the stated or agreed date; or
 - (b) the Minister believes on reasonable grounds that a problem relating to the water services entity may exist and—
 - the water services entity is unable or unwilling to effectively address the problem; or
 - (ii) a ministerial body currently or previously appointed in relation to the water services entity has recommended the appointment; or
 - (c) the Minister has received a written request to do so from the water services entity or the entity's regional representative group.
- (2) Before appointing a Crown review team, the Minister must give notice of the proposed appointment in accordance with **section 166**.
- (3) Before the Crown review team begins its review, the Minister must give notice of the appointment in accordance with section 167.
- (4) A Crown review team must, to the extent authorised by its terms of reference,—
 - (a) investigate and report on the nature and extent of the problem or failure to provide information; and
 - (b) make recommendations to the water services entity and the Minister on how the water services entity could address the problem (if any); and
 - (c) make recommendations to the Minister on whether the Minister should take further action in relation to the water services entity, including whether the Minister should appoint any other ministerial body in relation to the entity; and
 - (d) ensure, as far as practicable, that the existing organisational capability of the water services entity is not diminished.
- (5) To the extent authorised by its terms of reference, a Crown review team may also investigate, and report on, any related matter recommended by a ministerial body currently or previously appointed in relation to the water services entity.
- (6) A water services entity must—

Consultation draft

- (a) co-operate with a Crown review team so that it may comply with its terms of reference; and
- (b) comply with any reasonable request of the Crown review team to provide any relevant information that the water services entity holds.
- (7) A Crown review team must produce a final report that complies with **section 169** as soon as practicable after completing a review.

Compare: 2002 No 84 s 258

157 Appointment of Crown review team

- (1) A Crown review team comprises 1 or more members.
- (2) If a Crown review team comprises 2 or more members, the Minister must appoint 1 member as the chairperson.
- (3) The Minister must appoint each member by notice in writing.
- (4) Each notice of appointment must include—
 - (a) the terms of reference of the Crown review team, including—
 - (i) an outline of the reason it has been appointed to perform functions under **section 156**; and
 - (ii) the extent of its authority; and
 - (b) the start and end dates of each member's appointment; and
 - (c) the start and end dates of the review period.

Compare: 2002 No 84 s 258A

Crown observer

158 Minister may appoint Crown observer

- (1) The Minister may appoint a Crown observer to perform functions under this section if—
 - (a) the Minister believes, on reasonable grounds, that a problem relating to a water services entity exists and—
 - the appointment of a Crown observer is necessary to enable, or better enable, the water services entity to effectively address the problem; or
 - (ii) the appointment of a Crown observer is necessary to enable, or better enable, the Minister to monitor the water services entity's progress in addressing the problem; or
 - (iii) a ministerial body currently or previously appointed in relation to the water services entity has recommended the appointment; or
 - (b) the Minister has received a written request to do so from the water services entity or the entity's regional representative group.

68

- (2) Before appointing a Crown observer, the Minister must give notice of the proposed appointment in accordance with section 166.
- (3) Before the Crown observer begins their observation period, the Minister must give notice of the appointment in accordance with **section 167**.
- (4) A Crown observer must, to the extent authorised by the Crown observer's terms of reference,—
 - (a) assist the water services entity to address the problem; and
 - (b) monitor the water services entity's progress in relation to the problem;
 - (c) make recommendations to the Minister on whether the Minister should take further action in relation to the water services entity, including whether the Minister should appoint any other ministerial body in relation to the entity; and
 - ensure, as far as practicable, that the existing organisational capability of the water services entity is not diminished; and
 - (e) assist the water services entity with, and monitor progress on, any related matter as recommended by a ministerial body currently or previously appointed in relation to the entity.
- (5) A water services entity must—
 - co-operate with a Crown observer so that it may comply with its terms of reference; and
 - (b) comply with any reasonable request of the Crown observer to provide any relevant information that the water services entity holds.
- (6) A Crown observer must produce a final report that complies with **section 169**, as soon as practicable after its observation period ends.

Compare: 2002 No 84 s 258B

159 Appointment of Crown observer

- (1) The Minister must appoint a Crown observer by notice in writing.
- (2) Each notice of appointment must include—
 - (a) the terms of reference of the Crown observer, including—
 - (i) an outline of the problem that the Crown observer has been appointed to observe; and
 - (ii) the extent of the Crown observer's authority; and
 - (b) the start and end dates of the Crown observer's appointment; and
 - (c) the start and end dates of the observation period.

Compare: 2002 No 84 s 258C

Consultation draft

160 Minister may appoint Crown manager

- (1) The Minister may appoint a Crown manager to perform functions under this section if—
 - (a) the Minister believes, on reasonable grounds, that a problem relating to the water services entity exists and—
 - (i) the nature and extent of the problem is such that the water services entity is unlikely to effectively address the problem without the appointment of a Crown manager; or
 - (ii) the water services entity has not, without good reason, adequately implemented a recommendation of any other ministerial body in relation to the problem; or
 - (iii) a ministerial body currently or previously appointed in relation to the water services entity has recommended the appointment; or
 - (b) the Minister has received a written request to do so from the water services entity or the entity's regional representative group.
- (2) Before appointing a Crown manager, the Minister must give a notice of the proposed appointment in accordance with **section 166**.
- (3) Before the Crown manager begins their management period, the Minister must give notice of the appointment in accordance with **section 167**.
- (4) A Crown manager must, to the extent authorised by their terms of reference,—
 - (a) direct the water services entity, or the board of the water services entity, to act to address the problem; and
 - (b) make recommendations to the Minister on whether the Minister should take further action in relation to the water services entity, including whether the Minister should appoint any other ministerial body in relation to the entity; and
 - (c) ensure, as far as practicable, that the existing organisational capability of the water services entity is not diminished; and
 - (d) direct the water services entity on any related matter as recommended by a ministerial body currently or previously appointed in relation to the entity.
- (5) A Crown manager may work together with, or apart from, the board of a water services entity.
- (6) A water services entity must—
 - (a) co-operate with a Crown manager so that it may comply with its terms of reference; and
 - (b) comply with the directions of a Crown manager; and

70

- (c) comply with any reasonable request of a Crown manager to provide any relevant information that the water services entity holds.
- (7) A Crown manager must produce a final report that complies with **section 169** as soon as practicable after their management period ends.

Compare: 2002 No 84 s 258D

161 Appointment of Crown manager

- (1) The Minister must appoint a Crown manager by notice in writing.
- (2) Each notice of appointment must include—
 - (a) the terms of reference of the Crown manager, including—
 - (i) an outline of the problem it has been appointed to manage; and
 - (ii) the extent of the Crown manager's authority; and
 - (b) the start and end dates of the Crown manager's appointment; and
 - (c) the start and dates of the management period.

Compare: 2002 No 84 s 258E

Subpart 3—General provisions applying to Minister's power to intervene

162 Application

This subpart applies in relation to any appointment the Minister makes under subpart 2.

163 Minister may consult

The Minister may consult any person, organisation, or group—

- (a) when determining what action, if any, to take under subpart 2:
- (b) when appointing a ministerial body:
- (c) when formulating the terms of reference for a ministerial body.

Compare: 2002 No 84 s 258N

164 Minister must publish list of matters

- (1) The Minister must publish a list of matters relevant to determining what action, if any, the Minister will take under **subpart 2**.
- (2) Without limiting subsection (1), the list must include the following matters:
 - (a) guiding principles that the Minister is likely to adopt when making decisions under this Part:
 - (b) matters or circumstances relating to the management or governance of a water services entity that the Minister considers are likely to detract from the ability of the entity to give effect to its objectives or undertake its functions:

Consultation draft

- (c) the types and sources of information that the Minister is likely to consider when making decisions under this Part.
- (3) The Minister must review the list no later than 5 years after the date on which it is published and subsequently at intervals of no more than 5 years after the most recent review.
- (4) The Minister must republish the list after each review.
- (5) Before publishing or republishing a list, the Minister—
 - (a) must consult Local Government New Zealand; and
 - (b) may consult any other person, organisation, or group.
- (6) In this section, **publish** and **republish** mean publish in the *Gazette* and on an Internet site maintained by, or on behalf of, the monitor.

Compare: 2002 No 84 s 258O

165 Minister must have regard to published list

- (1) The Minister must, when determining what action, if any, to take under **sub-part 2**, have regard to the list published under **section 164**.
- (2) However, the Minister may act under **subpart 2** and appoint a ministerial body in relation to a water services entity even if the problem in relation to the water services entity does not relate to a matter on the list.

Compare: 2002 No 84 s 258P

166 Notice of proposed appointment of ministerial body

- (1) Before appointing a ministerial body to perform functions under this subpart in relation to a water services entity, the Minister must—
 - (a) give the entity and the entity's regional representative group notice that the Minister intends to make the appointment; and
 - (b) state—
 - (i) the reasons for the proposed appointment; and
 - (ii) the proposed terms of reference; and
 - (c) give the entity an opportunity to satisfy the Minister of the following matters, as applicable, by a date specified in the notice, which must be no earlier than 10 working days after the date on which the Minister gives the notice to the entity:
 - (i) that the reasons for the Minister to make the appointment do not exist.
 - (ii) that the water services entity is acting effectively to address the problem (if any) or the reasons for the proposed appointment:
 - (iii) that for any other reason, the Minister should not make the appointment:

72

Attachment 3

- (2) The Minister must notify a water services entity, in writing, if the Minister decides not to appoint a ministerial body.
- (3) This section does not apply if—
 - (a) the water services entity has requested the Minister to make the appointment: or
 - (b) the problem in relation to which the Minister intends to make the appointment relates to the consequences of a state of emergency and the Minister believes, on reasonable grounds, that the public health or safety of the people within the water services entity's service area is, or is likely to be, endangered.

Compare: 2002 No 84 s 258Q

167 Notice of appointment of ministerial body

- (1) A notice of appointment of a ministerial body under section 156(3), 158(3), or 160(3) must—
 - (a) be in writing; and
 - (b) be given as soon as is reasonably practicable after the Minister makes the appointment; and
 - (c) be sent to the relevant water services entity and the entity's regional representative group; and
 - (d) be published in the Gazette; and
 - (e) be publicly notified.
- (2) A notice of appointment must include—
 - (a) a statement that the Minister has appointed a ministerial body in relation to the relevant water services entity; and
 - (b) the type of ministerial body appointed; and
 - (c) the terms of reference; and
 - (d) the start and end dates of the ministerial body's appointment; and
 - (e) the name of each member of the ministerial body; and
 - (f) if applicable, the name of the chairperson of the ministerial body.
- (3) The Minister must notify any change in the membership of a ministerial body by notice in the *Gazette*.
- (4) In this section, publicly notify means to publish—
 - a notice on an Internet site maintained by, or on behalf of, the monitor;
 and
 - (b) any other notice that the Minister thinks desirable in the circumstances.

Compare: 2002 No 84 ss 258S, 258T

Consultation draft

168 Information to Minister

A ministerial body must inform the Minister about—

- (a) the steps it is taking to address the problem; and
- (b) the progress of those steps.

Compare: 2020 No 47 s 128(1)

169 Final report of ministerial body

- (1) A final report produced by a ministerial body under section 156(7), 158(6), or 160(7) must include—
 - (a) a narrative description of the activities of the ministerial body in relation to its terms of reference; and
 - (b) in respect of the problem in relation to which the ministerial body was appointed, an assessment of progress in addressing the problem; and
 - (c) any final recommendations of the ministerial body to the Minister, the water services entity, or both; and
 - (d) without limiting **paragraph** (c), any final recommendations of the ministerial body to the Minister on whether the Minister should take further action in relation to the water services entity, including whether the Minister should appoint any other ministerial body in relation to the entity; and
 - (e) any other matter required by the ministerial body's terms of reference.
- (2) The Minister must, as soon as practicable,—
 - (a) give a copy of the report to the relevant water services entity and the entity's regional representative group; and
 - (b) make the report publicly available, excluding any information that it is necessary to withhold for any of the reasons stated in section 6 or 7 of the Local Government Official Information and Meetings Act 1987.

Compare: 2002 No 84 s 258U

170 Remuneration and expenses of ministerial appointees

- (1) A ministerial appointee is entitled—
 - to receive remuneration for services as a member of a ministerial body as determined by the Minister in accordance with the fees framework; and
 - (b) to be reimbursed for actual and reasonable travelling and other expenses incurred in providing the services as a member in accordance with the fees framework.

74

2) In this section, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

Compare: 2002 No 84 s 258V

171 Recovery of expenses from water services entity

- (1) A water services entity owes, as a debt to the Crown, any expenses that the Crown incurs for the appointment of a Crown manager in relation to the entity, including the payment of remuneration and expenses to the Crown manager.
- (2) Any expenses that the Crown incurs for the appointment of a Crown observer or a Crown review team in relation to a water services entity, including the payment of remuneration and expenses to the Crown observer or any member of the Crown review team, may be recovered by the Crown from the entity if—
 - (a) the Minister decides that it is reasonable to do so in the circumstances;
 - (b) the terms of reference authorise the recovery.

Compare: 2002 No 84 s 258W

172 Minister may terminate appointment of ministerial body or ministerial appointee

- (1) The Minister may terminate the appointment of a ministerial body or ministerial appointee at any time by notice in writing.
- (2) The Minister must give notice of the termination of a ministerial body—
 - (a) in writing to the water services entity and the entity's regional representative group; and
 - (b) by notice in the Gazette; and
 - (c) by public notice.
- (3) The Minister must give notice of the termination of the appointment of a ministerial appointee in writing to the appointee, the water services entity, and the entity's regional representative group.
- (4) No compensation is payable to a ministerial appointee as a result of the appointee's termination.

Compare: 2002 No 84 s 258X

173 Protection from liability for ministerial appointees

(1) A ministerial appointee is not liable for any act done or omitted to be done by the appointee in good faith in the performance or intended performance of the appointee's functions, responsibilities, and duties, or the exercise of the appointee's powers as a ministerial appointee.

Consultation draft

(2) The protection from liability in subsection (1) includes protection in relation to acts done or omitted to be done by a Crown manager when directing a water services entity to act.

Compare: 2002 No 84 s 258Y

174 Disclosure of information held by water services entity

- (1) For the purposes of this Part, information held by a water services entity may be disclosed to the Minister or a ministerial body despite anything to the contrary in the Official Information Act 1982, the Local Government Official Information and Meetings Act 1987, or the Privacy Act 2020.
- (2) However, the Minister, the ministerial body, or a ministerial appointee must not publish or disclose the information to any other person except in accordance with those Acts.

Compare: 2002 No 84 s 258Z

175 Decisions and directions of Crown manager remain in force

On and from the expiry of the term of a Crown manager appointed in relation to a water services entity.—

- (a) a direction given to the water services entity by the Crown manager ceases to have effect; and
- (b) despite **paragraph** (a), any decision made by the water services entity giving effect to the direction continues in force unless and until the board of the entity revokes or amends the decision.

Compare: 2002 No 84 s 258ZA(1), (2), (3)

Part 6 Miscellaneous provisions

Subpart 1—Engagement

176 Engagement requirements

- (1) This section applies to engagement that a water services entity must undertake in accordance with any of the following provisions:
 - (a) **section 122(1)(b)** (relating to the preparation of a response to a Te Mana o te Wai statement for water services):
 - (b) **section 180(1)(a)** (relating to the making of regulations to provide for a model constitution for a regional representative group):
 - (c) clauses 6, 13, and 18 of Schedule 3 (relating to asset management plans, funding and financing plans, and infrastructure strategies).
- (2) Engagement requires that a water services entity do either or both of the following before deciding on a matter:

Consultation draft

- (a) consult on a proposal:
- (b) seek input during the formulation of a proposal, or feedback on a proposal, on an iterative basis.
- (3) Input or feedback may be sought via hui or meetings, social media, or any other forum that the water services entity thinks appropriate.
- (4) In undertaking an approach to engagement on a matter, a water services entity—
 - (a) must consider the purpose of the engagement; and
 - (b) must consider the needs of the particular person or persons with whom the water services entity is engaging; and
 - (c) must allow adequate time for engagement to occur and for consumers and communities to respond; and
 - (d) may consider the relevance and sufficiency of any earlier engagement.

Compare: 2020 No 42 s 22

Consumer engagement

177 Consumer forum

- (1) The chief executive of a water services entity must establish a consumer forum.
- (2) The purpose of a consumer forum is to—
 - (a) assist with effective and meaningful consumer and community engagement; and
 - (b) gather and compile consumer views; and
 - (c) assist the water services entity to understand consumer needs, expectations, and service requirements; and
 - (d) reflect and represent the interests and diversity of consumers across the entity's region.
- (3) A consumer forum may be established under this section—
 - (a) for the whole or part of a service area; and
 - (b) in relation to all, or a particular class of, consumers.
- (4) The chief executive of the entity must provide a guidance document to each consumer forum established under this section that provides for the composition and procedures of the forum, including—
 - (a) the intervals between meetings; and
 - (b) the number of members that may be on the forum; and
 - (c) the method of selecting forum members; and
 - (d) any additional purposes to those set out in subsection (2); and
 - (e) the roles and responsibilities of forum members; and

Consultation draft

- (f) the term of membership of the forum; and
- (g) any other matters not inconsistent with the purpose of a consumer forum under this section.
- (5) The chief executive must ensure that each consumer forum established has a guidance document.

178 Consumer engagement stocktake

- (1) The chief executive of a water services entity must prepare a consumer engagement stocktake annually.
- (2) The purpose of a consumer engagement stocktake is to—
 - (a) capture consumer and community feedback on, and satisfaction with, how the entity is performing; and
 - (b) set out how the water services entity will respond to consumer and community needs and address consumer and community concerns.
- (3) The chief executive must make the consumer engagement stocktake publicly available as soon as practicable after it is issued by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.

179 Principles of engagement

In performing its functions under sections 128 to 136 and section 178, a water services entity must by guided and informed by the following principles:

- (a) the entity's communication to consumers should be clear and appropriate and recognise the different communication needs of consumers:
- (b) the entity should be openly available for consumer feedback and seek a diversity of consumer voices:
- (c) the entity should clearly identify and explain the role of consumers in the engagement process:
- (d) the entity should consider the changing needs of consumers over time, and ensure that engagement will be effective in the future:
- (e) the entity should prioritise the importance of consumer issues to ensure that the entity is engaging with issues that are important to its consumers.

Subpart 2—Regulations

180 Regulations

- (1) The Governor-General may, by Order in Council on the recommendation of the Minister, make regulations to—
 - (a) provide for a model constitution for each regional representative group for the purposes of **section 41**; or

Consultation draft

- (b) provide for financial and non-financial disclosure requirements relating to the statement of intent, asset management plan, funding and pricing plan, and infrastructure strategy that are consistent with generally accepted accounting practice; or
- (c) provide for transitional and savings provisions concerning the coming into force of this Act that may be in addition to, or in place of, the transitional and savings provisions in **Schedule 1**, including transitional reporting obligations to apply to local government organisations or water services entities; or
- (d) change the name of a water services entity by amending the references to that entity in **Schedule 2**.
- (2) The Minister must, before recommending the making of regulations under **subsection (1)(a)** in relation to a water services entity, engage with the territorial authority owners of the entity and mana whenua of the service area.
- (3) Regulations made under **subclause (1)(b)** may include requirements relating to—
 - (a) the type of information that must be provided; and
 - (b) the frequency of the reporting.
- (4) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

Subpart 3—Amendments to other Acts

Amendments to Goods and Services Tax Act 1985

181 Principal Act

Sections 182 and 183 amend the Goods and Services Tax Act 1985.

182 Section 2 amended (Interpretation)

In section 2(1), insert in its appropriate alphabetical order:

water services entity means a water services entity as defined in section 5 of the Water Services Entities Act 2021

183 Section 6 amended (Meaning of term taxable activity)

In section 6(1)(b), replace "or any local authority or", with ", local authority, water services entity, or".

Amendments to Income Tax Act 2007

184 Principal Act

Sections 185 and 186 amend the Income Tax Act 2007.

Consultation draft

185 New section CW 38C inserted (Water services entities)

After section CW 38B, insert:

CW 38C Water services entities

Exempt income: sinking funds

(1) An amount of income derived from sinking funds relating to the debt of a water services entity is exempt income.

Exempt income: other income

(2) Any other amount of income derived by a water services entity is exempt income.

Exclusion: amounts received in trust

(3) Subsection (2) does not apply to an amount of income that a water services entity derives as a trustee.

186 Section YA 1 amended (Definitions)

In section YA 1, insert in its appropriate alphabetical order:

water services entity means a water services entity as defined in section 5 of the Water Services Entities Act 2021

Amendment to Local Government Official Information and Meetings Act 1987

187 Principal Act

Section 188 amends the Local Government Official Information and Meetings Act 1987.

188 Schedule 2 amended

In Part 1 of Schedule 2, insert in its appropriate alphabetical order: Regional representative groups established under **subpart 4 of Part 2** of the Water Services Entities Act **2021**

Amendment to Ombudsmen Act 1975

189 Principal Act

Section 190 amends the Ombudsmen Act 1975.

190 Schedule 1 amended

In Part 3 of Schedule 1, insert in its appropriate alphabetical order: Regional representative groups established under **subpart 4 of Part 2** of the Water Services Entities Act **2021**

80

Amendment to Public Audit Act 2001

191 Principal Act

Section 192 amends the Public Audit Act 2001.

192 Schedule 1 amended

In Schedule 1, insert in its appropriate alphabetical order: Water services entities established under **section 9** of the Water Service Entities Act **2021**

Amendment to Public Records Act 2005

193 Principal Act

Section 194 amends the Public Records Act 2005.

194 Section 4 amended (Interpretation)

In section 4, definition of local authority, after paragraph (b), insert:

(c) includes a water services entity as defined in section 5 of the Water Services Entities Act 2021

Schedule 1 Transitional, savings, and related provisions

Contents

Page

Part 1				
	Provisions relating to this Act as enacted			
1	Interpretation	83		
	Subpart 1—Transitional provisions relating to establishment and governance of water services entities			
2	Establishment functions and objectives of water services entities	84		
3	Establishment board of water services entity	84		
4	Appointment of establishment chief executive	85		
5	Role of Minister during establishment period	85		
	Subpart 2—Transitional arrangements relating to reporting obligations			
6	Chief executive of department may approve establishment water services plan	86		
7	Transitional requirements for asset management plan and funding and pricing plan during establishment period	86		
8	Quarterly reports	86		
9	First annual report of water services entity	86		
10	Duty of local government organisations to co-operate with	87		
	department and water service entities	0=		
11	Duty of water services entity to co-operate	87		
12	Chief executive of department may issue direction of non- compliance	87		
13	Relationship of this Part with Local Government Act 2002	88		
	Subpart 3—Transitional provisions relating to employment			
	Review of employment positions			
14	Review of employment positions by chief executive of department during establishment period	88		
15	Obligation to offer certain employees position that involves same or similar duties and responsibilities	89		
16	Transfer of employment positions	90		
17	Employees not entitled to redundancy or other compensation just because position or employer ceases to exist	90		

Consultation draft

Schedule 1

Collective bargaining and collective agreements	
Collective bargaining before establishment date for new collective agreement to come into force on that date	91
Application of existing collective agreements on and from establishment date	92
Subpart 4—Oversight powers of department	
Decisions subject to department's oversight powers	93
Review of local government organisation decisions and meeting agendas during establishment period	93

Water Services Entities Bill

Part 1

Subpart 5—Transitional tax relief

Confirmation of decisions of local government organisations

Provisions relating to this Act as enacted

1 Interpretation

Transitional tax relief

18

19

20 21

22

23

24

In this Part, unless the context otherwise requires,—

Decision making during establishment period

decision has the meaning set out in clause 20

establishment chief executive means a chief executive of a water services entity appointed under clause 4

establishment date means the earlier of-

- (a) a date appointed by the Governor-General by Order in Council; and
- (b) 1 July 2024

establishment period means the period—

- (a) commencing on the day after the date on which the Act receives the Royal assent; and
- (b) ending on the establishment date

existing employer has the meaning set out in clause 14

infrastructure assets includes—

- (a) existing or proposed assets to be used to provide services by, or on behalf of, the water services entity in relation to water services; and
- (b) any other assets that the water services entity wishes to include in the strategy

local government organisation has the same meaning as in section 124 of the Local Government Act 2002

Consultation draft

water services reform means-

- (a) the establishment of water services entities to deliver water services in accordance with this Act; and
- (b) the transfer of interests in, and the ownership of, infrastructure assets from local government organisations to the water services entities.

Subpart 1—Transitional provisions relating to establishment and governance of water services entities

2 Establishment functions and objectives of water services entities

During the establishment period,—

- (a) section 10 must be read as if—
 - (i) the objective set out **paragraph (a)** of that section were to ensure that, by the establishment date, the water services entity will deliver water services and related infrastructure in an efficient and financially sustainable manner; and
 - the objective set out **paragraph (g)** of that section were to ensure that, by the establishment date, the water services entity will deliver water services in a sustainable and resilient manner that seeks to mitigate the effects of climate change and natural hazards; and
- (b) section 11 must be read as if the function described in paragraph (a) of that section were to ensure that, by the establishment date, the water services entity will have sufficient capacity and capability to provide safe, reliable, and efficient water services in its area.

3 Establishment board of water services entity

During the establishment period, subparts 5 and 6 of Part 2 of this Act apply with the following modification:

- (a) **section 48(1)** must be read as if it required the board to consist of no fewer than 3, and no more than 6, members; and
- (b) all references to the regional representative group and the board appointment committee of the regional representative group in subpart 5 of Part 2 of this Act must be read as if they were references to the Minister and
- (c) **subpart 6 of Part 2** of this Act applies only in relation to board members, and all references in that subpart to the regional representative group and the board appointment committee of the regional representative group in relation to an obligation of the board or members of the board must be read as if they were references to the Minister; and

84

(d) **section 53** must be read as if it provided that a member of the board of a water services entity holds office for the establishment period or for any shorter period stated in the notice of appointment.

4 Appointment of establishment chief executive

- (1) The chief executive of the department must appoint an establishment chief executive to each water services entity during the establishment period.
- (2) An establishment chief executive is appointed for a term that—
 - commences in accordance with the terms and conditions agreed under subclause (3); and
 - (b) ends at the close of the day that is 24 months after the establishment date unless earlier terminated in accordance with **subclause** (5).
- (3) The terms and conditions of employment of an establishment chief executive must be determined by agreement between the chief executive of the department and the establishment chief executive.
- (4) When considering the terms and conditions of an establishment chief executive, the chief executive of the department must have regard to the matters listed in section 99(3)(a) to (d).
- (5) The board of a water services entity may remove the establishment chief executive of the entity from office at any time on or after the establishment date.
- (6) This clause—
 - (a) applies instead of **section 99(1) to (3)** during the establishment period; and
 - (b) continues to apply until the earlier of the following:
 - (i) 24 months after the establishment date; and
 - (ii) the removal or resignation after the establishment date of a chief executive appointed under this clause.

5 Role of Minister during establishment period

- (1) During the establishment period, in addition to the Minister's role under section 23, the Minister has the additional role of overseeing the establishment of the water services entities.
- (2) The Minister's additional role includes functions and powers to appoint and remove members of the board of each water services entity under this schedule.

Subpart 2—Transitional arrangements relating to reporting obligations

6 Chief executive of department may approve establishment water services plan

- The chief executive of the department may prepare and approve an establishment water services plan for a water services entity.
- (2) The chief executive of the department must, before approving a plan under **subclause (1)**, consult with the relevant water services entity.
- (3) A plan approved under **subclause (1)** for a water services entity must include—
 - (a) the processes and policies for identifying the functions, infrastructure, staff, and assets to be transferred to the entity; and
 - (b) the proposed timing for the transfer of staff, functions, and assets to the entity; and
 - (c) the reporting requirements for the quarterly reports to be provided to the chief executive of the department under **clause 8** of this schedule.
- (4) The plan may include any other matters the Minister considers relevant.

7 Transitional requirements for asset management plan and funding and pricing plan during establishment period

During the establishment period, sections 128 to 133 (relating to the requirements to prepare an asset management plan and a funding and pricing plan) apply with the following modifications:

- (a) references to the regional representative group must be read as references to the chief executive of the department:
- (b) sections 128(2)(c), 130(b), 131(2)(c), and 133(b) (which relate to engagement with consumers and the regional representative group) do not apply.

8 Quarterly reports

- (1) The board of a water services entity must, during the establishment period, provide a quarterly report to the chief executive of the department.
- (2) The report must include any information required by an establishment water services plan approved under **clause 6** of this schedule.

9 First annual report of water services entity

- (1) An entity established during the last 4 months of a financial year—
 - (a) is not required to provide an annual report for that financial year; but
 - (b) must, after the end of the entity's first full financial year, provide an annual report that covers the period from the date on which the entity is established until the end of the entity's first full financial year.

Consultation draft

- (2) The annual report referred to in **subclause (1)(b)** must contain the information required to be included in the entity's annual report, except that the information must be in respect of the period referred to in that subclause.
- 10 Duty of local government organisations to co-operate with department and water service entities
- (1) During the establishment period, a local government organisation must cooperate with the department and any relevant water services entity to facilitate the water services reform.
- (2) Without limiting subclause (1), a local government organisation must—
 - (a) comply with any reasonable request by the chief executive of the department or the water services entity for employees of the local government organisation to be seconded to the water services entity; and
 - (b) comply with any reasonable request by the chief executive of the department or the water services entity for information that the local government organisation holds.
- (3) The obligation to comply with a request under **subclause** (2)(b) includes a requirement to comply with any reasonable request to—
 - (a) collate information; or
 - (b) provide information in a particular format; or
 - (c) disclose current pricing information or indicative water charges on invoices during the establishment period.
- (4) A local government organisation may only provide personal information under **subclause (2)(b)** if the information relates to employment matters.
- (5) In this clause, **relevant water services entity** means the water services entity whose service area includes the district or region that the local government organisation services.
- 11 Duty of water services entity to co-operate
- (1) During the establishment period, a water services entity must co-operate with the department to facilitate the water services reform.
- (2) Without limiting **subclause (1)**, a water services entity must comply with any reasonable request by the chief executive of the department for information that the water services entity holds that is relevant to the water services reform.
- 12 Chief executive of department may issue direction of non-compliance
- (1) The chief executive of the department may issue a non-compliance direction to a local government organisation if they fail to comply with **clause 10** or any disclosure requirements required by regulations made under **section 180(1)(b)**.
- (2) The non-compliance direction must—

Consultation draft

- (a) identify the local government organisation to which it relates; and
- (b) specify the non-compliance; and
- (c) specify the action required to comply with the non-compliance direction.
- (3) The chief executive of the department may apply to the District Court for an order to compel a local government organisation to comply with a non-compliance direction.
- (4) The District Court may make an order to compel a local government organisation to comply with a non-compliance direction if satisfied that the local government organisation has failed to comply with the non-compliance direction.
- (5) The chief executive of the department may withdraw a non-compliance direction issued under this clause at any time.
- (6) An order of the District Court to compel a local government organisation to comply with a non-compliance direction under **subclause** (4) ceases to apply if the non-compliance order is withdrawn.

13 Relationship of this Part with Local Government Act 2002

The following provisions of the Local Government Act 2002 do not apply to any actions taken by a local government organisation in order to comply with this schedule or facilitate the water services reform:

- (a) section 95(2) (relating to the requirement for a local authority to consult on significant or material variations from its annual plan):
- (b) section 97 (which requires certain decisions to be taken only if provided for in a long term plan):
- (c) section 130(3) (relating to certain obligations to maintain water services).

Subpart 3—Transitional provisions relating to employment

Review of employment positions

14 Review of employment positions by chief executive of department during establishment period

- (1) The chief executive of the department must, during the establishment period,—
 - (a) review the positions of persons employed by existing employers; and
 - (b) determine, in relation to each employee, whether the employee—
 - (i) primarily undertakes functions that will be transferred to a water services entity; and
 - (ii) has a senior management role.
- (2) The chief executive of the department must, before the establishment date, notify in writing each employee and their existing employer of the determination made in relation to the employee under **subclause** (1)(b).

- (3) In this subpart, **existing employer**, in relation to a water services entity, means a local government organisation that—
 - (a) provides water services in the service area of the water services entity before the establishment date; and
 - (b) employs employees.

15 Obligation to offer certain employees position that involves same or similar duties and responsibilities

- (1) The chief executive of a water services entity must offer an employee of an existing employer an employment position if the chief executive of the department determines under clause 14 that—
 - (a) the employee primarily undertakes functions that will be transferred to the water services entity; and
 - (b) the employee does not have a senior management role.
- (2) The terms and conditions of the position offered under subclause (1) must—
 - (a) involve the same or similar duties and responsibilities; and
 - (b) include core terms that are no less favourable than the core terms that applied immediately before the notification by the chief executive of the department of the determination under clause 14(1)(b); and
 - (c) be in substantially the same general locality or a locality within reasonable commuting distance from the employee's location of work immediately before the notification by the chief executive of the department of the determination under clause 14(1)(b); and
 - (d) involve the same or similar hours and days of work to those worked by the employee immediately before the notification by the chief executive of the department of the determination under clause 14(1)(b); and
 - (e) recognise the employee's employment with the existing employer as if it were continuous service with the water services entity.
- (3) In **subclause (2)**, **core terms** includes the employee's salary, leave entitlements, and any entitlement to redundancy compensation.
- (4) The chief executive of the relevant water services entity must, before the establishment date, notify each employee who is being offered a position with the water services entity—
 - (a) that the employee is being offered a position with the same or similar duties and responsibilities with the water services entity; and
 - (b) of the terms and conditions of employment of the position being offered;
 - (c) of the date by which the employee is to notify the chief executive as to whether the employee accepts or declines the offer.
- (5) Nothing in this clause—

Consultation draft

- (a) imposes any obligation on an employee of an existing employer to accept an offer under this schedule; or
- (b) prevents the chief executive of the department from offering a position to any other employee of the existing employer on any terms and conditions the chief executive considers appropriate.

16 Transfer of employment positions

- (1) An employee who accepts an offer of employment made under **clause 15(4)** becomes an employee of the water services entity, on and from the establishment date, on the terms and conditions offered under that subclause.
- (2) The terms and conditions of employment continue to apply in relation to the employee until—
 - (a) the terms and conditions are varied—
 - (i) by agreement between the employee and the relevant water services entity; or
 - ii) in accordance with the employee's terms and conditions of employment; or
 - (iii) because of the application of section 61(1)(b) of the Employment Relations Act 2000; or
 - (b) the employee accepts a subsequent position with the water services entity or the employee resigns or has their employment terminated.
- (3) To avoid doubt, subclause (2) applies,—
 - (a) in the case of an employee bound by an applicable collective agreement, subject to section 61(1)(b) of the Employment Relations Act 2000 and, without limiting this paragraph, subject to an applicable collective agreement that comes into force on the establishment date; and
 - (b) in the case of an employee not bound by an applicable collective agreement, subject to any variation in terms and conditions of employment agreed to before the establishment date but to come into force on that date.
- (4) This clause applies only if the employee continues to be an employee of the existing employer at the close of the day before the establishment date.

Compare: 2010 No 37 s 101

17 Employees not entitled to redundancy or other compensation just because position or employer ceases to exist

- (1) This clause applies to an employee of an existing employer who—
 - (a) is notified of an offer in accordance with clause 15(4); or
 - (b) otherwise accepts a position with the water services entity.

90

- (2) An employee to whom this clause applies is not entitled to receive any payment or any other benefit (compensation) for any of the following reasons:
 - (a) the position held by the employee with an existing employer ceases to exist:
 - (b) the employee ceases to be an employee of an existing employer:
 - (c) the employee's employer ceases to exist.

Compare: 2010 No 37 s 103

Collective bargaining and collective agreements

- 18 Collective bargaining before establishment date for new collective agreement to come into force on that date
- (1) **Subclause (2)** applies if an employee whose position is subject to review under **clause 14** is a member of a union that enters into bargaining for a collective agreement to come into force on the establishment date.
- (2) For the purposes of the bargaining during the establishment period,—
 - (a) the employees are to be treated as if they were employees of the water services entity; and
 - (b) section 41 of the Employment Relations Act 2000 does not apply in relation to the bargaining; and
 - (c) the other provisions of the Employment Relations Act 2000 apply accordingly with any necessary modifications.
- (3) For the purposes of ratifying a collective agreement, a person is to be treated as an employee of the entity only if—
 - (a) the person—
 - (i) has accepted an offer of a position; or
 - (ii) has neither accepted nor declined an offer notified under clause 15; or
 - (iii) has not received notice of an offer under clause 15; and
 - (b) the following work comes within the coverage clause in the collective agreement:
 - (i) work to be done by the person for the water services entity (if paragraph (a)(i) applies):
 - (ii) work done by the person for their existing employer (if paragraph (a)(ii) or (iii) applies).
- (4) A person ceases to be an employee for the purposes of this clause if—
 - the person declines an offer of a position with the water services entity;
 or

Consultation draft

- (b) the person is notified that their employment is to be terminated on and from the establishment date; or
- (c) the person's employment is terminated before that date or the person resigns before that date.

Compare: 2010 No 37 s 111

19 Application of existing collective agreements on and from establishment date

- (1) Subclause (2) applies if—
 - (a) an employee of an existing employer—
 - has received and accepted an offer of employment with a water services entity; or
 - (ii) has received notification of an offer under clause 15(4) and neither accepted nor declined the offer; or
 - (iii) has not been notified in accordance with **clause 15(4)** as to whether they are being offered a position with a water services entity or their employment with an existing employer is to be terminated; and
 - (b) the employees are bound by a collective agreement under the Employment Relations Act 2000 in relation to their employment with their existing employer; and
 - (c) the collective agreement does not expire until after the establishment date.
- (2) On and from the establishment date,—
 - (a) the collective agreement is to be treated as a separate collective agreement in relation to the water services entity; and
 - (b) the water services entity is to be treated as a party to the collective agreement in place of the previous employer; and
 - (c) the collective agreement continues to apply to and bind only the employees referred to in **subclause (1)** to the extent that the nature of the work they undertake for the water services entity comes within the coverage clause of the collective agreement.
- (3) **Subclause (2)** applies only if the collective agreement is not replaced on the establishment date by a collective agreement in accordance with **clause 18**.
- (4) A union that is a party to a separate collective agreement under this clause may, by notice in writing to the relevant water services entity, specify a date on which the agreement is to expire, being a date that is earlier than a date on which the agreement would otherwise expire under section 52(3) of the Employment Relations Act 2000.

Compare: 2010 No 37 s 112

Consultation draft

Subpart 4—Oversight powers of department

20 Decisions subject to department's oversight powers

In this subpart, a decision-

- (a) means a decision that—
 - (i) relates to the provision of water services; or
 - (ii) may affect the provision of water services; and
- (b) includes a decision—
 - (i) by a local authority to adopt or amend a long-term council community plan or to adopt an annual plan:
 - (ii) by a local authority to adopt a policy required by the Local Government Act 2002:
 - (iii) by a local authority that is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy or plan adopted by the local authority under the Local Government Act 2002:
 - (iv) by a local authority to purchase or dispose of assets other than in accordance with its long-term council community plan:
 - (v) by any local government organisation to purchase or dispose of an asset, if the purchase or disposal of the asset will have a material impact on the capacity to provide water services or on the financial well-being of the organisation:
 - (vi) by any local government organisation to enter into any contract (other than an employment agreement)—
 - (A) that imposes, or will continue to impose, any obligation on the local authority after a date determined by the chief executive of the department for the purposes of this paragraph:
 - (B) for which the consideration is, or is equivalent to or more than, an amount set by the chief executive of the department for the purposes of this paragraph:
 - (vii) by any local government organisation to borrow money for a period that extends beyond a date set by the chief executive of the department for the purposes of this paragraph.

Compare: 2009 No 13 s 31(4), (5)

21 Review of local government organisation decisions and meeting agendas during establishment period

During the establishment period, each local government organisation must provide the department with information about an intended decision.

Consultation draft

- (2) The chief executive of the department may review any decision made by, or on behalf of, a local government organisation during the establishment period.
- (3) Despite **subclause** (2), the department must not review a decision under this clause that it has confirmed under **clause 23(2)(a)**.
- (4) The department must, without delay, notify a local government organisation if it—
 - (a) reviews a decision of the organisation under subclause (2); and
 - (b) considers, on reasonable grounds, that the decision is a decision to which **clause 22** applies.

Compare: 2009 No 13 s 20

22 Decision making during establishment period

- (1) The chief executive of a local government organisation must ensure that, before implementing a decision to which this clause applies, the department has confirmed the decision in writing.
- (2) A decision to which this clause applies is void and of no effect until it is confirmed by the chief executive of the department.
- (3) This clause applies to a decision of a local government organisation that is made during the establishment period and that may, directly or because of its consequences,—
 - (a) significantly prejudice the water services reform; or
 - (b) significantly constrain the powers or capacity of the water services entities following the water services reform; or
 - (c) have a significant negative impact on the assets or liabilities that are transferred to the water services entities as a result of the water services reform.

Compare: 2009 No 13 s 31(1), (6), (7)

23 Confirmation of decisions of local government organisations

- (1) This clause applies to the department if a local government organisation seeks confirmation of a decision to which **clause 22** applies.
- (2) The department must, as soon as practicable and in writing,—
 - (a) confirm the decision; or
 - decline to confirm the decision and give reasons for doing so (with reference to the matters in clause 22(3)); or
 - (c) if it considers that it has insufficient information to make a decision, request further information from the chief executive and then act under paragraph (a) or (b), as applicable.
- (3) The chief executive of the department may decline to confirm a decision if they determine that 1 or more of the following criteria are met:

Consultation draft

- (a) the decision will significantly prejudice the water services reform:
- (b) the decision will significantly constrain the powers or capacity of a water services entity following the water services reform:
- (c) the decision will have a significant negative impact on the assets or liabilities that are transferred to a water services entity as a result of the water services reform.

Compare: 2009 No 13 s 21

Subpart 5—Transitional tax relief

24 Transitional tax relief

No water services entity or local government organisation will have any tax liability under either the Income Tax 2007 or the Goods and Services Act 1985 arising from the vesting of assets or the transfer of employees from a local government organisation to a water services entity.

Schedule 2 Water Service Entities and their service areas

s 9

Part 1 Northern Water Services Entity

The Northern Water Services Entity's service area includes the districts of the following territorial authorities:

- Auckland Council:
- Far North District Council:
- Kaipara District Council:
- Whngārei District Council.

Part 2

Western-Central Water Services Entity

The Western-Central Water Services Entity's service area includes the districts of the following territorial authorities:

- Hamilton City Council:
- Hauraki District Council:
- Kawerau District Council:
- Matamata-Piako District Council:
- New Plymouth District Council:
- Ōpōtiki District Council:
- Ōtorohanga District Council:
- Rangitikei District Council:
- Rotorua District Council:
- Ruapehu District Council:
- South Taranaki District Council:
- South Waikato District Council:
- Stratford District Council:
- Taupō District Council:
- Tauranga City Council:
- Thames-Coromandel District Council:
- Waikato District Council:
- Waipa District Council:

96

- Waitomo District Council:
- Western Bay of Plenty District Council:
- Whakatane District Council:
- Whanganui District Council.

Part 3

Eastern-Central Water Services Entity

The Eastern-Central Water Services Entity's service area includes the districts of the following territorial authorities:

- Carterton District Council:
- Central Hawke's Bay District Council:
- Chatham Islands Council:
- Gisborne District Council:
- Hastings District Council:
- Horowhenua District Council:
- Hutt City Council:
- Kapiti Coast District Council:
- Manawatu District Council:
- Marlborough District Council (excluding those parts included in the service area of the Southern Water Services Entity under Part 4 of this schedule):
- Masterton District Council:
- Napier District Council:
- Nelson City Council:
- Palmerston North City Council:
- Porirua City Council:
- South Wairarapa District Council:
- Tararua District Council:
- Tasman District Council (excluding those parts included in the service area of the Southern Water Services Entity under Part 4 of this schedule):
- Upper Hutt City Council:
- Wairoa District Council:
- Wellington City Council.

Consultation draft

Part 4

Southern Water Services Entity

The service area of the Southern Water Services Entity is the takiwā of Ngāi Tahu as described in section 5 of Te Runanga o Ngai Tahu Act 1996, and includes—

- (a) the districts of the following territorial authorities:
 - Ashburton District Council:
 - Buller District Council:
 - Central Otago District Council:
 - Christchurch City Council:
 - Clutha District Council:
 - Dunedin City Council:
 - Gore District Council:
 - Grey District Council:
 - Hurunui District Council:
 - Invercargill City Council:
 - Kaikoura District Council:
 - Mackenzie District Council:
 - Queenstown-Lakes District Council:
 - Selwyn District Council:
 - Southland District Council:
 - Timaru District Council:
 - Waimakariri District Council:
 - Waimate District Council:
 - Waitaki District Council:
 - Westland District Council; and
- (b) the parts of the districts of the following territorial authorities within the boundaries of the takiwā of Ngāi Tahu as described in section 5 of Te Runanga o Ngai Tahu Act 1996:
 - Marlborough District Council:
 - Tasman District Council.

98

Schedule 3 Preparation of planning documents

ss 125, 128, 131, 134, 176

Part 1 Preparation of statement of intent

1 Draft statement of intent

- (1) The board of a water services entity must deliver a draft statement of intent to the entity's regional representative group.
- (2) The draft statement of intent must be delivered on or before 1 March in the year preceding the start of the period to which the draft statement of intent relates.

Compare: 2002 No 84 Schedule 8 cl 1

2 Consideration of regional representative group comments

The board of a water services entity must consider any comments on the draft statement of intent that are made by the regional representative group, at least 2 months before the start of the period to which the draft statement relates.

Compare: 2002 No 84 Schedule 8 cl 2

3 Final statement of intent

The board of a water services entity must deliver the final statement of intent to the entity's regional representative group before the start of the period to which it relates.

Compare: 2002 No 84 Schedule 8 cl 3

4 Regional representative group may extend deadlines by up to 1 month

The regional representative group of a water services entity may, by written notice to the board, extend a deadline specified in **clause 1(2)**, **2**, **or 3** for a period or periods not exceeding in total 1 calendar month.

Compare: 2002 No 84 Schedule 8 cl 4

5 Modifications of statement of intent

The board of a water services entity may, by written notice to the regional representative group, modify a statement of intent at any time if the board has first—

- (a) given written notice to the regional representative group of the proposed modification; and
- (b) considered any comments made on the proposed modification by the regional representative group within—

Consultation draft

- (i) 1 month after the date on which the board gave the notice under paragraph (a); or
- any shorter period that the regional representative group may agree.

Compare: 2002 No 84 Schedule 8 cl 5

Part 2

Preparation of asset management plan

6 Engagement on asset management plan proposals

The board of a water services entity must engage with consumers and communities on proposals to adopt an asset management plan in accordance with **section 176**.

7 Draft asset management plan

- (1) The board of a water services entity must deliver a draft asset management plan to the entity's regional representative group.
- (2) The draft asset management plan should include—
 - (a) the results of any engagement with consumers and communities under section 176; and
 - (b) a statement summarising the views received on the draft plan from consumers and communities.
- (3) The draft asset management plan must be delivered on or before 1 March in the year preceding the financial year to which the draft asset management plan relates.

Compare: 2002 No 84 Schedule 8 cl 1

8 Consideration of regional representative group comments

The board of a water services entity must consider any comments on the draft asset management plan that are made by the regional representative group of the entity at least 2 months before the start of the period to which the draft plan relates.

Compare: 2002 No 84 Schedule 8 cl 2

9 Final asset management plan

- (1) The board of a water services entity must deliver the final asset management plan to the regional representative group of the entity before the commencement of the financial year to which it relates.
- (2) The final asset management plan must include the board's responses to the comments considered under clause 8.

Compare: 2002 No 84 Schedule 8 cl 3

Consultation draft

10 Regional representative group may extend deadlines by up to 1 month

The regional representative group of a water services entity may, by written notice, extend a deadline specified in clause 7(3), 8, or 9(1) for a period or periods not exceeding in total 1 calendar month.

Compare: 2002 No 84 Schedule 8 cl 4

11 Modifications of asset management plan

The board of a water services entity may, by written notice, modify an asset management plan at any time if the board has first—

- (a) given written notice to the regional representative group of the entity of the proposed modification; and
- (b) considered any comments made on the proposed modification by the regional representative group of the entity within—
 - (i) 1 month after the date on which the notice under paragraph (a) was given; or
 - (ii) any shorter period that the regional representative group of the entity may agree.

Compare: 2002 No 84 Schedule 8 cl 5

Part 3

Preparation of funding and financing plan

12 Engagement on funding and financing plan proposals

The board of a water services entity must engage with consumers and communities on proposals to adopt a funding and financing plan in accordance with section 176.

13 Draft funding and financing plan

- (1) The board of a water services entity must deliver a draft funding and financing plan to the entity's regional representative group.
- (2) The draft asset management plan should include—
 - (a) the results of any engagement with consumers and communities under section 176; and
 - (b) a statement summarising the views received on the draft plan from consumers and communities.
- (3) The draft funding and financing plan must be delivered on or before 1 March in the year preceding the financial year to which the draft asset management plan relates.

Consultation draft

14 Consideration of regional representative group comments

The board of a water services entity must consider any comments on the draft funding and financing plan that are made by the regional representative group of the entity at least 2 months before the start of the period to which the draft plan relates.

Compare: 2002 No 84 Schedule 8 cl 2

15 Final funding and financing plan

- (1) The board of a water services entity must deliver the final funding and financing plan to the regional representative group of the entity before the commencement of the financial year to which it relates.
- (2) The final funding and financing plan must include the board's responses to the comments considered under **clause 14** of this schedule.

Compare: 2002 No 84 Schedule 8 cl 3

16 Regional representative group may extend deadlines by up to 1 month

The regional representative group of a water services entity may, by written notice, extend a deadline specified in clause 13(3), 14, or 15(1) for a period or periods not exceeding in total 1 calendar month.

Compare: 2002 No 84 Schedule 8 cl 4

17 Modifications of funding and financing plan

The board of a water services entity may, by written notice, modify a funding and financing plan at any time if the board has first—

- (a) given written notice to the regional representative group of the entity of the proposed modification; and
- (b) considered any comments made on the proposed modification by the regional representative group of the entity within—
 - 1 month after the date on which the notice under paragraph (a) was given; or
 - (ii) any shorter period that the regional representative group of the entity may agree.

Compare: 2002 No 84 Schedule 8 cl 5

Part 4

Preparation of infrastructure strategy

18 Engagement on infrastructure strategy proposals

The board must engage with consumers and communities on proposals to adopt an infrastructure strategy in accordance with **section 176**.

19 Draft infrastructure strategy

- (1) The board of a water services entity must deliver a draft infrastructure strategy to the entity's regional representative group.
- (2) The draft infrastructure strategy should include—
 - (a) the results of any engagement with consumers and communities under section 176; and
 - (b) a statement summarising the views received on the draft plan from consumers and communities.
- (3) The draft infrastructure strategy must be delivered on or before 1 March in the year preceding the financial year to which the draft infrastructure strategy relates.

Compare: 2002 No 84 Schedule 8 cl 1

20 Consideration of regional representative group comments

The board of a water services entity must consider any comments on the draft infrastructure strategy that are made by the regional representative group of the entity at least 2 months before the start of the period to which the draft plan relates.

Compare: 2002 No 84 Schedule 8 cl 2

21 Final infrastructure strategy

- (1) The board of a water services entity must deliver the final infrastructure strategy to the regional representative group of the entity before the commencement of the financial year to which it relates.
- (2) The final infrastructure strategy must include the board's responses to the comments considered under clause 20.

Compare: 2002 No 84 Schedule 8 cl 3

22 Regional representative group may extend deadlines by up to 1 month

The regional representative group of a water services entity may, by written notice, extend a deadline specified in clause 19(3), 20, or 21(1) for a period or periods not exceeding in total 1 calendar month.

Compare: 2002 No 84 Schedule 8 cl 4

23 Modifications of infrastructure strategy

The board may, by written notice, modify an infrastructure strategy at any time if the board has first—

- given written notice to the regional representative group of the entity of the proposed modification; and
- (b) considered any comments made on the proposed modification by the regional representative group of the entity within—

Consultation draft

Schedule 3

Water Services Entities Bill

- (i) 1 month after the date on which the notice under paragraph (a) was given; or
- (ii) any shorter period that the regional representative group of the entity may agree.

Compare: 2002 No 84 Schedule 8 cl 5

104

Schedule 4 Divestment proposals

s 96

1 Interpretation

In this schedule, unless the context otherwise requires,—

affected elector means-

- (a) a person who is a residential elector (within the meaning of section 23 of the Local Electoral Act 2001), if the address in respect of which the person is registered is in an affected area:
- (b) a person who is a ratepayer elector (within the meaning of section 24 of the Local Electoral Act 2001), if the person is qualified as a ratepayer elector in respect of a rating unit in an affected area

divestment proposal means a proposal to-

- divest a water services entity's ownership or other interest in a water service; or
- (b) lose control of, sell, or otherwise dispose of the significant infrastructure necessary for providing water services in its service area

Local Government Commission or **Commission** means the Local Government Commission continued under section 28 of the Local Government Act 2002

public notice, in relation to a notice of a divestment proposal given by the Local Government Commission,—

- (a) means a notice published—
 - (i) in 1 or more newspapers circulating in the affected area; and
 - (ii) on an Internet site maintained by, or on behalf of, the Commission; and
- (b) includes any other notice that the Commission thinks desirable in the circumstances.

Part 1 Divestment proposal

2 Water services entity must refer proposal to regional representative group

- (1) This clause applies to any proposal to do any of, or anything that would have the effect of, the following:
 - (a) divestment of ownership or other interest in a water service under **section 96(2)(b)**; or

Consultation draft

- (b) loss of control, sale, or disposal under section 96(2)(c) of significant infrastructure that would result in a water services entity being unable to meet its obligations to continue to provide water services or maintain its capacity to do so.
- (2) A proposal may be made—
 - (a) on the water services entity's own initiative; or
 - (b) by any other person.
- (3) The proposal must be made in writing to the water services entity.
- (4) A water services entity must forward any proposal received under **subclause** (2)(b) to the regional representative group.
- 3 Regional representative group may resolve by 75% majority to refer proposal to a poll following consultation
- (1) A regional representative group may resolve to refer a divestment proposal to a poll by a vote of not less than 75% of the regional representatives present and voting.
- (2) Before voting on whether to refer the proposal to a poll, the regional representative group must consult—
 - (a) all of the territorial authority owners of the water services entity; and
 - (b) mana whenua of rohe or takiwā within the area of the water services entity; and
 - (c) the Minister.
- (3) A regional representative group that resolves to refer a divestment proposal to a poll under this clause must notify the Commission of this resolution.
- 4 Notification of divestment proposal
- As soon as practicable after receiving notification of a resolution under clause 3, the Commission must—
 - (a) give public notice of the proposal and, in the notice, specify where copies of the proposal may be inspected; and
 - (b) provide a balanced assessment of the proposal to persons, bodies, and groups that the Commission identifies as having an interest in the proposal; and
 - (c) take any other action that it considers necessary to inform persons, bodies, and groups that the Commission identifies as having an interest in the proposal.
- (2) The costs incurred by the Commission under subclause (1) are to be apportioned among the affected water services entities according to the number of

106

affected electors on the electoral rolls of the territorial authority owners of the water services entity in the manner set out in regulations.

Compare: 2002 No 84 Schedule 3 cl 13(1)

Part 2 Poll

5 Poll to be held

- (1) A poll of electors on the proposal must be held in the service area.
- (2) Except as otherwise provided in this Part, a poll under this clause must be held under the Local Electoral Act 2001 and the provisions of that Act apply, with any necessary modifications, to the conduct of the poll.
- (3) The Local Government Commission must ensure that 1 electoral officer is designated to conduct the poll and to declare the official result of the poll under clause 7.
- (4) The costs of the poll are to be apportioned among the affected water services entities on the basis of the number of affected electors on the electoral rolls of the water services entity.

Compare: 2002 No 84 Schedule 3 cl 26

6 Timing of poll

- (1) A poll required by **clause 5** must be held on a date determined by the Local Government Commission in accordance with this clause.
- (2) In determining the date on which a poll is to be held, the Commission must consult the electoral officer required to conduct the poll.
- (3) The Commission must, as soon as practicable after complying with **subclause** (2), give written notice of the date determined under **subclause** (1) to the Secretary, to the chief executive of each affected water services entity, and to the electoral officer required to conduct the poll.
- (4) The electoral officer who receives written notification under subclause (3) must, within 7 days after receiving the notification, give public notice of—
 - (a) the poll; and
 - (b) the place or places at which the divestment proposal and the explanatory statement may be inspected.
- (5) The date determined under subclause (1) for the conduct of the poll must,—
 - (a) if written notice under **subclause** (3) is to be given on or after 28 September and before 21 November in any year, be a day no earlier than 17 February and no later than 24 February in the following year; and
 - (b) if written notice under **subclause** (3) is to be given on or after 21 November and before 16 December in any year, be a day no earlier than 14 March and no later than 21 March in the following year; and

- (c) if written notice under **subclause (3)** is to be given on or after 16 December in any year and before 13 January in the following year, be a day no earlier than 11 April and no later than 18 April in that following year, and
- (d) in any other case, be a day no later than 89 days after the day on which written notice under **subclause** (3) is given to the electoral officer.

Compare: 2002 No 84 Schedule 3 cl 26

7 Official result of poll

The electoral officer must,—

- (a) when declaring the official result of the poll under section 86 of the Local Electoral Act 2001, include a statement of—
 - (i) the total number of electors on the roll or rolls compiled for the purpose of the poll; and
 - (ii) the total number of valid votes cast:
- (b) as soon as practicable after declaring the result, notify the chief executive of the department, the chief executive of the water services entity and each territorial authority in the service area, and the Local Government Commission of the result:
- (c) if 75% of votes are in favour of the proposal, notify the Minister of the result.

Compare: 2002 No 84 Schedule 3 cl 27

8 Effect of poll

A divestment proposal must not be implemented unless 75% of the votes cast in the poll are in favour of the proposal.

Part 3 Advertising of poll

9 Interpretation

In this subpart, unless the context otherwise requires, advertising means advertising in any medium

publish, in relation to advertising,—

- (a) means to bring to the notice of a person in any manner, including (but not limited to)—
 - (i) displaying in any medium:
 - (ii) distributing by any means:
 - (iii) delivering to an address:
 - (iv) leaving at a place:

- (v) sending by post or otherwise:
- (vi) printing in a newspaper or other periodical:
- (vii) broadcasting by any means:
- (viii) disseminating by means of the Internet or any other electronic medium:
- (ix) storing electronically in a way that is accessible to the public:
- (x) incorporating in a device for use with a computer:
- (xi) inserting in a film or video; but
- (b) excludes addressing 1 or more persons face to face

specified period means the period commencing on the day after the date on which public notice of the proposal is first given under **clause 4** and ending with the close of the day on which the poll is held.

Compare: 2002 No 84 Schedule 3 cl 29

10 Advertising in relation to polls

- (1) A local authority or water services entity affected by a divestment proposal may not, at any time in a specified period, do anything (including publishing any advertising) that—
 - (a) involves the expenditure of the authority's or the entity's money or use of the authority's or the entity's resources; and
 - (b) promotes or opposes the implementation of the divestment proposal or a provision of the divestment proposal.
- (2) This clause does not apply to—
 - (a) any investigations or research undertaken by, or on behalf of, the water services entity or local authority that relate to the divestment proposal or its effects; or
 - (b) the making of submissions or other representations to the Commission by the water services entity or local authority; or
 - (c) the publication of any news or comment relating to the divestment proposal or the poll in any medium by any person other than the water services entity or local authority; or
 - (d) anything done by a water services entity or local authority to comply with the requirements of Part 7 of the Local Government Official Information and Meetings Act 1987.

Compare: 2002 No 84 Schedule 3 cl 30

11 Provision of referential information

Clause 10 does not preclude a local authority affected by a divestment proposal from publishing material that—

Consultation draft

- (a) does not expressly or impliedly promote or oppose the divestment proposal; but
- (b) contains factual or referential material presented—
 - (i) in a balanced way; and
 - (ii) to assist electors considering voting in a poll to make a betterinformed decision.
- (2) A local authority or water services entity may (but does not have to) seek a ruling from the Local Government Commission that material proposed to be published by the authority or the entity under **subclause** (1) complies with that subclause.
- (3) If the Local Government Commission provides a ruling that the material complies with **subclause** (1), then publication of the material by the local authority or water services entity is to be treated as published in accordance with **subclause** (1).

Compare: 2002 No 84 Schedule 3 cl 31

12 Authorisation of advertising

- (1) A person may not publish advertising that promotes or opposes the implementation of the divestment proposal, or a provision of the divestment proposal, unless the advertising contains a statement setting out the name and address of the person who initiated or instigated the publication of the advertising.
- (2) In subclause (1), address means,—
 - (a) in relation to an individual,—
 - the full street address of the place where the individual usually lives; or
 - (ii) the full street address of any other place where the individual can usually be contacted between the hours of 9 am and 5 pm on any working day:
 - (b) in relation to a body corporate or unincorporated,—
 - (i) the full street address of the body's principal place of business; or
 - (ii) the full street address of the body's head office.

Offences

13 Offence for publishing advertising in breach of clause 12

- (1) A person commits an offence if the person intentionally fails or refuses to comply with clause 12(1).
- (2) A person who commits an offence against **subclause** (1) is liable on conviction to a fine not exceeding \$20,000.

110

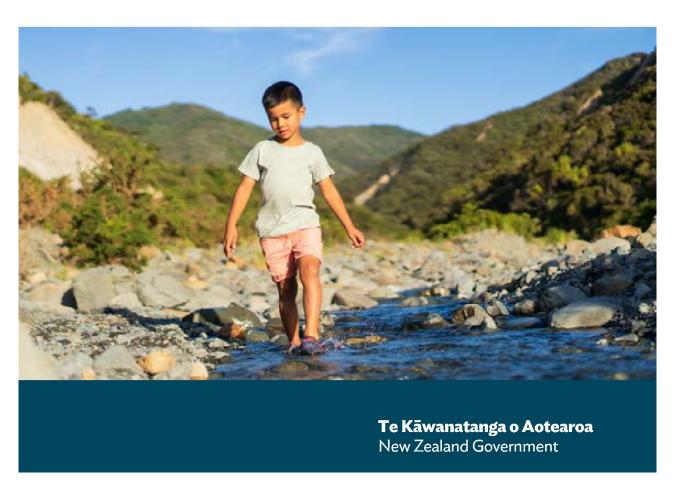




Transition information pack

January 2022

Three Waters National Transition Unit







Welcome			
Three Waters National Transition Unit4			
Transition strategy5			
Transition objectives5			
Indicative Transition Roadmap5			
Roles and responsibilities9			
National Transition Unit (NTU) and Local Establishment Entities (LEEs)9			
Councils (Elected officials, Officers and the Organisation)10			
lwi/Māori11			
Council engagement			
Supporting a smooth transition			
Councils play different roles			
Transition covers a wide scope of activity14			
Engagement to support key activities14			
Workstreams connecting national and local15			
Engagement with iwi/Māori16			
Workforce engagement			
Transfer of employment			
What's coming up in early 202218			
Keep an eye out for			

Governance and appointments19			
Funding for local authorities			
Better off	20		
No worse off	21		
Reasonable costs	21		
External advice procurement	21		
Transformation			
Transformation timeline			
Transformation Vision	23		

Transition information pack



Welcome

The Three Waters reform programme is one of the largest scale reforms that New Zealand has seen for many years. Through it, we will unlock the potential for significant additional investment in our three waters infrastructure, for thousands of additional jobs and new career pathways, and for an improved water services system that delivers safe and sustainable water services for everyone in Aotearoa.

In order to realise this ambitious future, the Three Waters National Transition Unit has been created to execute the Government's decisions on Three Waters reform through a consistent and coordinated nationwide approach to transition.

We know this can't happen alone. It will require a close and collaborative relationship with local authorities who are currently delivering water services and represent the voices of their communities. It will require a meaningful Treaty partnership with iwi/Māori, embedded across the new entities the transition will build. It will also require informed engagement with the thousands of staff working in water services across the country, whose input will be critical to our collective success.

I am confident that, through working together, we can deliver four water services entities that are ready to run on 1 July 2024. More than that, I know that we need to lay the groundwork for future transformation of the sector to unlock the opportunities that these reforms are creating.

This Transition Information Pack will give you more detail about the work we're planning, and how you can expect to engage with and be involved in it, with a focus on 2022. Throughout this year, we will continue to provide further detail, and you are always welcome to contact us as well with any questions.

Ngā manaakitanga,

Marlon Bridge
Acting Director, Three Waters National Transition Unit

Three Waters National Transition Unit

Email: ThreeWatersTransition@dia.govt.nz

Web: www.dia.govt.nz/national-transition-unit-three-waters-reform-programme

Transition strategy

- To execute the Government's reform decisions in a way that creates four successful operating entities to achieve the outcomes of reform.
- To ensure that the reform objectives are supported by a smooth transition and implementation approach that is efficient, effective and minimises disruption to communities and consumers.
- To leverage transition for strategic transformation opportunities.

Transition objectives

- To ensure the service delivery reforms are supported by a smooth transition and implementation approach, which is effective, efficient, and minimises disruption to communities, consumers, and the transfer of local government workers.
- To establish the new water services entities within a realistic timeframe, and ensure they
 have the operational frameworks and mechanisms needed to effectively deliver on their
 statutory purpose and objectives.
- To provide as much certainty for workers as reasonably possible, and enable the transfer and recruitment of staff to the new water services entities to support operational commencement.
- To provide for a collaborative approach with local government and iwi/Māori, and ensure
 they are well supported to participate fully and effectively both in the transition, and in
 relation to any future roles in the new system.
- To maintain clear and effective communications with local government, iwi/Māori, staff, unions, the public, and key stakeholders throughout.
- To ultimately, deliver the Government's ambitions to significantly improve the safety, quality, resilience, accessibility, and performance of three waters services, in a way that is efficient and affordable for New Zealanders.

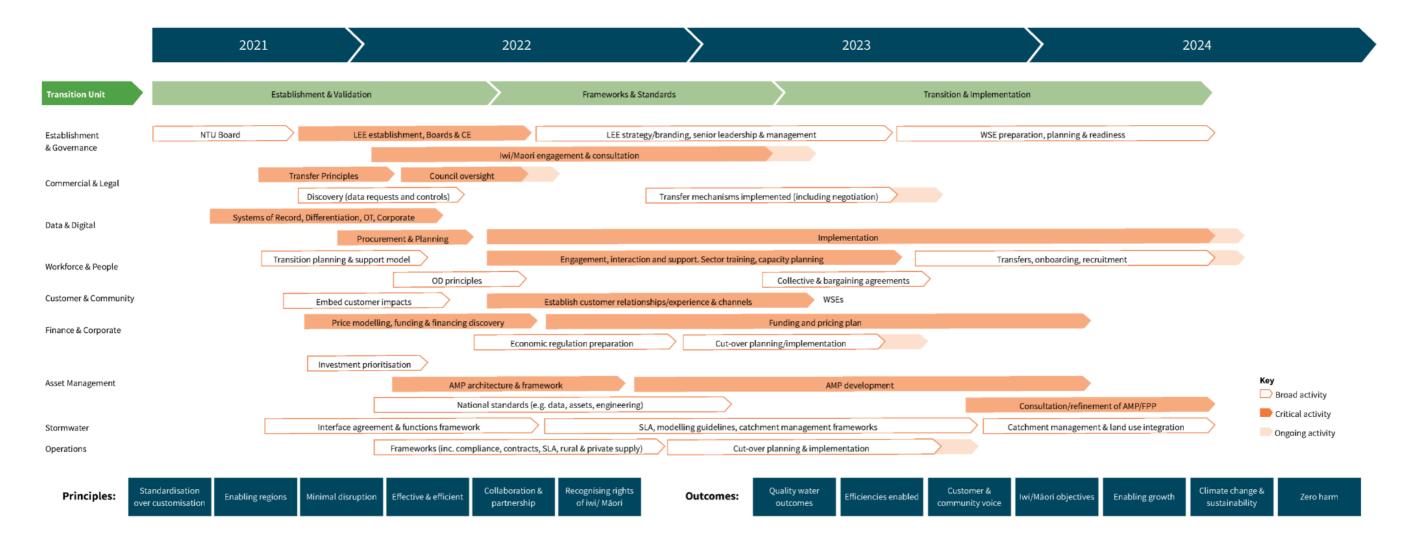
Transition roadmap

The roadmap includes the key transition activities, including both those undertaken by the National Transition Unit and by the Local Establishment Entities, organisations that will ultimately transform into the Water Services Entities.

The phases are indicative and subject to change based on engagement with the wider sector and the Local Establishment Entities, once they are formed.

The overarching approach is intended to balance the need to meaningfully engage, consult and collaborate with the need to achieve the right outcomes on both 1 July 2024 and beyond.

Indicative Transition Roadmap





Roles and responsibilities

National Transition Unit (NTU) and Local Establishment Entities (LEEs)

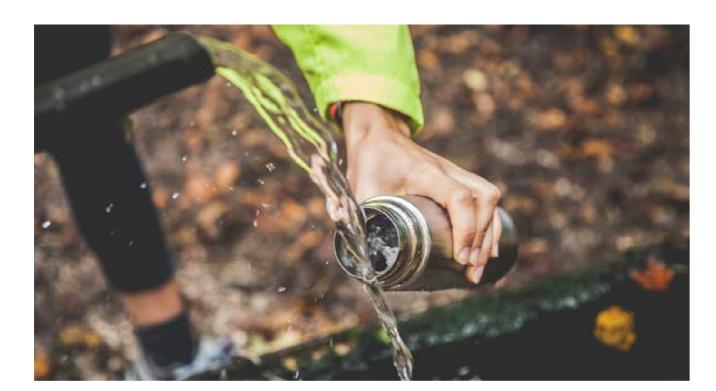
Responsible for	Accountable to
Delivering the transition from councils to water services entities (WSEs).	
Seconding in council workers where necessary to advise on the transition.	
Preparation for activities of WSEs after 30 June 2024.	Minister of Local Government.
Making decisions on transition matters, including undertaking appropriate engagement.	
The NTU is responsible for allocating which transition tasks are undertaken by it and which are undertaken by the LEEs.	

Councils (Elected officials, Officers and the Organisation)

Responsible for	Accountable to		
Delivery of water services until 30 June 2024 (Organisation and Officers).			
Collaborating with other councils in the same entity to prepare for the new system (Elected officials and Officers).	Their residents through standard local authority processes for ongoing water		
Supporting existing staff to participate in the transition, including through secondments to the NTU and LEEs (Organisation).	services delivery, and for engagement with the transition process to ensure local issues and opportunities are taken into account.		
Engaging with consultation processes run by the NTU and LEEs (Elected officials and Officers).			

lwi/Māori

Responsible for	Accountable to
Engaging in a kaupapa Māori process to develop the new roles created through the reforms.	
Participation in the transition process to ensure the new water services entities are able to give effect to the Crown's Treaty obligations.	Their people through their tikanga and kawa.



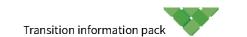
Council engagement

Supporting a smooth transition

Council Engagement Objectives

- 1. To build trust between the NTU, LEE and Councils to enable an efficient and effective transition
- 2. To use practical experience within Council for the benefit of the transition
- 3. To maintain Water Service delivery and minimise disruption to communities and customers during this period
- 4. To motivate and build capability in people who will form part of the Water Service Entity
- 5. To establish the new WSE within the time frames and deliver the reform ambitions

We want to support a smooth transition by making best use of the practical experience that exists within councils.



The transition period also offers the opportunity for the councils within each entity area to collaboratively work together and build long-lasting relationships.

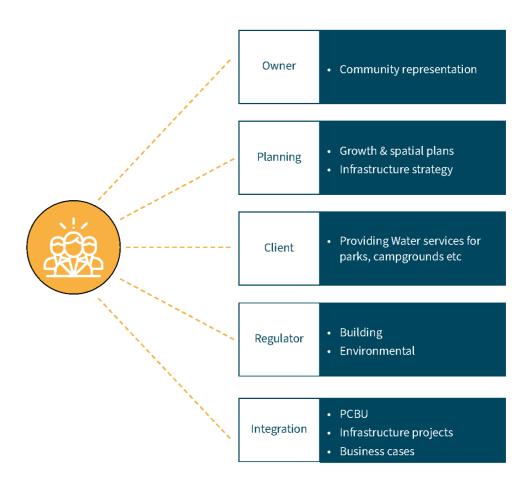
Effective engagement will allow us to succeed in our goals while minimising impact on council's business-as-usual operations.

Councils play different roles

Councils play several roles in the broader picture of water services.

In particular, councils are:

- a key stakeholder for the future Water Service Entity (WSE);
- a group of people delivering water services who we want to bring into the future WSE;
- the current holder of the assets and functions that need to be transferred.







Transition covers a wide scope of activity

The transition programme covers a wide range of activities, with discovery and design phases flowing into delivery. Some examples are:

Discovery & Design	Delivery
Develop a charging and pricing plan	Developing Asset Management Plans & Funding & Pricing Plans
Agreeing stormwater functions and assets	Transfer of assets
Operating Model and Organisational Design	Transfer of people into the new organisation

Some activities will be best developed at a local level, such as the development of each entity's Asset Management Plan. Others make more sense to build at a national level such as National Design Standards. One of the roles of the NTU is to determine which tasks will be allocated to the LEE.

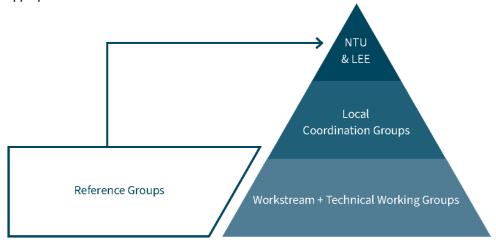
Engagement to support key activities

Councils will be engaged in a variety of ways:

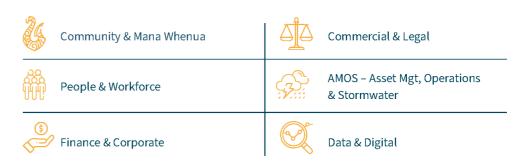
- Directly by the NTU particularly in relation to workforce and financial matters.
- At a local entity level by NTU workstreams or the LEE.
- At a national level by NTU workstreams.

Each entity will have a Local Transition Team (LTT) to help coordinate and communicate transition activities at an entity level.

Each LTT will be coordinated by a Council Interface Manager and will include other roles as appropriate.



Workstreams connecting national and local



Council participation in key activities will be enabled through workstreams. Workstream leaders in the NTU will engage with their equivalents in council.

Direct engagement with councils is proposed for the Commercial & Legal, Finance & Corporate, and People & Workforce workstreams.

For the Asset Management, Operations and Stormwater (AMOS) workstreams where there is more need for the people who know the local water business to be empowered, the workstream leads will work with the LCGs to establish Local Technical Working Groups. These working groups will include current council staff.

Where work is more appropriately undertaken at a national level, workstream leads will establish National Technical Working Groups. Participation from different councils will be invited to provide diversity and technical expertise.

At a higher level, some workstreams will establish Transition Reference Groups to advise and provide feedback to the NTU.



Engagement with iwi/Māori

Reform of three waters service delivery anticipates a significant new role for iwi/Māori, including during the transition and establishment process. Therefore, there are a number of programmes in development to ensure meaningful engagement with iwi/Māori are undertaken in a way that upholds a positive Treaty partnership in the new entities.

There are two significant Treaty principles applicable to the service delivery reforms:

- Partnership.
- · Active protection.

The principle of partnership requires the Treaty partners to act reasonably and with good faith to each other. The duty of good faith and active protection includes a requirement that the Crown take reasonable steps to make informed decisions on matters that affect Māori interests. These principles have shaped the way the proposed mechanisms that address Treaty rights and interests have been adopted in the reform decisions including their treatment as a bottom line for Government.

Key proposals to address Treaty of Waitangi rights and interests include:

- statutory recognition of the Treaty of Waitangi and Te Mana o te Wai;
- creating a joint oversight mana whenua group in the oversight and strategic direction of each entity, with equal rights to councils, to be established using a Kaupapa Māori process to determine representative interest;



- Te Mana o te Wai statements set out in legislation which will broadly describe Te Mana o te
 Wai statements and existing statutory documents that can be used in its place such as iwi
 management plans, cultural Impact Statements, Statements of Mana Whenua, or any other
 statement agreed as representing Te Mana o te Wai, guided by the Mana Whenua Forum.
 The entity's board will be required to respond to the Te Mana o te Wai statement to show
 how they will give effect to it;
- each entities' board will be required to have Treaty of Waitangi, mātauranga Māori, tikanga Māori, and Te Ao Māori competencies with specific expertise in kaitiakitanga, tikanga and mātauranga Māori in delivering water services;
- entities will fund and support capability and capacity of mana whenua to participate in their activities

It is intended that transitional funding is available to support iwi/Māori in the proposed three waters transition and establishment phase through the Pūkenga Wai Fund.

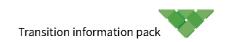
The funding will support iwi organisations to determine the mana whenua representation that will provide joint oversight of the new entities once they have been established.

Funding for individual iwi organisations to wānanga within their own whānau and hapū will be available for up to \$18,000 per annum through the Pūkenga Wai Fund.

The Pūkenga Wai Fund will open for applications in February 2022 and further details will be provided prior to this.

Iwi/Māori influence and participation at this stage of the reform is particularly important to ensure that the new water services entities are created with the right culture, competencies, and relationships in place.





Workforce engagement

The transition to the new water services entities can lay the foundations for excellent workplaces in a sector at the heart of healthy communities and natural environments. This change is strongly influenced by a recognition that better outcomes will rely on people.

Staying connected to staff and supporting their wellbeing through the change process is a key priority. How we make this change together will have a big impact on the success of delivering a highly skilled and innovative workforce.

Transfer of employment

All council employees who work primarily in water services (except senior managers) will be eligible to transfer their employment to the new water services entity in their area on 1 July 2024. This guarantees a role with the same or substantially similar duties and responsibilities in their current location, and with core terms and conditions of employment that are no less favourable than those that apply before the transfer.

Local government employees who only partially undertake functions that will be transferred to the new WSEs will not be automatically eligible to transfer, but there will be many opportunities in the new entities. New roles will be established to do the work that "partially water" employees do as a part of their job now.

Senior managers will also have opportunities in management and other new roles in the water services entities.

Unions and their members will be able to negotiate new collective agreements with the entities before 1 July 2024 – which will take effect from that time. If unions choose not to bargain before the establishment date, then union members will still be covered by the terms of their existing collective agreements until a new agreement is made.

The Water Services Entities Bill that has been released as an exposure draft includes more details of these protocols. A detailed staff transition plan will also be developed, with input from staff and unions. This will provide further detail of the change process.

Starting in 2022, there will be many opportunities and channels for staff to share views and have input as the entities are designed. We will be creating a digital platform where staff can find out what is happening, get support and advice, give feedback, and keep their own information up to date to help with the implementation of the change process.

What's coming up early in 2022

• The Terms of Reference (TOR) and request for nominations to the People and Workforce Transition Reference Group will be released.

 A discovery request to support the workforce transition process. This will include nonpersonal role-by-role information (most of which should be available from councils' HRIS), and some more general questions. We will be requesting that the information be received within a month.

Keep an eye out for

- Establishing the People & Workforce Transition Reference Group to advise the workstream and facilitate engagement with the people and organisations involved. Nominations will be made by local government organisations.
- Establishing ways of working with the unions whose members are involved in three waters.
- Developing the detailed staff transition plan, including engagement with staff, local government employers, unions and professional associations – all of whom will have important roles in the transition.
- Building a digital platform to support the transition of staff once this goes live, it will allow staff to engage directly with the NTU – about the transition, and about their own jobs and new jobs in the entities.
- Planning for organisation design, including planning how staff can be involved in designing the future organisations.
- Planning for collective bargaining with unions, and for the development of new standardised individual employment agreements which protect current core terms and conditions of employment.

Governance and appointments

The NTU will set up a LEE for each entity area. Each LEE will have a Board and Chief Executive.

In 2022, the NTU will commence consultation and engagement with the sector on the process and timing for these.

Each LEE Board will be made up of three to six members, appointed by the Minister of Local Government through a process led by the NTU and involving consultation with councils and iwi/Māori.

There will be similar competency requirements to those for the permanent entity boards, including requirements related to the Treaty of Waitangi, mātauranga Māori, tikanga Māori, and te ao Māori. Specific additional competencies will relate to undertaking transition activities and overseeing transformation/change management.

The LEE Chief Executives will be appointed through a process led by the NTU.



Funding for local authorities

The Government has developed, in close partnership with Local Government New Zealand, a package of \$2.5 billion to support the local government sector through the transition to the new water services delivery system, and to position the sector for the future.

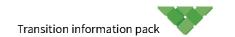
This package will ensure that local authorities are supported through the transition process, the financial impacts of reform are managed and importantly, all councils and communities will transition to the new system for delivering three waters services in a better position than where they are now.

There are two broad components to this support package:

- \$2 billion of funding to invest in the future of local government and community wellbeing, while also meeting priorities for government investment (the "better off" component)
- \$500 million to ensure that no local authority is financially worse off as a direct result of the reform (the "no worse off" component).

Better off

DIA is continuing work with the Joint Central Local Government Steering Committee, Taituarā and Local Government New Zealand on the design and implementation parameters of the better off package. An informal sector reference group comprising members of the Steering Committee and other Mayors has been established to support this work and advice to Ministers.



Councils will be able to apply for their pro-rata share of the \$500 million better-off allocation from early 2022. Guidance and supporting documentation is anticipated to be available in February 2022 following consultation with the sector reference group and Ministers.

We encourage councils to begin considering initiatives and project opportunities for their communities that can be funded from their pro-rata share which meet the criteria set out in the Heads of Agreement. Proposals may be included in annual plan consultation documents.

No worse off

Further detail regarding the "no worse off" package will be available in the second quarter of 2022, however we will test the approach with the sector prior to that.

Reasonable costs

The Government also expects to meet the reasonable costs associated with transition, including providing support to enable councils to engage with the transition through to 1 July 2024 when the new WSEs take on responsibility for water services deliveries. This is likely to include both some direct support for councils, as well as support for groups of councils at an entity-wide level.

Our intention is that this funding will support council engagement with the transition while ensuring council officers are able to continue with their business-as-usual operations.

Provision for these costs has been made within the \$296 million tagged contingency announced as part of the 2021 Budget Package for transition and implementation activities. We expect to be able to communicate how this will be approached in the first quarter of 2022.

External advice procurement

The National Transition Unit will be conducting a procurement process in Q1 2022 for external advisors to support the transition.

There will also be a procurement process for external advice which supports and bolsters councils' ability to engage with the transition (as described above). We are currently working through the details of the external advice which will be available for councils. Prior to the procurement, we will work with a representative range of councils to test the types and quantum of support we will fund.

We will not fund any external advisors outside of the procurement process, so we suggest that you do not go out separately to procure advice until this exercise is complete to avoid duplication of effort and unnecessary spending.



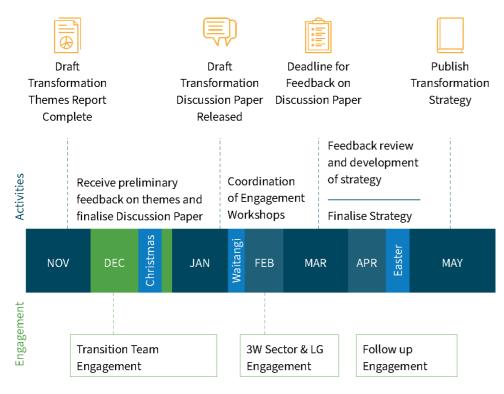
Transformation

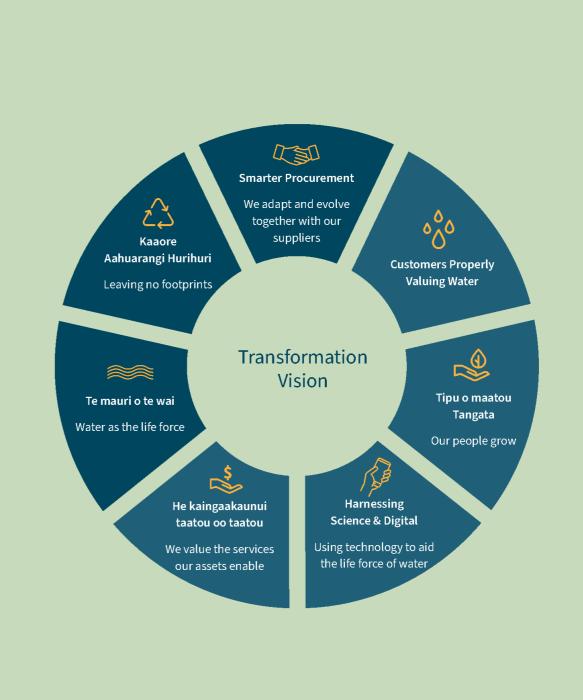
While the work undertaken to date provides the appropriate foundation to deliver the reform objectives, there are significant long-term challenges facing the three waters sector that will not be solved through the reform alone. These include items such as workforce availability, supply chain logistics, construction capacity, as well as many others. As many of the items are interrelated, these cannot be solved in isolation and will require a cohesive long-term transformation of the sector.

Preliminary engagement with key industry bodies and leaders from adjacent sectors within New Zealand and overseas have led to the development of transformation themes, or Pou as we have come to think of them. Although these Pou reflect varying areas of focus they are interwoven and, together, jointly support the Transformation.

These Pou reflect broad transformational areas identified for the three waters sector and are intended to promote thinking, discussion and seek feedback from the sector. Through this engagement we anticipate these Pou will continue to develop and be supplemented by new ideas and fresh thinking.

Transformation timeline





Transition information pack







This work is licensed under the Creative Commons Attribution 4.0 licence. In essence, you are free to copy, distribute and adapt the work as long as you attribute the work to the Department of Internal Affairs (and abide by the other licence terms – see the plain English licence terms at creativecommons.org/licenses/by/4.0). Please note that neither the DIA logo nor the New Zealand Government logo may be used in any way which infringes any provision of the Flags, Emblems, and Names Protection Act 1981 – attribution to the DIA should be in written form and not by reproduction of the DIA logo or New Zealand Government logo.

Te Kāwanatanga o Aotearoa New Zealand Government

Council Report

Committee: Council Date: 03 February 2022

Author: Dan Finn Authoriser: David Bryant

Position: People, Safety & Wellness **Position:** General Manager People and

Manager Organisational Performance

Report Name: Strategic Risk and Assurance reporting: Safety & Wellness

Report Status	Open
	- r -

Purpose - Take

1. To provide the Council the most recent updates on Safety and Wellness as reported to the Strategic Risk and Assurance Committee.

Staff Recommendation - Tuutohu-aa-kaimahi

2. That the Council receives the report.

Executive Summary - Whakaraapopototanga matua

- 3. The Safety and Wellness report was reported to the Strategic Risk and Assurance Committee of 18 November 2021.
- 4. The Safety and Wellness report provides Members with information on wellness strategic progress, performance, and activities.
- 5. Staff are reporting these strategic risk and assurance matters through to the Council to ensure appropriate reporting on these matters are available to the whole of Council.
- 6. The Safety and Wellness report is planned to be reported to the Council on a quarterly basis.
- 7. Staff consider the matters in this report have low significance and that the recommendations comply with Council's legal requirements.

Background - Koorero whaimaarama

- 8. The Strategic Risk and Assurance Committee meets quarterly, with a Membership of five Councillors, the Mayor and an external Chair and Deputy Chair.
- 9. The Strategic Risk and Assurance Committee's terms of reference identify the importance of regular reporting to the Council on matters regarding Council's risk control environment and mitigation practices.
- 10. To ensure the whole of Council has a view on these matters it has been agreed by the Strategic Risk and Assurance Chair and Principal Advisor that these reports will be presented to Council on a regular basis.
- 11. Future Strategic Risk and Assurance Committee meetings will recommend to the Council to receive the Safety and Wellness reports.

12. The 18 November 2022 meeting did not include these recommendations and therefore the Strategic Risk and Assurance Committee's Principal Advisor and Chair have agreed to present the information to the Council within this report.

Discussion - Matapaki

- 13. The attached Health and Wellness report (**Attachment 1**)) was reported to the Strategic Risk and Assurance Committee 18 November 2021.
- 14. The Safety and Wellness report highlighted recent matters regarding the Project Ora the safety management system update and safety reset activities.
- 15. The next Safety and Wellness report of 30 March 2022 is to be reported to the Council meeting of 25 May 2022.

Financial Considerations - Whaiwhakaaro Puutea

16. This is a regular operating activity funded through the Long Term Plan.

Legal and Policy Considerations - Whaiwhakaaro-aa-ture

17. Staff confirm that the matters in this report comply with Council's legal and policy requirements.

Wellbeing Considerations - Whaiwhakaaro-aa-oranga tonutanga

- 18. The purpose of Local Government changed on the 14 May 2019 to include promotion of the social, economic, environmental and cultural wellbeing of communities in the present and for the future ('the 4 wellbeings').
- 19. The subject matter of this report has been evaluated in terms of the 4 wellbeings during the process of developing this report as outlined below.
- 20. The recommendations set out in this report are consistent with that purpose.
- 21. There are no known social, economic, environmental or cultural considerations associated with the matters in this report.

Risks - Tuuraru

22. There are no known risks associated with this matter.

Significance & Engagement Policy - Kaupapa here whakahira/anganui

Significance

23. Having considered the Significance and Engagement Policy, staff have assessed that the recommendations in this report have a low level of significance.

Engagement

24. Given the low level of significance determined, the engagement level is low. No engagement is required.

Attachments - Ngaa taapirihanga

Attachment 1 - Strategic Risk and Assurance Report of 18 November 2021 - Safety and Wellness Report - 1 August 2021 to 31 October 2021

Council Report

Committee: Strategic Risk and Assurance **Date:** 18 November 2021

Committee

Author: Dan Finn **Authoriser:** David Bryant

Position: People, Safety & Wellness **Position:** General Manager People and

Manager Organisational Performance

Report Name: Safety and Wellness Report - 1 August 2021 to 31 October 2021

Report Status	Open
---------------	------

Purpose - Take

1. To inform the Strategic Risk and Assurance Committee on safety and wellness strategic progress, performance, and activities for the period covering 1 August 2021 to 31 October 2021.

Staff Recommendation - Tuutohu-aa-kaimahi

2. That the Strategic Risk and Assurance Committee receives the report.

Executive Summary - Whakaraapopototanga matua

- 3. This report is intended to provide the Strategic Risk and Assurance Committee continued visibility on our progress of key strategic activities that are aligned to risks, relationships and resources. To provide Members with a more comprehensive overview on our progress we have included further updates on wider activities, assurance, and successes.
- 4. Project Ora and the Safety Management System (SMS) remain significant programmes of work. Current progress is being limited as we balance 'business as usual' activities with increasing workloads on key individuals and teams who are being affected by multiple change processes, including the impact and uncertainty that Covid-19 is having on business continuity.
- 5. Recommendations and corrective actions identified through our 'State of Safety' programme have been assigned to each business unit. With the alignment of the new Safety & Wellness Business Partnering model, the Safety & Wellness Team are focussed on providing a collaborative approach to supporting and guiding business units to achieve the recommendations, as well as monitoring progress regularly to track continuous improvement.
- 6. Activity is continuing within the Contractor Management workstream, including updated procedures, simple flowcharts, and other supporting documentation to provide assurance and guidance. Several key activities within this complex body of work are still to be completed before these improved processes can be finalised.
- 7. Staff consider the matters in this report have low significance and that the recommendations comply with Council's legal requirements.

Discussion - *Matapaki*

Strategic Progress - Te ahunga whakamua rautaki

8. The following workstreams outline Council's progress on our 'safety reset' activities previously communicated. They are designed to strengthen and support our wider safety and wellness strategy and will continue to formulate part of this report until full completion.

Workstream	Status	Next milestone	Comment
SafePlus review recommendations	40%	Consolidate actions & recommendations	Several recommendations will be completed via Ora/SMS streams
SMS development and implementation	75%	Safety Governance Committee review	Document is in draft
Technology and communication (Ora)	35%	Business Analyst scoping and mapping progress to date	This work is a key priority to give clear oversight of what events are occurring and to whom, with robust reporting for relevant key stakeholders
Critical risk management	20%	Critical risks to be confirmed for each business unit. Risk owners to be identified.	Learning teams complete, review bowties and write improvements
Contractor management	40%	Confirmed workstream team. Consultation on draft framework	Several meetings held. Draft framework being developed
Resourcing and structure review	100%	The Safety & Wellness Team have a full complement of people now on board.	Aligning with the Business Partnering Model meeting key stakeholders and building on a collaborative approach to support Council in health, safety & wellbeing

Table 1 Key workstreams

Risks and Incidents – Ngaa Tuuraru me ngaa Paanga

- 9. Incidents profiled for the quarter are summarised in **figure 1** below.
- 10. There was a total of four injuries this quarter, compared to 11 in the previous period. Of those injured, one resulted in lost time and three required medical treatment. Near hit reporting was significantly lower than the previous period with 28 near hits recorded. Project Ora is being redesigned to improve the end user experience and promote an improved culture of reporting.



- 11. There was one notifiable event to the regulator during the quarter for Council. This event was an underground service strike by an employee while installing a wastewater new connection. A digger struck a gas service causing a release of gas.
- 12. This notifiable event involved Council employees and related to our critical risk 'hazardous substances'. Further details on the notifiable event can be found in **Attachment 1**.
- 13. To provide further mitigations and to improve our Contractor Management framework, a suite of monitoring forms has been developed and consultation carried out with key stakeholders. These forms are ready to be piloted and are intended to be built into Ora to facilitate easy access and improved visibility. A contractor handbook (for contractors) has also been drafted and is currently being reviewed by the stakeholder group. We are currently awaiting their feedback. Health and safety requirements contained in procurement contracts have also been updated and currently being reviewed by our legal representative before finalising.

Relationships - Whanaungatanga

- 14. The Safety & Wellness Strategy 2021 -2023 has been finalised to align with Councils high performance way of working and can found in **Attachment 2.** This strategy document also includes simplified metrics for reporting and are aligned to risks, relationships and resources. Future dashboards are being developed to assist in presenting this information. Please refer to our current dashboard (**Attachment 3**).
- 15. A simplified version of the Safety & Wellness Strategy will be communicated throughout the organisation to help support and embed continuous safety improvement in the way we do things at Council.
- 16. Covid-19 continues to impact business continuity and there is much work continuing through IMT to provide the organisation with guidance and clarity based on the information available to us. The recent health order and further announcements affected key sectors like Health and Education. Many parts of local government will also be affected both directly and indirectly through the mandating of vaccination passports for those businesses to operate safely. Council has many business units where there is a high risk of transmission and/or exposure to the virus. The Safety & Wellness Team have been proactive in their approach and support of teams undertaking risk assessments using WorkSafe guidelines including their recommended

- template. The risk assessment data has been consolidated and will be used to determine those roles that will be required to be fully vaccinated to perform the work safely.
- 17. To equip our workers with additional skills to cope with change including the uncertainty that Covid-19 continues to present, Synergy Health were engaged to provide 'Charging through Change Workshops' via Microsoft Teams for workers. Synergy Health also held 'Leading through Change Workshops' for People Leaders with the focus on how to build stronger leadership across an organisation, coupled with a powerful engagement process, to help build a resilient and agile organisation that can cope with uncertain times.
- 18. Our annual Employee Engagement Survey is scheduled for 9 November 2021. The survey will contain relevant safety and wellbeing questions that will provide us with a wellbeing index, as well as providing important insight into the types of safety and wellbeing issues affecting workers. This will ensure that action plans, programmes and key initiatives can be designed to address and improve those highlighted areas.
- 19. To lift capability and increase safety awareness the Safety and Wellness Team are investigating different types of learning and educational options for Elected Members and other Senior Leaders, focussing on good governance, and exercising due diligence. Early in the New Year Elected Members can expect:
 - i. visits to business units to see the risks associated with tasks and duties completed;
 - ii. an adapted mentoring/coaching approach to leverage experience across Elected Members; and
 - iii. formal training workshops on health and safety risks (twice yearly).
- 20. The Safety Governance Committee (SGC) met on 30 August 2021, via audio-visual link due to Covid-19 alert level restrictions. The next meeting is scheduled for 1 November 2021. An excerpt from the minutes is below, and the full minutes are provided as **Attachment 4**.

'The SGC undertook a critical risk deep dive on Service Strikes, with representation and insights provided by operational groups undertaking those types of works. Final insights from the 'What Matters Most' survey were presented, supporting the performance indicators selected. The Safety and Wellness Strategy 2021 – 2023 was discussed in depth and endorsed by the SGC. Critical learnings following the recent Bomb Threat that affected Council were presented by the Risk team.'

Resources - Rauemi

- 21. The Safety & Wellness Team have fully staffed their new structure and have recently welcomed seven new members to the People, Safety and Wellness Business Unit. The new structure consists of a Safety & Wellness Lead, four new Business Partners, a Safety and Wellness Co-ordinator and Data Business Analyst. A business partnering model aligns safety and wellness resources to relevant business units to build relationships and support improved collaboration. The Business Analyst will work towards providing insightful data and analytics for reporting purposes to improve decision making. The role will also be supporting Project Ora as our replacement safety software.
- 22. The Health and Safety Contractor assisting with the Contractor Management Framework has recently finished their fixed term contract with Council on Friday, 29 October 2021. The Safety & Wellness Team will continue this work, with good progress being made and a clear framework being defined.
- 23. The Safety & Wellness Team continue to be well supported by other decentralised resources domiciled in our high-risk operational areas, together with our Health and Safety representatives who make up our engagement committee structures.

Assurance - Kii Taurangi

- 24. The 'State of Safety' review, reported at the two previous Strategic Risk and Assurance meetings, forms part of the audit and assessment element of our Safety Management System (SMS). Designed to measure the level of safety maturity across the organisation this review has now been completed, providing a detailed picture of the areas of focus to progress towards best practice.
- 25. An updated heatmap (**Attachment 5**) provides visibility on the progress of corrective actions assigned to each Business Unit across Council.
- 26. The Safety & Wellness Team continue to support and partner with Business Units to monitor and close out recommendations.

Success and Recognition - Angituutanga me ngaa Mihi

27. There are a number of new team members the Safety & Wellness Team who are all excited to be able to support Council in everything health, safety and wellbeing – Marie, Leanore, Amanda and Ron. Coupled with the experience of those that have already been with Council over many years – Karin, Corina and Lewis – we look forward to continuing to build relationships, having a collaborative approach and working alongside our customers to support the vision and purpose of Council.



Marie Snowball - Safety & Wellness Lead



Leanore Bullen



Karin Barclay



Lewis Snapes



Amanda Barlow

Safety & Wellness Business Partners



Corina Martin





Ron Krishna

Business Analyst

Financial Considerations - Whaiwhakaaro Puutea

28. This is a regular operating activity funded through the Long-Term Plan.

Legal and Policy Considerations - Whaiwhakaaro-aa-ture

Staff confirm that any recommendations in this report comply with Council's legal and policy requirements.

Wellbeing Considerations - Whaiwhakaaro-aa-oranga tonutanga

- 30. The purpose of Local Government changed on the 14 May 2019 to include promotion of the social, economic, environmental and cultural wellbeing of communities in the present and for the future ('the 4 well-beings').
- 31. The subject matter of this report has been evaluated in terms of the 4 wellbeings during the process of developing this report.
- 32. This report addresses matters of safety and wellbeing. There are no known social, economic, environmental or cultural considerations associated with the matters in this report.

Risks - Tuuraru

33. There are no risks associated with the recommendations in this report.

Significance & Engagement Policy - *Kaupapa here whakahira/anganui* Significance

34. Staff have considered the key considerations under the Significance and Engagement Policy and have assessed that the matter(s) in this report has/have a low level of significance.

Engagement

35. Given the low level of significance determined, the engagement level is low. No engagement is required.

Attachments - Ngaa taapirihanga

- Attachment 1 Attachment 1 Notifiable Events August-October 2021
- Attachment 2 Attachment 2 Safety and Wellness Strategy 2021_2023
- Attachment 3 Attachment 3 Safety and Wellness Dashboard August to October _2021
- Attachment 4 Attachment 4 Safety Governance Committee Meeting Minutes 30 August 2021
- Attachment 5 Attachment 5 State of Safety Heatmap August-October 2021

Attachment 1 – Notifiable Events

During this reporting period (1 August to 31 October 2021) there was one notifiable event involving a Council employee. A brief summary is below:

Date	Incident summary	Status
18 October 2021	Underground service strike Whilst installing a new wastewater connection, a digger struck a gas service causing a release of gas.	 SOP 1.9 Excavations amended to clearly include operations on private property worksites. Service plans/ Before you dig plans must always be requested for planned work as per SOP 1.9 Excavations communicated to management across the unit.

Attachment 2 Safety and Wellness (PSW) Strategy 2021 -2023



Delivering on our Vision







OUR VISION What we are striving to become and aim to achieve

To ensure Hamiltonians enjoy a connected, vibrant, attractive and prosperous city

OUR PURPOSE Who we are and why we exist

To improve the wellbeing of Hamiltonians. Non-Negotiable: Safety first in all we do.

OUR MISSION How we will achieve our vision

To build an organistaion that ambitiously delivers on our promise to the community

OUR STRATEGIES

Decision Making

World-class decision making:

Maximising the positive impact of our decsions on the wellbeing of Hamiltonians

Engagement

World-Class customer and stakeholder engagement: Leveraging our interactions with our stakeholder to deliver outcomes of mutual advantge

People, Processes and Technology World-class people, processes, and technology: Leveraging our people, processes, and technology

OUR CULTURE Who we want to be

UNITED

COMMITTED TO EXCELLENCE Whaiaa te Iti Kahwangi

INDIVIDUALLY RESPONSIBLE AND ACCOUNTABLE
Maa tika, Maa pono. Ka ota

SUPPORTIVE OF ONE ANOTHER Prohatia te tangata

OUR BEHAVIOURS How we do it

THINK DIFFERENTLY Whakaaro kee atu

WORK TOGETHER Mahi ngaatahi

ACT WITH INTEGRITY Nahi pono. Nahi tika

MAKE IT HAPPEN Mahia te mahi



OUR STAKEHOLDERS

to achieve operational excellence

OUR PEOPLE

CUSTOMERS

PARTNERS

ELECTED MEMBERS

IWI



People, Safety and Wellness - Our Purpose

We are helping to shape and awesome Hamilton by

Partnering to create a thriving high-performance organisation that impacts our community.

Partnering to attract and build a thriving connected workforce diverse in people and diverse in opportunity.

Partnering to enhance the employee experience through a personalised approach, support and development. Enabling our people to be the best versions of themselves.



We are empowering our people to enhance community value and experiences by delivering on our key priorities:

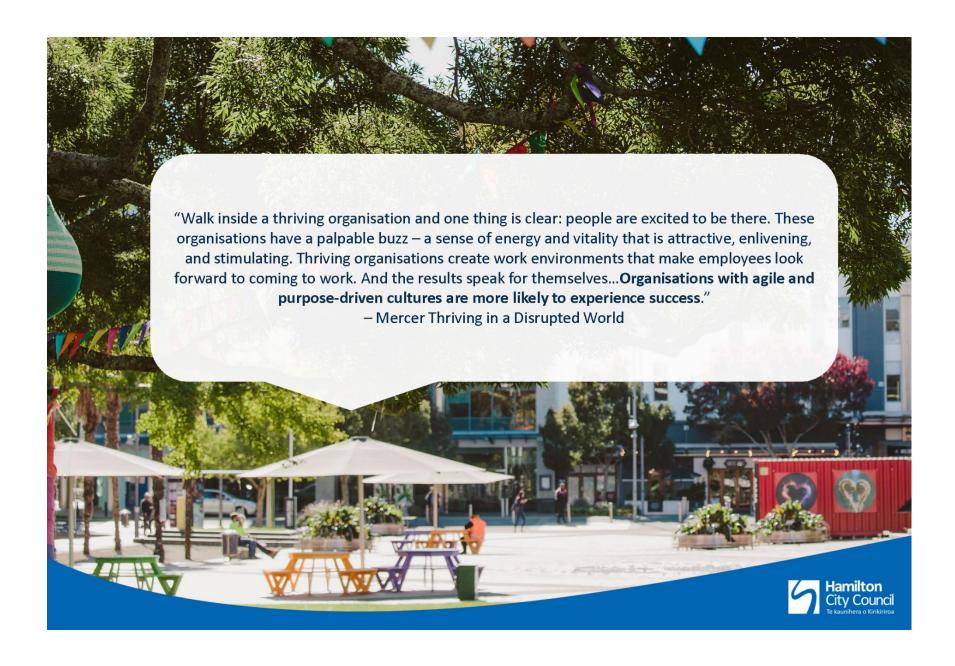
World-class Decision Making Maximising the positive impact our decisions have on the wellbeing of Hamilton

Engagement
Leveraging our interactions with
our stakeholders to deliver
outcomes of mutual advantage

People, Processes and Technology Leveraging our people, processes and technology to achieve operational excellence



Council Agenda 3 February 2022- OPEN



Council Agenda 3 February 2022- OPEN

Page 346 of 406

Our Safety and Wellness Game Plan Outcomes - 2021 -2023

Thriving Organisation

Create

Partnering to Create a thriving high-performance organisation that impacts on our community.

Putting safety first in all we do is a core component of our high performance way of working

Our safety performance is enhanced through our ambitious safety reset

Greater systems enablement (ORA) to enhance our safety performance, transparency and engagement

Enhanced safety leadership capability, that's impactful and drives positive safety transformation

Thriving Workforce

Connect

We are partnering to attract and build a thriving Connected workforce diverse in people and opportunities.

Our Workwell Programme enhances our employee experience, creating a happy, healthy and more productive workplace

Dashboards established, metrics and data leveraged to develop and measure impactful health, safety and wellness strategies

Our safety approach is inclusive, reflecting our diverse workforce and the community we serve

Our Safety Management System (SMS) provides an integrated framework to meet and exceed our obligations under the HSWA 2015 and associated regulations

Thriving Individuals

Care

We Care about our people and partnering to enhance the employee experience through a personalised approach, support and development.

Our Safety and Wellness Team provides enhanced partnering, supporting collaboration so business units succeed, feel engaged and connected

Our people and contractors feel cared for and safe at work throughout the employment and contractor life cycles

Our people have the capability through learning pathways, so they can safely deliver outcomes for our community

Assurance activities are regular, monitored and highlight opportunities for continuous improvement, including successes through a personalised approach

Safety and Wellness Current State 3 Month Activities – Quarter One

Thriving Organisation Create

Partnering to Create a thriving high-performance organisation that impacts on our community.

Jutcome

Putting safety first in all we do is a core component of our high performance way of working

Our safety performance is enhanced through our ambitious safety reset Greater systems enablement (ORA) to enhance our safety performance & impact

Enhanced safety leadership capability, that's impactful and drives positive safety transformation

- Continue to track, monitor and report on key activities associated with the safety reset programme, which includes:
 - Review of our critical risks and controls
 - Refresh our safety management system (SMS framework)
 - o Complete the State of Safety review
 - o Implement Safeplus and other assurance recommendations and
 - o Recruit the right resources to support our people
- Launch our new safety software solution Ora, ensuring that good change management practices are applied to bring our people along on the journey
- Provide system users with sufficient information and support to drive improved reporting
- Shift our culture from reactive and compliant to proactive and self managing
- Improve safety leadership capability across all tiers to increase awareness and understanding. Leverage the Business Leaders Forum to identify learning opportunities that can be scaled up

Activities

Safety and Wellness Current State 3 Month Activities – Quarter One

Thriving Workforce Connect

We are partnering to attract and build a thriving Connected workforce diverse in people and opportunities.

Our Workwell Programme enhances our employee experience, creating a happy, healthy and more productive workplace

Dashboards established, metrics and data leveraged to develop and measure impactful health, safety and wellness strategies

Our safety approach is inclusive, reflecting our diverse workforce and the community we serve

Our Safety Management System (SMS) provides an integrated framework to meet and exceed our obligations under the HSWA 2015 and associated regulations

- As part of our Workwell Programme we will resurvey our people to identify further focus areas and develop an updated action plan to move from Bronze to Silver accreditation by end of June 2022
- · Create meaningful dashboards using our safety management software (Ora) to provide data insight, trending and analysis to enable worldclass decision making by our senior leaders and elected members, whilst fulfilling their due diligence requirements
- Review the 'Be Inclusive' work programme and identify initiatives that can be aligned with Safety and Wellbeing. Create safe spaces and opportunities for our people to share their stories and celebrate successes
- By end of December 2021 our core SMS pillar documents will be fully written, reviewed and communicated across the organisation through an effective engagement plan that leverages our business partnering model

Activities

Safety and Wellness Current State 3 Month Activities – Quarter One

Thriving Individuals

Care

We Care about our people and partnering to enhance the employee experience through a personalised approach, support and development.

Outcomes

Our Safety and Wellness Team provides enhanced partnering, supporting collaboration so business units succeed, feel engaged and connected

Our people and contractors feel cared for and safe at work throughout the employment and contractor life cycles

Our people have the capability through learning pathways, so they can safely deliver outcomes for our community Assurance activities are regular, monitored and highlight opportunities for continuous improvement, including successes through a personalised approach

- Recruit our newly created Safety and Wellness Business Partner positions and assign to Groups and Business Units as their first point of contact.
- Facilitate a think tank with operational health and safety personnel (decentralsied teams) and establish a Service Level Agreement that promotes engagement, trust and collaborative ways of working to foster a high-performance culture.
- Support and provide input towards an improved employee induction programme, working closely with OD/L&D, that promotes health and safety requirements and key information. Gain insights and opportunities for improvement through onboarding surveys.

• Identify key touch points across the Contractor life-cycle as a first step to drafting and implementing a robust action plan to improving contractor management processes, procedures and practices.

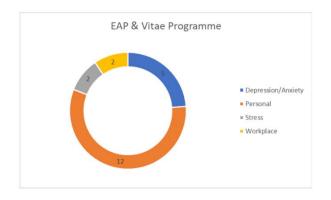
- Identify core fundamental health and safety training that all employees should undertake as part of their first 90 days. Work with OD/L&D to understand how the 'Development Kete' can support and best facilitate.
- Under the Assurance Pillar, review existing activities and develop a core list that can be scheduled.
- Assess training needs and communication plans to support key assurance activities, leveraging business partner relationships.

Activities

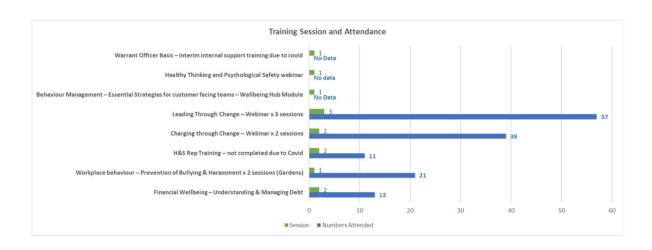
Measuring what matters - using data and insights to inform people strategies that enable our community to thrive						
Relationships Enabling world-class customer and stakeholder engagement. Helping to leverage our interactions with stakeholders to enhance the employee experience/ wellbeing	Resources Enabling world-class people, processes and technology. Leveraging our people, processes and technology to achieve operational excellence	Risk Enabling world-class decision making. Maximising the positive impact of our decisions on the wellbeing of Hamiltonians				
Proposed Metrics and Reporting EAP and Vitae usage and insights Success stories Wellbeing Index	 Proposed Metrics and Reporting Safety factor responses from Engagement survey No. of work related ACC claims 	 Proposed Metrics and Reporting Total number of incidents reported into safety system, including by type: critical risks other risks (near hit events, first aid injuries etc.) hazard contributing to event No. of Lost Time Injuries No. of WorkSafe notifiable events 				

Attachment 3: - Safety & Wellness Dashboard August - October 2021





	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21
Notifiables Injuries (Contractors)	0	0	1	0	0	0	0	0	4	0	0	0
Notifiables Injuries (Workers)	0	0	1	0	0	0	1	0	1	0	0	1
Lost Time Injuries	0	0	1	0	0	0	0	1	2	1	0	0
ACC Work Injury Claims	5	5	3	7	6	8	9	7	6	7	6	2



Key Performance Indicators

3.98 Average days to report in Vault



Attachment 4 – SCG Meeting Minutes

Safety Governance Committee

Time and date: 1:15pm, Monday 30 August 2021

Venue: Zoom

In Attendance: Greg Dearsly (Independent Chair), Richard Briggs (Chief Executive), Dan Finn (People,

Safety and Wellness Manager), David Bryant (GM P&OP), Lance Vervoort (GM Community), Marie Snowball/Karin Barclay (Safety Engagement Lead), Emily Botje (City Waters), Simon Young (City Delivery), Claire Toko (H3), Dion Liddel (AWUNZ), Tracey Wood (Communications), Cr Ewan Wilson (Elected Member), Olly Te Ua (Maangai Maaori), Stephen Lewis (Revolving Health and Safety Representative – City Delivery)

Geraint Rowlands (Guest presenter – AGR Consultancy)

Apologies: N/A

1. Welcome

Meeting opened by the Chair, followed by condolences to Council for Luke O'Dwyer and acknowledging this is Richard Briggs' last Safety Governance Committee Meeting before his departure from Council.

2. Confirmation of previous minutes and review of the Action Register

The minutes of the Safety Governance Committee Meeting held Wednesday 2 June, have been confirmed.

Moved by: Cr Ewan Wilson

The previous meetings action register was reviewed and amended as follows.

Action	Assigned To	Due Date	Comments	Status
It was agreed more time was required to digest the Monitoring What Matters survey results and discuss at next meeting.	Dan Finn	Next meeting		In Progress
Further follow up from Governance to confirm Safety and Wellness updates to be included at full Council Meetings.	Dan Finn		Dan to discuss with Becca	In Progress

Meeting Minutes

Hamilton City Council
Te kaunihera o Kirikiriroa

3. Monitoring What Matters – Final Assessment Insights

The final assessment insights from the survey were presented to the committee, with discussions held and explanations provided around the results in each section of the survey.

SLT members were given another opportunity to complete the survey, with 91% completing the survey.

The following questions were asked by the committee:

- Q. With regards to the Risk Questions, do we have a training regime around implementation of new technology, equipment, or plant?
- A. When there is a new process, the risks are analysed and reviewed, extra training is provided or sometimes when the process is so different, we re-evaluate the training and competencies required.
- Q. What is the change management process that integrates safety considerations?
- A. Risk and safety assessments are being completed however change management is currently not consistently applied across the organisation. We are looking at further opportunities for improvements.
- Q. How is the Health & Safety strategy being informed by this survey?
- A. Some of the opportunities or gaps are not new, part of our safety reset is looking at Critical Risks, the results of this survey have informed the next steps.

Action points from this section:

- It was agreed more time was required to digest the results and discuss at next meeting.

4. Safety and Wellness Strategy 2021-2023

The Safety and Wellness Strategy was presented by Dan Finn.

Some comments on the Strategy are listed below:

The organisational Game Plan is unwavering in its commitment to Health and Safety, all Game Plans throughout
the organisation are aligned to the organisational Game Plan. Responsibility lies with the whole organisation,
Dan has presented how he is supporting Health and Safety, this is Dan's response to honour his purpose.

The following questions were asked by the committee:

- Q. How is the organisation resourced to implement this strategy over the next three years?
- A. Much better than where we were. We have reset our structure and have additional resources in the Health and Safety Business Partner space. Operational areas have stood up resources domiciled in their areas to apply this in the front line. The important thing to focus on is to ensure we bring centralised and decentralised teams together to ensure we consistently apply our strategy.
- Q. At this point in time, does the organisation have a single point database of all staff and what training has been completed and does it proactively manage when training expires?
- A. We currently don't have a single version of the truth. We are working on migrating training levels into Cornerstone which manages expiries and renewals very well. In the meantime, administrators manage training matrixes who inform staff when training is coming up for renewal.
- $\it Q$. How is the Health & Safety strategy being informed by this survey?
- A. Some of the opportunities or gaps are not new, part of our Safety reset is looking at Critical Risks, the results of this survey have informed the next steps.
- Q. Any comments on the effect on the first quarter being July to September from Covid? Meeting Minutes

Page 2 of 4



A. Some activities will spill over into next quarter. If some people are unable to do their normal work, it would be great if they could be working on the key activities.

Proposed performance indicators:

- Q. Do any KPI's show how much stress staff are under?
- A. SLT can see workloads compounding stress and is having conversations with the Elected Members around priorities. Covid-19 is adding a lot of stress to employees who will be returning to a huge backlog of work.
- Q. EAP and Vitae are the ambulances at the bottom of the cliff however they are looking more at prevention. Is that what we are doing also?
- A. We will be including this as part of our metrics.
- Q. What are the average number of days to report incident/event (Vault/Ora)
- A. Near hit reporting was low, they provide opportunities to make corrective actions. We want to be able to make reporting easier. Vault is cumbersome, with Ora reporting should go up as it is more user-friendly. Events should be notified within 24 hrs and recorded within 48hours. We are working on lifting the culture of reporting.

Action points from this section:

 Further follow up from the Governance to confirm Safety and Wellness updates to be included at full Council Meetings.

5. Critical Risk Deep Dive - Services Strike

Geraint Rowlands provided an update on the report.

Some comments are listed below:

Infrastructure operations have implemented all the recommendations from Geraint's report. As a result, there
has been more engagement around service strikes. This is not just a Hamilton City Council issue but nationwide
issue. We are confident that we are recording all service strikes.

Stephen Lewis joined the meeting late as he was attending an urgent job. A discussion was had with Stephen around what happens when there is an incident. There was a general conversation around the excavating requirements as highlighted by Stephen.

Main points covered:

- Training and supervision of new recruits.
- Importance of a good reporting culture.
- Strikes in walls in our facilities.
- An investigation can be used to reinforce the positives.

6. Emergency response bomb threat

Critical learnings & recommendations were presented by Michelle Hawthorne.

Some key points from Michelle included:

- The overall response went well, only 3 people showed up to the building.
- The Genesis building was used as a base.

Meeting Minutes



Page 3 of 4

- Our communications were good. We are reflecting on our communication lines around who do we call and when.
- We identified the need to look at our emergency response. Part of that was looking at business resilience for the whole organisation.

The following questions were asked by the committee:

Q. Once the event has happened, how do we return to operation mode? Psychosocial response to staff, trauma triggered?

A. It highlighted some key staff leaving their laptops at home, we are trying to reinforce to staff to take laptops home every night. With regards to the psychosocial response, we always consider staff in these events and always mobilise vitae to ensure adequate support is given.

Q. will council look at using increased security?

A. Developing our culture is something we need to focus on. We have had some assessments done on some parts of our business, but we have no plans at this stage for added security.

7. Round table

- Marie Snowball, HCC's new Safety and Wellness lead was introduced to the committee.
- Nigel Latta did a webinar for all our staff which has been recorded for anyone who would like to watch it again.
- Thank you for feedback on Safety Strategy and Performance Indicators.

8. Actions Register

Action	Assigned To	Due Date	Comments	Status
It was agreed more time was required to digest the Monitoring What Matters survey results of the survey and discuss at next meeting.	Dan Finn	Next meeting		In Progress
Further follow up from Governance to confirm Safety and Wellness updates to be included at full Council Meetings.	Dan Finn		Dan to discuss with Becca	In Progress

The meeting was declared closed at 4:30pm.

• Next Meeting: Monday 1 November 2021

Meeting Minutes



Attachment 5: State of Safety Heatmap

Hamilton City Council Safety assurance programme - Overview of internal review



Group	Unit	Critical Issues	Recommendations	SMS - Pillar 1 Safety leadership and policy	SMS - Pillar 2 Risk management	SMS - Pillar 3 Safety assurance	SMS - Pillar 4 Training, promotion and engagement	Behaviours and conditions	Unit Specific items	General
Community	Museum		34	4	16	3	6	2	1	2
Community	Central Library		15	2	4	0	2	5	0	2
Community	Parks - Planning and Projects		21	3	9	2	3	1	3	0
Community	Zoo		13	1	8	2	1	1	0	0
Community	Cemetery		26	4	2	1	1	14	0	4
Community	Hamilton Gardens		26	2	8	0	3	7	4	2
Community	Parks and Recreation		13	2	7	1	2	1	0	0
Community	Gallagher Aquatic Centre		13	1	4	0	2	6	2	0
Community	Nursery		16	4	4	1	3	4	0	0
Community	Waterworld		18	1	12	2	1	2	0	0
Community	City Safe Operations		20	2	7	1	2	5	0	3
Community	Animal Education and Control	1	25	1	13	1	0	4	6	0
Development	Facilities		16	1	7	1	3	2	2	0
Development	Capital Projects		9	1	4	3	0	0	0	1
Venues, Tourism and Major Events	H3 - Claudelands Event Centre, FMG and Seddon Park		50	2	11	2	10	10	15	0
Operations Infrastructure Operations	Waste Water Treatment Plant and Water Treatment Plant	2	42	2	10	1	5	21	1	2
	City Delivery		36	3	14	1	2	13	1	2
	Transportation		11	2	2	1	4	1	1	0
	Totals	3	404	14	31	7	19	56	20	9

- 1 Reviews were completed from the 04/02/2021 to the 01/06/2021.
- 2 General items apply to more than one Unit
- 3 Colour status is based on the review report. The current status is to be confirmed based on a Units action on a recomendation.
- 4 Not having a Safety Policy on display is included as a recommendation.

SMS - Safety management System

Pillar 1 - Safety leadership and policy (5 items included in the review)

Pillar 2 - Risk management (10 items included in the review)

Pillar 3 - Safety assurance (1 item included in the review)

Pillar 4 - Training, promotion and engagement (4 items included in the review)

Not started Underway Completed

Council Report

Committee: Council **Date:** 03 February 2022

Author: Michelle Hawthorne **Authoriser:** David Bryant

Position: Governance and Assurance **Position:** General Manager People and

Manager Organisational Performance

Report Name: Strategic Risk and Assurance reporting: Risk Management

Report Status	Open
---------------	------

Purpose - Take

1. To provide the Council the most recent updates on Risk Management as reported to the Strategic Risk and Assurance Committee.

Staff Recommendation - Tuutohu-aa-kaimahi

2. That the Council receives the report.

Executive Summary - Whakaraapopototanga matua

- 3. The Risk Management report was reported to the Strategic Risk and Assurance Committee of 18 November 2021.
- 4. The Risk Management report provides Members with information on the status of Hamilton City Council's nine strategic risks, three key organisational risks and any key emerging risks.
- 5. Staff are reporting these strategic risk and assurance matters through to the Council to ensure appropriate reporting on these matters are available to the whole of Council.
- 6. The Risk Management report is planned to be reported to the Council bi-annually.
- 7. Staff consider the matters in this report have low significance and that the recommendations comply with Council's legal requirements.

Background - Koorero whaimaarama

- 8. The Strategic Risk and Assurance Committee meets quarterly, with a Membership of five Councillors, the Mayor and an external Chair and Deputy Chair.
- 9. The Strategic Risk and Assurance Committee's terms of reference identify the importance of regular reporting to the Council on matters regarding Council's risk control environment and mitigation practices.
- 10. To ensure the whole of Council has a view on these matters it has been agreed by the Strategic Risk and Assurance Chair and Principal Advisor that these reports will be presented to Council on a regular basis.

- 11. Future Strategic Risk and Assurance Risk Management reports will recommendations to the Council to receive the report.
- 12. The 18 November 2022 meeting did not include these recommendations and therefore the Strategic Risk and Assurance Committee's Principal Advisor and Chair have agreed to present the information to the Council within this report.

Discussion - Matapaki

- 13. The attached Risk Management Report (**Attachment 1**) was reported to the Strategic Risk and Assurance Committee on 18 November 2021.
- 14. The report highlighted recent matters regarding key risks concerning Westport floods, shortage of external resources, recruitment and Covid-19.
- 15. The next Strategic Risk and Assurance Risk Management report to the Council will be the 9 June 2022 report, which will go to the Council meeting of 30 June 2022.

Financial Considerations - Whaiwhakaaro Puutea

16. This is a regular operating activity funded through the Long Term Plan.

Legal and Policy Considerations - Whaiwhakaaro-aa-ture

17. Staff confirm that the matters in this report comply with Council's legal and policy requirements.

Wellbeing Considerations - Whaiwhakaaro-aa-oranga tonutanga

- 18. The purpose of Local Government changed on the 14 May 2019 to include promotion of the social, economic, environmental and cultural wellbeing of communities in the present and for the future ('the 4 wellbeings').
- 19. The subject matter of this report has been evaluated in terms of the 4 wellbeings during the process of developing this report as outlined below.
- 20. The recommendations set out in this report are consistent with that purpose.
- 21. There are no known social, economic, environmental or cultural considerations associated with the matters in this report.

Risks - Tuuraru

22. There are no known risks associated with this matter.

Significance & Engagement Policy - *Kaupapa here whakahira/anganui* Significance

23. Having considered the Significance and Engagement Policy, staff have assessed that the recommendations in this report have a low level of significance.

Engagement

24. Given the low level of significance determined, the engagement level is low. No engagement is required.

Attachments - Ngaa taapirihanga

Attachment 1 - Strategic Risk and Assurance Report of 18 November 2021 - Risk Management Report

Council Report

Committee: Strategic Risk and Assurance Date: 18 November 2021

Committee

Author: Authoriser: David Bryant Nicholas Whittaker

Position: Position: General Manager People and Risk Advisor

Organisational Performance

Report Name: Risk Management Report

Report Status	Open
---------------	------

Purpose - Take

To inform the Strategic Risk and Assurance Committee on the status of Hamilton City Council's 1. nine strategic risks, three key organisational risks and any key emerging risks.

Staff Recommendation - Tuutohu-aa-kaimahi

That the Strategic Risk and Assurance Committee receives the report.

Executive Summary - Whakaraapopototanga matua

- Hamilton City Council's top Strategic and Organisational Risks have been reviewed over the last 3. quarter and updated to reflect the changing risk environment.
- 4. Staff continue to provide a regular report on these matters at each meeting of the Strategic Risk and Assurance Committee. The focus areas for the Committee to note for enterprise risks are outlined in the following paragraphs:
- Strategic Risk 1 Disaster Event Council deployed seven staff to Westport in August to 5. support their emergency responses to significant flooding issues. Attendance at such incidents has proven to be a significant development opportunity for HCC staff to obtain real event experience. This should provide a degree of confidence that HCC staff are able to mount a credible and professional response in the event of a major emergency locally.
- 6. Throughout the reporting period CDEM have maintained a capability to support the District Health Board (DHB) led Covid testing centres and vaccination centres. This support has included provision of traffic management services, facilitating additional pop-up locations, community messaging and general welfare support.
- 7. Business units have reviewed and updated their pandemic continuity plans in preparation for future alert level changes. All staff received reminders and up-to-date communications to encourage good hygiene practices, reinforce the expectations at Level 4 and 3, including increased awareness on new legislation, mask wearing and scanning QR codes.

- 8. **Strategic Risk 7 Shortage of External Resources** This risk is again highlighted due to continuing pressure on regional and national delivery capacity of the construction industry and supply chain, industry skills shortages and increased demand for certain materials. The consequences are project delays and escalating cost.
- 9. Due to the current climate the inherent risk likelihood rating has increased from 'Likely' to 'Almost Certain'. This has taken the inherent risk rating to 'Extreme'. However, the residual risk rating remains at 'Very High'. Further details are provided in the discussion section of this report.
- 10. Staff consider the matters in this report have medium significance and that the recommendations comply with Council's legal requirements.

Background - Koorero whaimaarama

- 11. The Strategic Risk and Assurance Committee meeting of 16 May 2019 approved, for monitoring purposes, eight strategic risks and three key organisational risks (as set out below). At subsequent meetings, staff reported on the status of each risk and associated improvement plans.
- 12. The purpose of the report is to highlight significant activity over the last quarter for each risk. The appended register sets out more detail on all risks.

Discussion - Matapaki

13. **Strategic Risk Review** – As requested by the Committee, a review of all strategic risks was commenced by the risk owners and their teams during July and August 2021. However, further discussion with the Senior Leadership Team was deferred due to the emergence of Covid-19. The review will continue with the aim of bringing the Strategic Risk Review to a future Committee Workshop.

Strategic Risk 1 – A disaster event

- 14. This risk relates to a natural or human-induced disaster event. Actions undertaken have had a very strong focus on Covid-19 resurgence preparation.
- 15. Unlike the Covid responses in 2020, the lead agency for the current Covid outbreak was determined to be the Ministry of Health. The role of CDEM changed to having responsibility for the provision of consistent community messaging, maintaining the regional intelligence picture, supporting support iwi, agencies, and essential community providers to provide essential welfare and wellbeing support to communities and whanau. CDEM were also tasked with providing emergency welfare services to communities, whanau, or individuals, where there are no other means of support available. While the residual rating for this risk remains very high, the rating is due to the unknown impact any disaster event could have on the city and the community.

Strategic Risk 3 – Increasing Compliance Standards

- 16. The Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill received a first reading recently. The Bill has been referred to the Environment Committee. Submissions are due on or before 16 November. The Bill is designed to improve housing supply in New Zealand's five largest cities by speeding up implementation of the National Policy Statement on Urban Development (NPS-UD) and enabling more medium density homes. Staff will be available to discuss the risks associated with the legislation and potential impact on Council business. The flow on effects could be seen in the planning and building units if we get an uplift in applications as a result, there is also potential for this to impact our critical assets if intensification out paces our infrastructure capacity, and for the easing of regulation to increase competition for resources that we need in the construction sector.
- 17. The Government has announced it will put forward legislation for New Zealand's three water services drinking water, wastewater, and stormwater to be managed by four new publicly owned water entities, replacing the services currently managed by 67 councils. This confirmation that reform will proceed will significantly affect all councils.
- 18. The Fluoridation of Drinking Water Amendment Bill received its Committee Stage yesterday and appears will be law in the near future.

Strategic Risk 4 – Cyber Attack

- 19. This risk continues to be managed "to ensure the organisation is secure from, or prepared for, credible cyber threats".
- 20. Staff are currently progressing through the implementation of the Security Operations Services defined in the Security RFP. This will expand Council's cyber security partnerships and introduce key cyber security capabilities. These capabilities will significantly improve Council's ability to identify, protect, detect and respond to cyber security threats.
- 21. Council continues to experience significant activity in cyber-attacks through sophisticated email phishing campaigns. These have the primary focus of compromising Council passwords and running malicious software on Council devices. The impact of compromised council passwords is being mitigated by Multi-Factor Authentication and suspicious login alerts. Targeted end-user education is ongoing.
- 22. CERT NZ have reported their Q2 2021 NZ incident figures, which highlight a 150% increase in ransomware attacks, a 37% increase in unauthorised access reports and a 30% increase of incidents reporting financial loss. The sophistication and complexity of cyber threats continues to increase.

Strategic Risk 5 - Growth

- 23. Strategic Risk 5 looks at significant changes in growth demand, and/or the consequences of growth not delivering positive outcomes for the community.
- 24. Demand in the residential sector continues to be high in Hamilton. In the 12 months to October 2021 the number of residential sub-division lots granted was 1,988, a drop of 20% because of a particularly large consent (833 lots) falling in the 12 months to October 2020. Subdivision consents were still 15% higher than the average for the last 5 years.

25. The proportion of infill consents dropped from 51% in 2020 to 45% in the year to June 2021. In the 12 months to October 2021 consents for 1,706 new dwellings were lodged, up nearly 2% on the prior 12 months. There were 1,570 Code Compliance Certificates issued in the 12 months to October 2021, up 14% on the 12 months prior.

Strategic Risk 6 - Political Change

- 26. **Three Waters Reform** This was an emerging risk in June 2021 and is now integrated into Strategic Risk 6: Political Changes Impact Council's Strategic Direction, along with other government reform programmes.
- 27. Within Council, a Three Waters Reform programme with a dedicated team has been established as the central point of information and action for all legislative change processes.
- 28. Council will also receive regular reports on the Three Waters Reform programme via full Council.

Strategic Risk 7 – Significant cost escalation and/or shortage of resources to deliver works programmes

- 29. This risk focuses on the strain and upward cost pressures on construction resources and materials and the impact this will have on current or pending development across Hamilton City.
- 30. Council has budgeted in the 2021-31 LTP to deliver an increasing capital works programme. The current delivery capacity of the construction industry and supply chain is under pressure regionally and nationally, including the widely discussed construction industry skills shortage, increased national and international demand for certain materials, and significant delays and increased costs of international freight. Issues have been accelerated with extended periods of COVID Alert Level restrictions in both the Waikato and Auckland which have significantly impacted the supply chain. The risk consequences are project delays and escalating cost.
- 31. A large component of this year's programme is already contractually committed and largely progressing with committed resources and more cost certainty, however the risk of delays and escalating cost is now being realised on projects which are entering the construction procurement phase. In future years this issue will result in significant cost pressures to deliver projects in accordance with LTP funding allocations.
- 32. In the 2021/31 Long Term Plan council applied inflation adjustments to the capital programme of 0% in Y1 (2021/22) and 3% p.a. in Years 2 to 5 (2022/23 to 2025/26).
- 33. Current construction cost indices are indicating costs escalating at over 4% p.a. over the past 12 months, with further upward pressure anticipated for the foreseeable future.
- 34. Staff are currently undertaking a further quantitative assessment to benchmark construction cost indices against our LTP and better identify our key areas of risk exposure. This will be further considered as part of the 2022/23 Annual Plan.
- 35. Discussions with our contractors indicate recent shortages and/or significant cost escalations for certain products including but not limited to steel, concrete, pipes, fittings, bitumen, timber, and glass.
- 36. Tagging risks around material supply, cost escalation and COVID alert level changes is now common across recent construction tenders being advertised by Council.
- 37. Human resource shortages also remain a key issue currently for the construction industry.

- 38. In order to support the construction industry to proactively invest in growing local delivery capacity and capability, staff are actively progressing key initiatives including:
 - Council led a construction industry briefing session in late June to present a comprehensive regional forward works pipeline to contractors and designers - including other key regional client organisations (other councils, Waka Kotahi NZTA and key developers);
 - ii. ensuring integration and alignment with the NZ Infrastructure Commission and their national infrastructure pipeline; and
 - iii. a draft strategy/plan for delivery of the upcoming 2021-31 LTP programme including an emerging preferred option to implement long-term collaborative panel contracts for delivery of large components of the programme. Along with other benefits, this model would incentivise enhanced investment in delivery resources through longer term commitments, improved forward works certainty, early contractor involvement during design, opportunities to advance order items/materials and improved collaboration.

Strategic Risk 9 - Climate Change

- 39. On 26 August 2021 the Environment Committee approved the 2021/2022 Climate Change Action Plan. The Action Plan outlines activities funded in the 2021-31 Long Term Plan that will deliver on emissions reductions or build resilience to climate change.
- 40. In September and October 2021, the Climate Change Working Group and Climate Change Steering Group both met and provided input into the development of the Climate Change Strategy and Climate Change and Environment Policy. The Climate Change Strategy will be taken to the Environment Committee in February/March 2022 and will respond to changes in international and national policies. It is proposed that the Climate Change and Environment
- 41. Policy will outline Council's intent to complete a risk assessment and an annual climate change disclosure report. To support the implementation of the policy, changes are proposed to the business case, project plan and council report templates to include a section on climate change.
- 42. In September 2021 the Ministry for the Environment released guidance for local government on completing a Climate Change Risk Assessment. The document outlines the steps required to undertake a citywide risk assessment and the Ministry have signalled that training will be provided in due course. Staff will be commencing this for Hamilton in 2022.
- 43. On 13 October 2021 the Ministry for the Environment released *Te hau mārohi ki anamata Transitioning to a low-emissions and climate-resilient future* for consultation. The discussion document outlines proposed policies and actions that the Government will take to reduce emissions from 2022-2025. The documents are available on the Ministry's website.
- 44. The United Nations Framework Convention on Climate Change (UNFCCC) 26th Conference of Parties (COP26) was held from 31 October 2021 to 12 November 2021 in Glasgow. An update on the outcomes of COP26 will be provided verbally to the 30 November 2021 Environment Committee. An update will be provided in the next update on the climate change strategic risk to this Committee.

Organisational Risks

Organisational Risk 3 – H&S – Workers (incl. contracted workers & volunteer workers)

45. The on-going nature of the Level 3 lockdown has the potential to adversely impact the wellbeing of Council staff. This can be discussed in more detail as part of the Health and Safety report.

46. In addition, nationally the jobless rate fell to 3.4 percent for the three months ended September, compared to 4 percent in the previous quarter. The number of unemployed people fell by 18,000 during the quarter, while the economy gained 54,000 jobs during the quarter. The underutilisation rate, which is a measure of the slack in the labour market, was 9.2 percent from 10.5 percent, the lowest since mid-2007. This is reflected in the current challenges in recruitment.

Organisational Risk 3 - Critical Asset Failure;

47. Covid-19 Alert Level changes have had an impact on some planned maintenance work being unable to be carried out. This has either been due to limiting staff numbers to mitigate any future risk of Covid-19 Delta variant spreading amongst essential workers or that contactors have been located outside of the Waikato boundary. The planned maintenance work is regularly monitored to ensure that the critical asset is not at risk of failure. Work programmes are not currently aligned with Government's new Covid-19 Protection Framework. The IMT are coordinating with key activity areas to identify workplan requirements and compliance.

Emerging Risks

48. There are no new emerging risks this quarter.

Financial Considerations - Whaiwhakaaro Puutea

49. There are no financial implications in relation to receiving this report.

Legal and Policy Considerations - Whaiwhakaaro-aa-ture

50. Staff confirm that the Risk Management Report complies with Council's legal and policy requirements.

Wellbeing Considerations - Whaiwhakaaro-aa-oranga tonutanga

- 51. The purpose of Local Government changed on the 14 May 2019 to include promotion of the social, economic, environmental and cultural wellbeing of communities in the present and for the future ('the 4 wellbeings).
- 52. The subject matter of this report has been evaluated in terms of the 4 wellbeings during the process of developing this report as outlined below.
- 53. The recommendations set out in this report are consistent with that purpose.

Social

54. The risks highlighted in this report have the capacity to affect social wellbeing should they materialise. Social wellbeing continues to be prioritised through Council's management of the risks and opportunities arising from the risks outlined in this report.

Economic

55. The risks highlighted in this report have the capacity to affect economic wellbeing should they materialise. Threats and opportunities relating to external material and human resources could impact on economic wellbeing locally, regionally, nationally and globally with the continued active resurgence of COVID-19. Council's management of the risks and opportunities in this report continues to reflect the impact on economic wellbeing.

Item

Environmental

56. Council continues to manage its response to the impact on the environment by establishing services that are safe and sustainable and embedding climate change considerations into priority projects across Council. Finding opportunities such as this means that environmental wellbeing continues to be prioritised.

Cultural

57. Staff consider the matters set out in this report do not have a direct impact on cultural wellbeing.

Risks - Tuuraru

58. The Risk Register (Attachment 1) identifies the risks relating to this report.

Significance & Engagement Policy - Kaupapa here whakahira/anganui

Significance

59. Having considered the Significance and Engagement Policy, staff have assessed that the matters in this report have a medium level of significance.

Engagement

60. Community views and preferences are already known to Council. Given the medium level of significance determined, no engagement is required.

Attachments - Ngaa taapirihanga

Attachment 1 - Risk Register - November 2021

Risk Number	Strategic Risk Description	Risk Owner	Residual Risk Rating
1	A Disaster Event A natural or human-induced disaster event (excluding act of terrorism)	Lance Vervoort	Very High
2	Major Economic or Financial Shock An external financial event impacts Council's financial strategy, fiscal and monetary position.	David Bryant	Medium
3	Increasing Compliance Standards due to Stakeholder Expectations The risk of central government and regional council increasing compliance standards or changes in community expectations.	David Bryant	High
4	Cyber Attack Unauthorised access to Council's IT infrastructure results in loss of service continuity that may lead to safety risks to Hamiltonians and relatable consequences of reputational, legal, and financial losses.	David Bryant	High
5	Growth Significant change to/in growth demand and/or the consequences growth does not deliver positive outcomes for the community.	Blair Bowcott	High
6	Political changes impact Council's strategic direction Political stakeholders make unpredictable decisions or take actions that significantly impact or contradict Council's strategic imperatives.	Blair Bowcott	Very High
7	Significant Shortages of Key External Resources The market is unable to deliver necessary resources to achieve our strategy; including but not limited to people and material for projects	Chris Allen	Very High
8	High-Level security threat or major emergency A safety, security or environmental attack materialises and impacts Council's strategic direction.	David Bryant	High
9	Climate Change Failure to adapt to the changing environment as a result of climate change, including failure to mitigate the organisations contributions to greenhouse gas emissions	Sean Hickey	Very High

Risk Number	Organisational Risk Description	Risk Owner	Residual Risk Rating
1	H&S – Workers (incl. contracted workers & volunteer workers) Failure to ensure the health and safety of council staff or workers whose activities are influenced or directed by council, while the workers are carrying out work.	David Bryant	High High
2	Safety and Wellbeing of the Community Failure to create, provide and maintain a safe environment for the community leading to a serious injury incident or fatality.	Lance Vervoort	High Medium
3	Failure of critical assets Incorrect investment (timing and/or amounts) results in the unexpected failure of critical assets (loss of levels of service).	Eeva-Liisa Wright	High

^{*} There is a very strong relationship between the likelihood and severity (consequence) of H&S incidents. The likelihood of minor injuries is much higher than an incident which could result in a death. (refer pp 20-25)

Emerging Risks – verbal discussion topics

Emerging risks are risks which may develop or which already exist and are difficult to quantify but may have a high consequence or high impact if they materialise. The following identified risks are not ranked but monitored informally across Council and reported when appropriate. Analysis and mitigation identification have been conducted as operational and business as usual applications.

- City Water Supply quality and quantity of intake from the Waikato River.
- Three Waters Reform Programme reforming the delivery of water services in New Zealand.

Risk Type	Definition
	The risk of an event or impact that is external to Council and could impact
Strategic	the organisation's strategies, including Council's Financial Strategy, Long
	Term Plan and 30 Year Infrastructure Strategy.
Organicational	The risk of an event or impact that is internal or external to Council and
Organisational	could impact the whole organisation.
Onevetienel	The risk of an event or impact that is internal or external to Council and
Operational	could impact one or more Operational activity.
	Emerging risks are risks which may develop or which already exist and are
Emerging	difficult to quantify but may have a high consequence, high impact if they
	materialise.

Indicator	Description	Indicator	Description
\longrightarrow	No change – managed	1	Adverse change since previous
•	New risk	•	Improved change since previous

^{**} Council takes the safety of our people and the community seriously and are working hard to reduce the likelihood of a serious harm incident. Due to the focus and definition of this risk relating to death or a serious injury, the risk rating (and by extension the target risk rating) can never reduce below 'High' because we consider the consequence to be 'catastrophic'. (refer pp 20-25)

A Disaster Event

A natural or human-induced disaster event (excluding an act of terrorism)

Risk Owner – (GM	Lance Vervoort	Category	Strategic
Level)			Preparation and Disaster
			Recovery

Risk Triggers

- Natural disaster event without warning or build up
- Severe weather events that increase in intensity, including those events that are a result of climate change
- Critical asset failure that impacts the safety of Hamiltonians water, energy, telecommunications, financial, transportation
- Civil unrest political or social unrest resulting in a security or safety threat to people or assets (excluding an act of terrorism)
- Disaster caused by failure of human-made structures
- Pandemic

Inherent Likelihood	Inherent Consequence		Inherent Risk Rating	Rating
		Catastrophic		Very High
	Strategic Safety &			
	Wellbeing,			

Existing Controls

Emergency management

- Annual external (NEMA) capability assessments
- Collaboration on emergency management response approach across agencies and the region.
- Co-located EOC in a dedicated leading-edge centre (Group Emergency Management Office GEMO) with built in redundancy (including water and power supplies)
- Early warning processes are in place at a national and regional level
- Emergency Management Framework National Emergency Management Agency (NEMA), Group, Local Emergency Operations Centre (EOC) structure
- Emergency management training program TAKATU implemented for Council staff
- Robust emergency exercise schedule in place to test preparedness and response functionality

Infrastructure resilience

- Asset and service monitoring capability
- Criticality assessments and asset identification ratings
- Engineering standards identified and managed
- Activity Management Plan (AMP) renewals, maintenance plans and operational strategies are funded in the 2018-28 10-Year Plan Budget and critical assets are given a higher priority for renewal
- Availability of technical expertise to manage, monitor, operate and maintain critical assets and identify situations when early intervention is required to maintain asset condition and level of service.
- Infrastructure Strategy is in place to identify significant infrastructure challenges over the next 30 years, and to identify the principal options for managing those challenges and the implications of those options
 Further controls and mitigations relating to critical assets can be found in Organisational Risk #3.

Residual Likelihood	Possible	Residual Consequence Driver Strategic Safety &	Major	Residua Rating	l Risk	Rating Very High
A 11 O		Wellbeing,				
Action Owner Risk Treatment Kelvin Powell Mitigate						
Treatment Plan		Previous updates				Update – vember 2021
Implementation of CDEM workplan deliverables ahead of next external Capability Assessment November 2021	reduced pa Manageme March. Foc resurgence and resilier (June 21) - assessor de learnings in Manageme Officer in p exercise in reported to (Sept 21) - [exercise. Ca	reduced pace due to vacancy of Emergency Management Officer – replacement commences 1 March. Focus actions for this quarter: o Covid-19 resurgence prep o Training delivery o Preparedness and resilience building in our vulnerable communities (June 21) - Capability Assessment deferred due to assessor demand issue. Covid-19 resurgence planning learnings implemented and tested. New Emergency Management Officer in place. Planning ongoing for Tier 2 (Regional) exercise in November. Work programme update reported to Community Committee 18 May			W coore to define an W Ree no M Cal as fu	forkplan intinues but at duced pace due ongoing smand and spacts of COVID in disupport to estport flooding. In gional exercise ow deferred until earch 2022 coability sessment likely or the rice deferred in to Covid splications
Complete review of Covid-19 Post Action report to identify work programme and lessons learnt by March 2022	 (March 21) - Critical lessons learnt from Covid-19 response incorporated into new plans for Regional based response for resurgence of Covid-19 in the community again. Changes incorporated into plans provide clarity and prevent duplication of effort. HCC Staff contributions have been identified and names assigned (June 21) - Covid-19 learnings implemented in the following: A regional 'Hub and spoke' approach adopted for future Covid related activations to maximise effectiveness. Local support plans for supporting DHB Covid testing site with excess demand issues developed and tested. (Sept 21) - Planning and engagement continue around the formulation of boundaries to be applied in the event of a Covid outbreak. Central Government is overall responsible for COVID Alert Level boundary planning and boundary setting. Learnings from 'Auckland lockdowns'. 			appint Co Au wo su sn Inc Po Boo cu sc W wi re	ub and spoke aproach troduced in ovid responses in agust and orked well with pport from a hall local cident Control oint undary issues rrently under rutiny as aikato deals th Covid sponses without hard border	

Major Economic or Financial Shock

An external financial event impacts Council's financial strategy, fiscal and monetary position.

Risk Owner	David Bryant	Category	Financial
(GM Level)			

Risk Triggers

- · Global financial crisis
- Rapid increases in inflation, interest rates, oil prices, or a rapid decline in NZD leading to significantly higher construction input costs, debt costs, and significant pressure on household rates affordability
- · Critical infrastructure failure
- Major construction industry failure
- Major government policy changes negatively impact Council's income streams or cost base
- Natural or manmade disaster (including deliberate attacks on critical infrastructure or pandemic) has an impact on the economy (e.g. affects national imports/exports which has a flow on effect)

Inherent Likelihood		Inherent		Inherent Risk	Rating
		Consequence		Rating	
	Likely	Driver	Major		High
		Safety and			
		Wellbeing,			
		Financial, Service			
		Delivery			

Existing Controls

- PwC, as Council's treasury partner, provides a report and meets with Council (both on a monthly basis) to discuss national and international economic and financial trends relevant to treasury matters
- Six weekly financial forecasting and planning cycles through reporting to the Finance Committee,
- Monitoring of macro trends (Finance, Treasury, Economic Growth team)
- Additional \$60M bank facility
- · Financial scenario modelling
- Council's ability to urgently reprioritise and reduce capital spending
- Council's ability to urgently reprioritise and reduce community levels of service spending
- · Availability for options to respond to a shock, depending on the type of shock

Residual Likelihood	Unlikely	Residual Conseque Driver Strategic Safety & Wellbeing,	nce	Serious	Residual Risk Rating	Rating Medium
Action Owner			Risk	Treatment		
Tracey Musty, Greg Car	Greg Carstens		Mitigate			
Treatment Plan		Previous updates			•	late – ber 2021

Staff are currently working with an independent party to help determine the consequences of supply issues and price escalation across the construction industry

- (March 2021) In February 2021 Council will be approving the draft LTP to go out for Consultation with the Community
- (June 2021) The final 2021-31 LTP will be adopted by Council in June. The resilience for any major shock in Years 4-6 has now lessened. The risks and associated mitigations will be reviewed at the next Strategic Risk and Assurance workshop.
- (September 2021) Staff are completing a review of the LTP assumptions and associated risks at the SR&A Committee Risk Workshop in September 2021. Staff are currently working on engaging an independent party to help determine the consequences of supply issues and price escalation across the construction industry.

Staff are still reviewing the outcomes of the latest lockdown and are constantly revising contracts and monitoring projects and their budgets.

The current risk at the moment is availability of material, cost escalation and time constraints. All of which can lead to the possibility of delayed projects and increased overall costs.

Increasing Compliance Standards

The risk of central government and regional council increasing compliance standards, or changes in community expectations resulting in increased compliance standards.

Risk Owner – (GM	David Bryant	Category	Environment
Level)			Strategic

Risk Triggers

- Central government changes the regulatory standards for compliance: including resource
 management, environmental (including climate change and pollutant management), corporate
 (including health and safety, human resources and financial), growth, consultation requirements,
 health and infrastructural (including traffic and transport) compliance. This might also include
 changes to the required frequency of Council actions (such as the 10 Year Plan). This also includes
 wide-ranging regulatory changes in response to an incident such as a pandemic or natural disaster
- Continued or serious breaches leading to increased compliance requirements and regulation
- Community service-level expectations in management of water quality, recycling, climate change and other services not being met
- Failure to plan long term for consenting requirements (both as a regulator and a regulated entity)
- · Regional Council changes its policies to ensure legislative compliance (e.g. Healthy Rivers policy)
- External audit identifying major non-compliance within HCC operations (e.g. by IANZ)
- · Legal challenge to HCC policy or practice resulting in findings of non-compliant practices
- Change in stakeholder partner expectations for environmental performance
- Changes to our own District Plan impacting other parts of the business (e.g. changes to resource consents affect consented Three Waters activities)

Inherent Likelihood		Inherent		Inherent Risk	Rating
	Possible	Consequence Drivers Safety & Wellbeing, Financial, Service Delivery, Compliance	Major	Rating	Very High

Existing Controls

- · Local and regional council relationships established
- Internal resource allocated for specific compliance changes
- Key stakeholders engaged for central government submissions
- Bylaws and Policies overseen centrally in council
- Competency assessments and training in place for staff internally and externally
- Notification protocols in place for unforeseen events
- Council has established an Incident Management Team to respond to natural disasters or unforeseen events
- · Regular reporting, accreditation and auditing by independent providers
- Internal programme for continuous improvement in place
- · Regular legal services advice and input from other specialist experts available by external providers
- Internal legal advisor resource
- External experts for example advice on HR, taxation matters.
- Advice available from trusted external legal service providers on an ad hoc basis, as well as regular quarterly updates and training.

Council has access to Lexis Nexis database							
Residual Likelihood	Possible	Residual Consequence Drivers Safety & Wellbeing, Financial, Service Delivery, Compliance	Serious	Residual Risk Rating	Rating High		
Action Owner			Risk Treatment				
Michelle Hawthorne			Mitigate				

Treatment Plan	Previous updates	Update –
		November 2021
Council to consider WLASS Joint Procurement Project to invest in the compliance programme for effective reporting on legislative compliance.	 (Reset of Treatment Plan) Sept 2021 - Plan reviewed and reset to: Scope and implement a reporting legislative compliance platform for council by June 2022. Staff are reviewing options for compliance as part of scoping this project, including an adaptation of existing platforms. 	Staff have made a decision as part of the implementation of SHIELD to use this platform for reporting legislative compliance, this was previously noted as part of the September update to the committee-adaptation of an existing platform.
Review the impacts of The Privacy Act 2020 on council's businesses and develop an action plan by end of March 2021 (extended to June 2021)	 (June 21) - We are reviewing the Privacy Policy we present for our customers/users with the plan to launch these changes along with the redeveloping the Hamilton.govt.nz website. Organisational training is being scheduled using the Privacy Commission suite of e-learning tools Amendments have been made to Council's Delegations to Positions Policy to reflect the PA 2020 structure (Sept 21) - On-line training modules in place. Rollout underway for existing staff. The module being included as part of induction for new staff. 	 The On-line training rollout is underway for existing staff. The Module is included as part of induction for new staff. A verbal update will be provided at the Committee Meeting.

Cyber Attack

Unauthorised access to Council's IT infrastructure results in loss of service continuity that may lead to safety risks to Hamiltonians and relatable consequences of reputational, legal, and financial losses.

Risk Owner	David Bryant	Category	Disaster Recovery/ Business	
(GM Level)			Continuity	

Risk Triggers

- IT/OT technology advances positive and negative
- Inadequate identification of IT security trends, themes, detection and responses
- Poor IT/OT Security awareness / culture / behaviours
- Poor IT/OT security operational practices
- Release and change management lacking a security focus not "secure by design"
- Privacy Breach
- Outdated hardware and inadequate architecture
- Inadequate competency at organisational level
- Specific targeting and malicious exploitation of security vulnerabilities across Council IT asset infrastructure, or Operational Technology
- International trends and attacks not being considered in NZ
- Malicious activity targeting central and local government entities.
- Underinvestment in Information Services (infrastructure, technology, resource)
- · Lack of maintenance in information technology
- Inadequate access control to key systems

Inherent Likelihood		Inherent		Inherent	Rating
		Consequence		Risk Rating	
	Possible	Driver	Catastrophic		Very High
		Service			
		Delivery			

Existing Controls

Identify

- Risk based approach Three lines of defence (management control, risk management, independent assurance)
- National Cyber Security Centre (NCSC) monitoring and trend analysis reporting of local and international IT security challenges – internal and external
- National and international cyber-attack trends are monitored and assessed by the CIO and CTO to guide system capability investments.
- Security Governance and Risk Management practices implemented
- · Policies, Standards and Enablers are documented and communicated regularly
- Risk management frameworks, methods and tools are fit for purpose
- Ongoing Cyber awareness education for staff, contractors, customers and Elected Members

Protect

- Systems and information are secured by design
- Tools, systems and resources are now available to protect against, monitor and resolve potential
 malicious activity.
- Contractual service level agreements are monitored and maintained
- Access to Hamilton City Council services are managed effectively
- Information and assets have implemented processes and controls

Detect

- Reviews on Council's IT technology environment are conducted to improve detection and response capabilities.
- External and internal security audit and reviews
- Networks, systems and operations security will be assured through vulnerability and anomaly detection tools
- Physical environments will have appropriate physical and technology safeguards
- Timely and accurate reporting

Respond

- Response plans processes are in place and tested
- Council is supported by the NZ National Cyber Security Centre (NCSC) for response to attacks and receives quarterly trend updates for consideration.
- Technical support from key vendors Microsoft and Fujitsu

Recover

- Business continuity and disaster recovery (BCDR) processes in place and tested
- Cyber recovery planning processes known, understood, and practiced
- Ensuring data survivability, data will be backed up and available

Residual Likelihood		Residual		Overall	Rating
		Consequence		Residual	
		Driver		Risk Rating	
	Unlikely	Service	Major		High
		Delivery			
Action Owner		Risk Treatment			
Murray Heke		Mitigate			

lm	provement Plan	Previous Updates		Update – November 2021
•	Implement vulnerability management tools, processes and resourcing by March 2022	 (June 21) - Added to Security operation services RFQ (Sept 21) - Security operation services RFQ vendor has been selected. Project is now in the discovery phase 	•	Implementation discovery phase is underway and due for completion by end of Q4 2021
•	Re-architecture of current IT and OT network design by March 2022	(Sept 21) - development of a cyber security architecture document and a review of our current architecture	•	Cyber security architecture document is in draft form and expected to be completed by end of Q1 2021
•	Establishment of dedicated Security Operations Centre (SOC) by March 2022	 (June 21) - Security operation services RFQ is in progress (Sept 21) - Security operation services RFQ vendor has been selected. Project is now in the discovery phase. 	•	SOC pilot and discovery phase is underway and due for completion by end of Q4 2021
•	Establish a cyber security incident handling and response capability by March 2022	 (June 21) - Added to Security operation services RFQ (Sept 21) - Security operation services RFQ vendor has been selected. Project is now in the discovery phase 	•	Implementation Discovery phase is underway and due for completion by end of Q4 2021

Growth

Significant change in growth demand, and/or the consequences of growth do not deliver positive outcomes for the community.

Risk Owner (GM	Blair Bowcott	Category	Strategic, Service Delivery
Level)			

Risk Triggers

Understanding growth

- Wider economic downturn
- · Population growth rates change (either natural change or through internal or international migration rates.
- Significant change in the market either demand or supply side, due to e.g. construction cost inflation and restrictions on credit.
- Significant change in public perception of growth or growth outcomes
- Inadequate skills, data or modelling and scenario planning
- Changes in growth projections as a result of climate change impacts on population spread in New Zealand and overseas

Growth decisions

- Council's decisions that impact desired growth outcomes e.g. growth opened on too many fronts, lack of funding for desired levels of outcome etc
- Inadequate provisions in of application of the District Plan to deliver positive outcomes for people / environment
- Neighbouring councils make growth decisions around Hamilton's border that are not aligned with Hamilton's desired growth strategy
- Changes in Government Policy or legislation impact on desired growth outcomes or our ability to effectively respond to growth
- · Requests from developers for unplanned, out of boundary and/or out of sequence developments
- Central Government funding and financing initiatives such as Housing Infrastructure Fund, Infrastructure Funding (IFF) and Financing and the Infrastructure Acceleration Fund (IAF)

Growth consequences

Groups within Council planning and budgeting for growth separately versus in a joined-up way

Inherent Likelihood		Inherent		Inherent Risk	Rating		
		Consequence		Rating			
	Possible	Driver	Major		Very High		
		Service					
		Delivery					
Existing Controls							

Understanding growth

- Growth Funding & Analytics Unit in place to function as Council's growth funding, growth projection and economics specialists
- HCC Growth and Development Contributions model provides data analysis, forecasting and scenario management. Inputs and modelling externally peer reviewed.
- Hamilton Housing Market & Economy Growth Indicator Report provides annual, regional analysis of growth, housing and market/economic drivers
- National Policy Statement Urban Development a sub-regional review of land use, demand and supply completed in 2017 and finalised in early 2021.
- Analytics Strategy adopted in 2019 to support evidence-based decision making and provide insights, principally about growth
- Monitoring the broader environment and how it could impact growth rates and including this in modelling, including monitoring migration forecasts

Growth decisions

- Scenario modelling report completed in September 2019 to illustrate modelled effects of higher or lower growth in Hamilton, and to articulate Council's decision-making levers and timelines if growth projections charge markedly.
- Growth Funding Policy in place for out of sequence and unfunded developments.
- Engagement with neighbouring Councils on strategic growth planning (Metro Spatial Plan, FutureProof partnership, Growth discussions at CE and Governance level, Future Proof Priority Development Workstream, good officer level relationships).
- Engagement with Central Government to explore and implement new tools for funding and delivering growth related projects, for example IFF and IAF.
- Preparation of growth programme business cases to assist with investment decisions into growth cells. The
 business cases have a wellbeing lens (vs just economic) and include the full costs of the growth cell including
 community and network infrastructure, consequential operating expenditure, commercial considerations
 and how the programme will be delivered.
- Strategic and consequential infrastructure costs are considered and investigated as part of the zoning decisions process (high level business cases prepared as required).
- Management of Resource Consent applications on a consent-by-consent basis using existing District Plan Controls
- · Changes to District Plan (plan changes) where required to support better community wellbeing outcomes.
- Private Developer Agreements in place for provision of infrastructure.
- Submissions on any neighbouring councils plan changes.
- Draft out of Boundary Principles developed for unplanned, out-of-sequence and out-of-boundary development proposals.

Growth consequences

- Numerous strategies and plans in place to manage the outcomes of a growing city including Regional Policy Statement, Hamilton-Waikato Metro Spatial Plan, Hamilton Urban Growth Strategy, District Plan.
- Whole of Council Programme/spatial approach to planning for and delivering new growth areas.
- Growth Programmes team in place to weave people and projects together to deliver wellbeing outcomes for new and existing growth communities. Formal Programmes are in place for Peacocke, Northwest, Ruakura, Central City and Emerging Areas..

F	Residual Likelihood	Possible	Residual Consequence Driver Service Delivery	Serious	Overa Resid Rating	ual Risk	Rating High	
£	Action Owner				Risk Tr	eatment		
k	Karen Saunders, Greg Ca	arstens			Mitiga	te		
	Improvement P	lan	Previous	updates		U	lpdate November 2021	
Deliver revised Hamilton Urban Growth Strategy, by June 2022 Review staff resourcing to manage and comprehensively engage with unplanned, out of		ng to nensively ed, out of	(June 21) - Scope was approved at Strategic Growth Committee meeting 30 March 2021. Staff currently planning the project and appointing key resources. (Sept 21) - Draft Out of Boundary Principles approved in May 2021. Consultant appointed in May 2021 and work is under way (June 21) - Staff are reviewing necessary resourcing with GM Growth		ry 11. 021	 Investigations have continued and staff are working to understand the impacts of the recent planning Medium Residential changes indicated by central govt. A HUGS Reference Group is on 5th November where staff are seeking direction from elected members for the strategy. Recruitment has been successful, with placements for several key positions in the 		
	sequence and out of I development proposa District Plan reviews I September 2022	als and	(Sept 21) — Additional resources approved including a Programme Manager for Emerging Areas. Recruitment is underway.			Growth group.		
Set up the Strategic Development Forum to improve and better understand developer needs for industrial and commercial developments, by December 2021		• n/a - new			 Draft Terms of Reference presented to Strategic Growth Committee on 19 October 2021 First meeting scheduled for early 2021 			
•	Actively participate a contribute to the Fu Priority Developmen workstream to ident progress opportuniti enable development and scale in these ar 2022	ture Proof at Areas tify and ies to t at pace	• n/a - new			now of Priori works Track	th Programmes Manager chairing the Future Proof ty Development Areas stream., from Oct 2021. ers/reports for each of reas are in development.	

Progress and notify District Plan Change Programme in response to Government	● n/a - new	 District Plan Committee meeting to discuss programme and approach on 4 November
Direction from NPS-UD and RMA Bill, by September 2022.		2021.

Political Changes or Decisions Impact Council's Strategic Direction or Form and Function

Political stakeholders make decisions or take actions that significantly impact or contradict Council's strategic direction.

Risk Owner	Blair Bowcott	Category	Executive Director of Special
(GM Level)			Projects

Risk Triggers

- Political changes including central government strategic direction and legislative changes creates risk or opportunities
- Local political changes, including potential misunderstanding of Council's intent
- Political personalities, trust and relationships and change of key personnel positive & negative
- Failure to manage stakeholder relationships, communication and engagement tactics, including due to a lack
 of resource or need to balance priorities
- Short term focus overshadows long term cost benefit outcomes
- Political sovereignty/patch protection, lack of alignment or willingness to compromise ie boundaryless approach vs localism
- · Financial strategy misaligned with wider context
- International events, trends or decisions influence NZ
- Major projects or initiatives for the benefit of Hamilton accelerating or slowing down
- Relationships with neighbouring territorial authorities are ineffective or adversarial due to differences of opinion or priorities

Note* Political risk is essentially the probability that a political action/decision will significantly affect Council's strategic direction —whether positively or negatively.

Inherent Likelihood		Inherent		Inherent Risk	Rating
	Possible	Consequence Driver Strategic Political Service Delivery	Major	Rating	Very High
Existing Controls					

- Regular engagement with stakeholders at political and executive level shared responsibility to manage key relationships
- Regular meetings with Government Ministers and MPs (both government and opposition, Government
- Collaborative governance group meetings to progress alignment of strategic direction Mayoral Forum, Future Proof, Waikato Plan, CEO Forum, Waikato Local Authority Shared Services (WLASS), Regional Transport Committee, neighbouring Councils and other strategic discussions externally
- Regular Council briefings for sharing of information and alignment of thinking
- Monthly SLT discussion to ensure awareness of strategic initiatives
- Culture, expectation and policies of HCC organisation regarding behaviours of political, executive and staff and Council Controlled Organisations.
- Participation in national and regional advisory groups on strategic topics
- Participation in formal processes to influence direction of government policy
- Establishment of a reform programme within council to be a central point of information and action for all legislative change processes.
- Proactive steps are taken at the start of each local government triennium to re-establish relationships with counterparts and stakeholders, so that we can develop a common understanding of strategic direction

Residual Likelihood	Possible	Residual Consequence Driver Strategic Political Service Delivery	Major	Overall Residual Risk Rating	Rating Very High
Action Owner			Risk Treatment	i	
Senior Leadership Team — (Blair Bowcott)			Mitigate		

Tre	eatment Plan	Previous updates	Update – November 2021
•	Key Stakeholder Engagement Plan in place by 30 June 2021.	 (March 21) - This plan is in the process of being prepared and will align with the CEO KPI's. (June 21) - The draft plan is due for completion on 30 June 2021. (Sept 21) - Complete - Key Stakeholder Engagement Plan draft has been provided to SLT and workshopped. Final Plan is now being developed for use 	Final Plan under development. Timeframes have been pushed out due to staffing capacity and changes to group and unit structure. Direction will be socialised with new CEO prior to plan being confirmed.
•	Establish an internal programme to address all legislative change/reform that will affect local government – including 3 waters, RMA and Future for Local Government	• (Sept 21) – New TP	 Internal reform programme team established across council to investigate the impacts of the three large pieces of central government reform that will impact the form and function of local government. These include the 3 Waters reform, RMA reform and Future for Local Government Review. Staff are participating in national, regional and sub-regional

collaborative opportunities to
influence the direction of reform
programme.
 Cross-council team are
working to determine potential
impacts on HCC (and the local
government sector as a whole).
 A number of groups are
establishing similar work
programmes – Waikato Plan,
UNISA, LASS, Mayoral Forum and
other councils – we are
participating in these.

Significant cost escalation and/or shortage of resources to deliver works programmes

The market is unable to deliver necessary resources to achieve our strategy; including but not limited to people and material for projects.

Risk Owner – Chris Allen Category Service Delivery and People

Risk Triggers

- Major construction sector skills/labour shortage capacity and capability
- Political changes in the labour market (e.g. immigration policy changes)
- Regional or national investment decisions leading to increased demand for construction resources and market congestion i.e. significant increase in capital portfolios nationally
- Supply chain company failures
- Supply chain investment confidence i.e. forward work confidence to invest in people, plant and technology
- Construction cost indices (cost fluctuations) exceeding LTP inflation assumptions
- Key construction material shortages or delays particularly pipes, bitumen, oil, steel, aggregate and concrete
- COVID-19 Alert Levels
- International supply chain breakdown
- Accelerated works programmes as a result of accelerated growth or additional funding (ie/ central
 government investment) taking place at a faster rate, or in a different way, than forecast

Inherent		Inherent		Inherent	Rating
Likelihood		Consequence		Risk Rating	
	Almost	Driver	Major		Extreme
	Certain	Economic and			
		Social			

Existing Controls and Mitigations

- Forward works pipeline visibility and supply chain engagement communication of the HCC capital
 portfolio regionally via regular presentations/updates and nationally via contributing to the NZ
 Infrastructure Commission national pipeline.
- Working with other councils and NZTA to coordinate the workload to the market including active involvement in the Waikato LASS coordinated infrastructure initiative.
- Established procurement planning frameworks including procurement policy and procedures in accordance with NZ Government procurement requirements and principles of the Construction Accord
- Procurement optimisation including reviews undertaken to ensure contract conditions and commercial terms of our contracts are attractive to industry
- Utilising panel arrangement for procurement and engagement of professional services, ensuring greater speed in procuring key resources and increased forward workload confidence for suppliers.

Residual		Residual		Overall	Rating
Likelihood		Consequence		Residual	
	Likely	Driver	Serious	Risk Rating	Very High
		Economic and			
		Social			

Action Owner	Mitigation
Chris Barton	Mitigate

Improvement Plan	Previous Updates	Update – November 2021
Optimise procurement processes and contracts to enable Hamilton City Council to be a construction industry client of choice by the end of 2021.	 (June 2021) A preferred strategy has been identified including implementation of long term collaborative and performance based panel arrangements to deliver large components of the forward works programme, enabling: longer term workload certainty for contractors to invest in people, plant, technology and relationships more efficient delivery with reduced wastage to improve delivery timing and generate savings opportunities to integrate broader wellbeing outcomes into programme delivery KPIs Supply chain engagement is currently underway to seek feedback on this proposed strategy. 	 Further detailed procurement planning is progressing regarding panel delivery arrangements. Standard contract terms and conditions will be further reviewed by October to ensure appropriate risk transfer via special conditions and ensure our contracts are attractive to suppliers.
Ensure internal resourcing is recruited and in place to effectively deliver planned controls and mitigations by June 2021	(June 21) - There is a nationwide shortage of suitably qualified and experienced construction industry personnel, which is making it challenging to attract and fill key vacancies. (September 21) - Additional suitably experienced internal project management and governance resources are being sourced to align with the increasing capital works programme. Moving toward performance based collaborative contract models will require additional commercial management capability.	 Following confirmation of the LTP additional capital delivery resourcing is being sourced to align with the programme requirements, with mixed success but some key roles successfully filled. Moving toward performance based collaborative contract models will require additional commercial management capability.
 Initiate and review construction industry survey feedback for supply chain 	(September 21) - Local construction industry briefing held in late June which was well attended and included a constructive session of comments and discussion on the 'state of the industry'.	Ongoing collaboration with CCNZ Waikato Branch

insights by July 2021.	Results of the <u>2021 CCNZ national</u> <u>construction industry annual survey</u> have indicated a big boost in civil construction business confidence.	
Complete a quantitative assessment of industry cost escalations to further inform key portfolio cost risks by November 2021.	 Staff are currently undertaking a further quantitative assessment and economic forecasting exercise (utilising external industry subject matter experts) to benchmark construction cost indices against our LTP and better identify our key areas of risk exposure. 	BERL are completing their report in November to inform Annual Plan deliberations regarding adequacy of the current budget allocations to deliver the escalated capital works programme.

High-Level security threat or major emergency

A safety, security or environmental attack materialises and impacts Council's strategic direction.

Risk Owner (GM David Bryant Category Strategy Safety and Security

Risk Triggers

- Large Scale Physical attack on people in public places
- Physical attack on city critical infrastructure e.g. Waste Water Treatment Plant, Water Treatment Plant, reservoirs designed to compromise integrity of service.
- Civil unrest redirection of resources to protect vulnerable people and assets Chemical or biochemical attack

Inherent Likelihood		Inherent Consequence Driver		Inherent Risk Rating	Rating
	Possible	Social, Cultural and Environment	Catastrophic		Very High

Existing Controls

- Regional and National Emergency Service Relationship Management made up of Elected Members and officials. Council has representatives on the Regional Joint Committee and the Waikato Coordinating Executive Group (CEG)
- Security risk assessments have been completed for key identified HCC facilities, with mitigating recommendations for implementation.
- Business continuity and Emergency Response plans have been completed for some business units.

Residual Likelihood		Residual Consequence		Overall Residual Risk	Rating
	Unlikely	Driver Social, Cultural and Environment	Major	Rating	High
Action Owner			Risk Treatment		
Michelle Hawthorne			Mitigate		

Treatment Plan	Previous Updates	Update –
		November 2021

Adopt and Implement accepted recommendations for SRAs by December 2022.	(March 21) – SRA adopted and being implemented in stages 1. Just Do It (JDI) 2. Projected planned maintenance (PPM) 3. Long term plan (June 21) – SRA Recommendations findings are completed. Stage 1 and 2 action plans commenced. Tender process for robbery and conflict training commenced. (Sept 21) – Organisation wide recommendation actions added to the organisational improvement register. Tender process for training provider complete. Robbery response and conflict resolution training will commence with pilot group in October followed by full rollout.	Due to Covid-19 restrictions the robbery response and conflict resolution was deferred to first quarter 2022. Organisational improvements have been deferred due to resourcing and Covid-19 restrictions. A more detailed update will be provided in first quarter 2022.
Governance Review of Organisational Security Risk Assessment (OSRA) by March 2022	 (March 21) - On hold until result of SRA mitigation implementation of current recommendations is finalised. (June 21) - Review of OSRA in progress. Setting up security governance group to consider development of a Security Framework (Sept 21) - Risk Governance Group being established to determine next steps. Governance Group to review ORSA. Security Roadmap and framework in development 	 On hold until Senior Risk Advisor recruitment complete.
Review the HCC Crisis Management Plan to extend an HCC-wide response approach to include crisis management capability by December 2021	 (June 21) - An internal Working Group has been set up to develop a detailed crisis management action plan. This includes identifying key urgent actions along with other areas for improvement. (Sept 21) – High level Crisis Management Plan developed, awaiting presentation to SLT 	On hold until Senior Risk Advisor recruitment complete.

Climate Change

Failure to adapt to the changing environment as a result of climate change, including failure to mitigate the organisations contributions to greenhouse gas emissions

Risk Owner	Sean Hickey (GM	Category	Strategic
	Strategy and		Preparation and
	Communications)		Disaster
			Recovery
			Environment

Risk Triggers

Understanding climate change

- Council's strategies and plans do not adequately consider appropriate climate change scenarios
- Changes in political direction (including local, regional and national) on climate change
- Economic, social and technological shocks resulting from the transition to a lower-carbon economy
- Uncertainty in the climate modelling on the physical climate change and transition impacts for Hamilton, making it hard to estimate impacts on particular Council activities

Decision making

- Misalignment between Council's climate change strategies and operational activities
- Failure to consider climate change appropriately in fit for purpose activity management
- Failure to appropriately consider climate change in growth decisions.

Inherent Likelihood		Inherent		Inherent Risk	Rating
	Likely	Consequence	Major	Rating	
		Drivers			
		Safety &			Very high
		Wellbeing,			
		Financial,			
		Service			
		Delivery,			
		Compliance			

Existing Controls

Governance, Strategies and Plans

- Environment Committee has responsibility for climate change response
- Climate change steering group established and operational
- 2021/2022 Climate Change Action Plan approved outlining the actions being taken to reduce emissions and build resilience to climate change
- Hamilton City Council Emissions Reduction Roadmap outlines actions to reduce the Councils operational emissions
- 2021-2031 Long Term Plan includes actions that deliver on climate change
- 2021-2051 Infrastructure Strategy includes climate change adaptation and emissions reduction considerations
- Activity Management Plans incorporate climate change considerations.
- Collaborating with stakeholders, Councils and businesses on the regional response
- Citywide emissions profile for 2018/19 provides Council with an understanding of key emissions reduction opportunities

Residual Likelihood	Likely	Residual Consequence Driver Social, Cultural and Environment	Major	Overall Residual Risk Rating	Rating Very high
Action Owner		Risk Treatme	nt		
Julie Clausen			Mitigate		

Treatment Plan	Previous Updates	Update – November 2021
Develop a 3-year readiness action plan from the climate change readiness assessment for Hamilton City Council by 30 June 2021.	 (June 21) - Delay in receiving final report from consultants. Action plan now under development. (Sept 21) - Complete - Internal response to the climate change readiness assessment developed. Key elements to be incorporated into the Climate Change and Environment Policy 	Business Case, Project Plan and Council report templates to include sections on climate change
Develop a draft climate change policy that sets out the appropriate climate change scenarios to use, governance for climate change, capability and capacity requirements by December 2021	 (June 21) - Process of developing the policy has commenced. Project plan is currently being developed. (Sept 21) - Draft Climate Change and Environment Policy is underway. Workshop with Elected Members help on 26 August 2021. Draft policy to be considered at 30 November 2021 Environment Committee meeting for recommendation to Council 	Draft Climate Change and Environment Policy underway. Workshop held with Climate Change Steering Group in October 2021. Further feedback being sought by internal stakeholders.
Undertake a Risk assessment for Hamilton City Council including both the physical climate change and transition risks following the Ministry for the Environment Guidance by December 2021.	 (June 21) - Guidance from Ministry for the Environment is due to be finalised by December 2021, propose to do a two-phase process for risk assessment. (Sept 21) - First phase being commissioned as 	The Ministry for the Environment released guidance on local government climate change risk assessments in September 2021, this will inform the first phase assessment as

	part of the Climate Change Strategy	well as the full assessment in 2022.
Development of a climate change strategy that outlines the Council's approach to mitigation and adaptation by June 2022.	 (June 21) - Process of developing the strategy has commenced. Project plan is currently being developed. (Sept 21) - Strategy development underway Quotes for evidence base have been received and consultant selection underway. 	WSP have been commissioned to deliver supporting evidence for the strategy. And a workshop is scheduled for 29 November 2021 with Elected Members.

Organisational Risk					
volunteer worke	H&S – Workers (incl. contracted workers & volunteer workers) Failure to ensure the health and safety and wellbeing of council staff or workers whose activities are influenced or directed by council, while the				
Risk Owner	, 3				

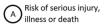
Risk Triggers

- Poor safety culture and/or behaviours across organisation
- Failure to understand duties and accountability relating to health and safety
- · Critical health and safety risks not identified, assessed and mitigated adequately
- · Safety Management System (SMS) ineffective or inefficient or implementation failures
- Inadequate contractor management frameworks, including procurement and assurance practices
- Not sharing or acting on information and lessons learnt internal and external to Council
- Complacency leading to greater risks being taken
- Failure to properly engage with and listen to staff
- Staff under resourcing leading to identified risks not being mitigated appropriately
- Time pressures and or complacency leading to acceptance of high levels of risk

Inherent Risk

		CONSEQUENCE					
		Minor	Moderate	Serious	Major	Catastrophic	
	Almost certain	н		VH		E	
QC	Likely	М	Н	\frac{1}{2}	VH		
ГІКЕГІНООБ	Possible	L	М	н	VH	VH	
Ė	Unlikely	L	М	М	н	VH	
	Rare	L	L	L	М	н	

There is a very strong relationship between the likelihood and severity (consequence) of H&S incidents. The likelihood of minor injuries is much higher than an incident which could result in a death.



B Risk of other significant incidents as defined in the Health and Safety at Work Act).

Existing Controls

- Council undertakes an annual engagement survey that includes wellness and safety elements to help assess the level of organisational maturity and perception relating to the importance placed on health and safety.
- Our High Performance Way of Working provides a clear framework to support and
 establish accountabilities relating to health and safety, for example, Job Descriptions,
 Inductions, Game Plans and our Set, Enable and Expect principles.

- Council's critical safety risks are reviewed regularly. We have in place control management
 plans based on the hierarchy of control and the residual risk score following the
 implementation of these controls are accessed by their effectiveness to mitigate the risk.
 Critical risks are reported on regularly.
- Prequalification and Safety Standards for Contractors performing physical works on Council's behalf are assessed and maintained through our SLA with SHE Software and Solutions
- Our Safety Management System (SMS) is being updated to better achieve our safety
 objectives consistently and systemically across the whole of Council. Having in place our
 SMS helps us meet our legislative obligations and facilitate organisational learning to help
 foster a positive safety culture, attuned to our high-performance way of working.
- Council has an effective safety governance structure to facilitate information flow, decision
 making and oversight to achieve a collective uplift in safety performance through improved
 worker engagement.
- Council has in place a safety software system that provides reporting capability, data and intelligence, meets compliance standards, enables good safety governance and due diligence.
- Assurance activities are carried out regularly and include both internal and external
 assessments to ensure good practice, compliance and continuous improvement. Council
 has commissioned a full Health and Safety reset, including: The State of Safety Review, High
 Level Critical Risk Learning Teams, Safety Events and Investigations and a Safe Plus External
 Review
- Appropriate resources are available to ensure that Council has the right capabilities and the right number of resources sufficiently needed to implement and maintain the SMS fundamentals, supported by external expertise as and when required

Residual Risk

		CONSEQUENCE					
		Minor	Moderate	Serious	Major	Catastrophic	
	Almost certain	н	н	VH	E	E	
9	Likely	М	HC	VH	VH	E	
LIKELIHOOD	Possible	L	М	/ S	VH	VH	
Š	Unlikely	L	М	М		VH	
	Rare	L	L	L	M	Z	

There is a very strong relationship between the likelihood and severity (consequence) of H&S incidents. The likelihood of minor injuries is much higher than an incident which could result in a death.

A Risk of serious injury, illness or death

B Risk of other significant incidents (as defined in the Health and Safety at Work Act).

Action Owners	Risk Treatment	
Dan Finn, Marie Snowball	Mitigate	

A separate report is taken to the Strategic Risk and Assurance Committee which provides further details about the Organisation's Health and Safety strategic direction and improvement schedule. Note: there is no change to the residual risk rating for this quarter, and remains high due to the re-emergence of COVID-19 in the community and the change in the Governments strategy from elimination to containment.

Organisational Risk				
Safety and Wellbeing of the Community Failure to create, provide and maintain a safe environment for the community leading to a serious injury incident or fatality.				
Risk Owner	People			

Risk Triggers

- Poor HCC understanding of the health and safety risks within the facilities and services provided and managed by Council
- Failures in safety-in-design planning for our amenities and services provided to the community •
 Failures in asset maintenance
- Failure in due diligence on assets purchased for use by the community or staff
- · Failure in due diligence on maintenance
- Human error / inappropriate behaviours / criminal behaviour or damage at Council assets
- · Complacency leading to greater risks being taken by the community of public safety issues
- Failure to properly engage with and listen to the community
- Failure to act on staff and public information or lessons learned from near misses and incidents (including lessons from other industry experiences)
- · BCP and Pandemic Plans are not adhered to
- Failure to consider climate change impacts on the community safety and wellbeing

Inherent Risk

		CONSEQUENCE					
		Minor	Moderate	Serious	Major	Catastrophic	
	Almost certain	н		VH		E	
Q	Likely	М	Н	Ž	VH		
LIKELIHOOD	Possible	L	M	Ħ	VH	VH	
Ē	Unlikely	L	М	М	н	VH	
	Rare	L	L	L	М	н	

There is a very strong relationship between the likelihood and severity (consequence) of H&S incidents. The likelihood of minor injuries is much higher than an incident which could result in a death.

- Risk of serious injury or death
- B Risk of other serious harm incidents (as defined in the Health and Safety at Work Act).

Existing Controls

- Emergency response and Pandemic plans
- Emergency and safety response training drills
- Specific training programmes for staff within facilities and service management
- Subject matter expert support internal and external
- Incorporated risk assessments and safety in design planning
- Traffic management plan adoption per requirements
- Maintenance and monitoring plans buildings
- Operational asset maintenance (trees and operational infrastructure)

- Condition assessments for assets
- Communication plans for new projects around safety requirements
- Community education support for ongoing Community safety
- Management drop-ins and Unit Audits

Residual Risk (expected rating)

		CONSEQUENCE					
		Minor	Moderate	Serious	Major	Catastrophi c	
	Almost certain	н	н	VH	E	E	
QC	Likely	М	н	VH	VH	E	
LIKELIHOOD	Possible	L		Ħ	VH	VH	
5	Unlikely	L	М	7		VH	
	Rare	L	L	٦	М	7	

There is a very strong relationship between the likelihood and severity (consequence) of H&S incidents. The likelihood of minor injuries is much higher than an incident which could result in a death.

A Risk of serious injury or death

B Risk of other serious harm incidents (as defined in the Health and Safety at Work Act).

Action Owner		Risk Treatment		
3LT – (Rebecca Whitehead)		Mitigate		
Treatment Plan	Previous updates		Update- November 2021	
Design and implement an appropriate monitoring and reporting framework Risks relevant to Organisational Risk 2	(September 20) - Framework for completion August 202 community group leadersh September 2021. (December 20): Specific resupport the Community Gronflicting priorities across will be completed preChrist reported on at the first SRA (March 21) - The report on reporting framework for of Organisational Risk 2 will be 2021 SRAC meeting. (June 21) - The reporting framework dashboard, while provide assurance around identified improvement actinalised and will be report SRAC meeting in the 2021/ (Sept 21) - Framework community leadership gone Monthly reporting commendation.	1. Reporting to hip commences assource has been hired to coup to achieve IP due to the business. This work that and will be a constant to the monitoring and ther Risks relevant to the presented to the June amework and ch will provide to the completion of tions is currently being the total the September and the septem	Security Risk Audit (SRA) dashboard has been completed. Process for updating the dashboard for reporting to Community Leadership Team (CLT) being presented for discussion at 3 November CLT meeting.	

Organisational Risk				
Failure of critica Incorrect investment (til failure of critical assets	3			
Risk Owner Eeva-Liisa Wright (GM City Infrastructure Operations) Category		Category	Financial	

Risk Triggers

Asset Management

- Failure to identify all critical assets
- · Failure to accurately forecast capacity limits or inaccurate demand forecasting on critical assets
- Failure to accurately forecast useful life on critical assets
- Failure to future proof asset to allow for pending changes in requirements
- Failure to procure/renew the asset with an appropriate replacement
- Failure to install asset correctly (including poor procurement processes to begin with)
- Assets being operated outside of design scope or change in demand or that the operation of the asset exceeds design assumptions.
- Failure to carry out and prioritise planned maintenance and renewal of critical asset
- Failure to deliver renewal of the asset within scheduled timeframe

Planning

- Inadequate budget allocated for maintenance and renewal of critical assets
- · Incorrect analysis in development of maintenance and renewal requirements
- Insufficient resources to deliver renewal of assets on time and within allocated budgets
- Failure to adequately consider climate change in critical asset investment
- Insufficient skilled, knowledgeable and experienced staff and low investment in the ongoing building of staff capability to ensure critical assets remain functional, resilient and levels of service remain.
- Misalignment in the timing of investment with the required levels of service or that key deliverable dates not identified appropriately
- · Poor or incomplete asset data
- Stakeholder specifications and expectation of asset increase making the asset no-longer fit for purpose

Procurement

- Critical manufacture service agents unavailable to resolve major failure of critical assets
- Critical resources unavailable due to supply chain shortages

Operational

- Utility service and third-party critical impacts (stakeholder relationships)
- Limited anomaly detection capability and poor identification of vulnerabilities
- Failure to identify threat actors who wish to exploit technology vulnerabilities

Inherent Likelihood Possible	Inherent Consequence Drivers Safety & Wellbeing, Financial, Service Delivery, Compliance	Major	Inherent Risk Rating	Rating Very High
---------------------------------	------------------------------------------------------------------------------------------	-------	----------------------------	----------------------------

Existing Controls

Asset Management

- Regular monitoring and submission on industry change that impacts our activities
- Infrastructure Strategy is in place to identify significant infrastructure challenges over the next 30
 years, and to identify the principal options for managing those challenges and the implications of
 those options
- Asset Management Plan policy in place to set standards for maturity
- Asset Strategy Team is in place to drive organisational consistency of asset management overseen by the GM Development
- Resourcing for Activity Management Plan (AMP) renewals, maintenance plans and operational strategies are funded in the 2021-31 10-Year Plan Budget and critical assets are given a higher priority for renewal
- Modelling and master planning of strategic assets and strategic plans for sites in place
- 3 yearly independent asset management maturity assessments are undertaken
- 3 yearly Activity Management Plans are internally and externally reviewed to ensure robust planning processes and systems
- Availability of technical expertise to manage, monitor, operate and maintain critical assets and identify situations when early intervention is required to maintain asset condition and level of service

Planning

- Project planning processes in place to ensure that staff have appropriate project management skills and experience and there is external engagement of experienced project managers
- Robust project management and procurement processes are in place and followed
- Annual review of building and Facilities capital programme with Facilities Unit to ensure forward planning of projects
- Solutions for redundancy (physical and process) in place for critical assets
- Anomaly detection and vulnerability scanning capability

Procurement

- HCC procurement processes are followed to correctly identify/scope and procure appropriate asset
- Maintenance and service agreements in place with the supplier, where appropriate
- Speciality contracts are in place to maintain the condition of critical assets and minimise the risk of failure occurring
- Stakeholder engagement prior to procurement/replacement of asset to ensure appropriate replacement

Operational

- Business Continuity and Essential Maintenance Plans in place.
- Quarterly Threat and Risk assessments
- Training and development plans in place for staff to identify competency and skill requirements
- Processes in place for the supervision, design and testing during build or vesting of assets

			1			
Residual		Residual			Residual	Rating
Likelihood		Consequence			Risk	
		Orivers			Rating	
	Unlikely	Safety &	Majo	r		High
		Wellbeing,				
		inancial,				
		Service				
		Delivery,				
		Compliance Social and				
		Cultural				
Action Owner		Jarcarar				Risk Treatment
	ssets Strategy M					Mitigate
	byn Denton (Tran	•			_	
	Group Business					
	chelle Rivers (Cer					
- ·	nager), Ross Wille	' -		am Leadei	r), Baird	
	Director); Ben Sla	tter (H3 Group))			
Treat	ment Plan	Previou	s updates		•	late –
					Novem	ber 2021
network in assets to d Business (nt of critical nfrastructure determine gaps in Continuity or Maintenance Plai) – New TP	The review and update of BCP's and Essential Maintenance plans will follow the Waters Criticality work outlined below.		nce plans will follow
wastewat (treatmen	ks for water and er activity assets It plants and In assets) by	• (Sept 21)	– New TP	The criticality for water and wastewate assets will be completed by December 2021. The resilience strategy and policy is also underway to be delivered by March 2022.		leted by December estrategy and policy
• Impleme	nt the	-		New Tre	atment Pla	ın.
Implement the Organisational Asset						ne Plan. The plan
					31 organis	
Management				improve	ments to be	e undertaken. It is
Improvement Plan				based or	n feedback i	from Council's
				Auditor	and an inde	ependent Asset
						rity Assessment from
				_		improvements have
						4 streams of work
				1	-	ams relating to
						cality. This plan will
						nderstanding,
						ational and risk
						critical assets.
				manage	circ or its	ci i cicui usse tsi

Council Report

Committee: Council **Date:** 03 February 2022

Author: Amy Viggers **Authoriser:** David Bryant

Position: Governance Lead **Position:** General Manager People and

Organisational Performance

Report Name: 2022 Triennial Elections Information

Report Status	Open

Purpose - *Take*

1. To inform the Council on progress for the 2022 Triennial Local Authority Elections (Election day is on 8 October 2022) and if the Council so chooses, determine the order in which candidates' names are listed on the voting documents.

Staff Recommendation - Tuutohu-aa-kaimahi

- 2. That the Council receives the report.
- 3. That the Council approves the names of the Hamilton City Council candidates for the 2022 Local Authority Elections to be arranged on the voting documents in **either**:
 - a) alphabetical order

or

b) pseudo-random order

or

c) random order.

Executive Summary - Whakaraapopototanga matua

- 4. The 2022 Triennial Local Elections for Hamilton City Council (2022 Elections) will be held on Saturday 8 October 2022. The elections are required to be undertaken in accordance with the Local Electoral Act 2001 (LEA) and occur every 3 years.
- 5. The 2022 Elections will be conducted using the Single Transferable Voting (STV) electoral system following a decision made by the Council to change to STV from the First Past the Post (FPP) electoral system in August 2020. The 2022 Election will be the first time Hamilton City Council has used the STV voting system, however it won't be the first time Hamilton voters have used the STV system with the previous DHB elections being conducted using the STV electoral system.
- 6. Council staff are currently working on putting together a wider communications and engagement plan for the 2022 Elections which will involve 3 key stages Enrol/Stand/Vote.
- 7. As part of the general communications and engagement plan there will be an education component that will focus on the two new aspects being introduced for the 2022 Elections Maaori wards and the STV electoral system.

- 8. Staff will be liaising with several key stakeholders including the Electoral Commission, other nearby Councils, Maaori partners and other key community groups early in the new year to help inform the development of the 2022 Elections engagement and communications plan.
- 9. The Council has re-appointed Dale Ofsoske (Independent Electoral Services Ltd.) as Electoral Officer for Hamilton City Council for the 2022 elections. Amy Viggers (Governance Lead) is Council's Deputy Electoral Officer.
- 10. A decision Council is able to make if it chooses is the order of Candidates names on the voting documents (Clause 21(1) of the Local Electoral Regulations 2001). The options for order are alphabetical, random, or pseudo-random. These options are described more fully in paragraph 32 of this report.
- 11. If no decision is made on the order of names, the order defaults to alphabetical.
- 12. Staff consider the matters/decisions in the report to have low significance and that the recommendations comply with the Council's legal requirements.

Discussion

2022 Triennial Elections Plan

- 13. Staff have commenced planning for the 2022 Elections.
- 14. Key dates for the 2022 elections are as follows:

May/June 2022	Pre-election report finalised
15 July 2022	Candidate nominations open and roll opens for public inspection
15 July - 12 August 2022	Receipt of candidate nominations
12 August 2022 at 12 noon	Candidate nominations close and roll closes
17 August 2022	Public notice of candidates' names
16 - 21 September 2022	Voting documents delivered
16 September - 8 October 2022	Progressive roll scrutiny, special voting period, early processing
8 October 2022 at 12 noon	Election day - voting closes midday
8 October 2022 from 12 noon	Preliminary results
13-19 October 2022	Declaration of results
October/November 2022	Elected Members' swearing in ceremonies

- 15. The 2022 elections logistics are being project managed by Governance in conjunction with the Communications Unit.
- 16. Dale Ofsoske will be Council's Electoral Officer and Amy Viggers (Governance Lead) will be the Deputy Electoral Officer.
- 17. The Taituarā Local Elections Reference Group have recently provided some general information and FAQs concerning the local elections which can be found here.

Electoral System Change

18. The decision to use the STV electoral system in the 2022 Local Elections was made in August 2020. STV is a proportional representation electoral system designed to more proportionally reflect the diverse composition of the community.

Elections 2022 Communications and Engagement Campaign – Enrol/Stand/Vote

- 19. Hamilton City Council will be providing key elections information on its 'yourcityelections' website from early next year, and increasingly as the various stages of the 2022 Elections communications and engagement campaign gets underway.
- 20. Council staff are currently working on putting together a wider communications and engagement plan for the 2022 Elections which will involve three key stages Enrol/Stand/Vote.
- 21. As part of the general communications and engagement plan there will be an education campaign around the two new aspects being introduced for the 2022 Elections Maaori wards and the STV electoral system.
- 22. Staff will be liaising with several key stakeholders including the Electoral Commission, neighbouring Councils, Maaori partners and other key community groups early in the new year to help inform the development of the 2022 Elections engagement and communications plan and to ascertain any potential partnership opportunities.
- 23. While the specifics of the 2022 campaign are still being developed, elements from the 2019 elections and 2021 by election that were successful will be incorporated. These include:
 - i. candidate profiles and videos on the yourcityelections.co.nz website;
 - ii. processing special votes at libraries branches, and mobile voting stations;
 - iii. outreach voting boxes at community houses, rest homes, and large employers such as the DHB, University of Waikato, Fonterra;
 - iv. drive-thru voting;
 - v. working with our city partners to connect with their networks and attend events to respond to questions;
 - vi. clearly setting out the challenges the city is facing in the Pre-Election Report;
 - vii. candidate information sessions via bus tour of the city;
 - viii. your neighbourhood event(s); and
 - ix. delivering presentations to schools and community groups.
- 24. There are a number of studies into why voter turnout for local elections continues to be low across the country, with many different ideas and theories being mooted on why there continues to be a steady decline in voter turnout and apathy. In recent years there has been a concerted effort within the local government sector to address this issue. We are starting to see some small improvements in some areas of the country, but equally, there are some Councils who have seen a decline in voter turnout in recent years despite a concerted effort being put in to reverse the trend.
- 25. What is clear, is that we collectively need to do more to educate and increase civic literacy among our diverse communities, especially those who have traditionally had the lowest voter turnout such as Maaori and rangatahi. To do this, it will be vital for the Council to work closely with our key partners on developing and implementing a wider communication, education, and engagement plan with new initiatives at the upcoming 2022 local elections.

Order of Candidate Names

- 26. Although not mandatory, the Local Electoral Regulations 2001 allows Local Authorities to consider the order of candidate names on the voting documents if they wish.
- 27. For the 2013, 2016, 2019 elections, Council considered the voting order and resolved to go with random order. The order of candidate names for the 2010 election was 'Pseudo-random'.
- 28. There is no price differential in printing costs between the three options of candidate name order. Election costs are budgeted for in the 2021-31 10 Year Plan.
- 29. If no decision is made, the order of names defaults to alphabetical order.
- 30. The voting documents will also include the Waikato Regional Council (WRC) election. They will make their own decisions about the order of names of candidates for their respective elections.

Options

- 31. The candidate profile statement booklet is always printed in alphabetical order. It is only order of candidate names on the voting documents that Council can determine.
- 32. The features of each name order arrangement are described below:

Option 1 – Alphabetical order of surname

Alphabetical order is simply listing candidate surnames alphabetically and has been the order traditionally used in local authority and parliamentary elections.

Option 2 – Pseudo-random order

Pseudo-random order is where candidate surnames are randomly selected, and the order selected is the order appearing on **all** voting documents. The names are randomly selected via a good practice method managed by Election Services.

Option 3 - Random Order

Random order is where all candidate surnames are randomly selected by computer so that the order of surnames is different on each voting document.

Advantages/Disadvantages of options

- 33. The advantage of **alphabetical order** is that it is familiar and easier to understand for voters. Where there is a large number of candidates competing for a position, it is easier for a voter to find a candidate they wish to vote for if the names are listed alphabetically.
- 34. It is also easier for a voter if the order of names on the voting document follows the order of names in the directory of candidate profile statements accompanying the voting document
- 35. Random order (**both random and pseudo-random**) removes the perception of name order bias, but the Pseudo-random order of names simply substitutes a different order for an alphabetical order. Any first-name bias will transfer to the name at the top of the pseudo-random list. The only effective alternative to alphabetical order is random order.
- 36. A disadvantage for both the random options is voter confusion as it is not possible for the supporting documents such as the candidate profile statement booklets to follow the order of a random voting paper. Making voting more difficult carries the risk of deterring the voter from taking part.
- 37. The following table shows the candidate name order decided by city and regional councils for recent elections.

	2016	2019
Auckland Council	Alphabetical	Alphabetical
Hawke's Bay Regional Council	Alphabetical	Alphabetical
Invercargill City Council	Alphabetical	Random
Manawatu-Wanganui Regional Council	Alphabetical	Random
Southland Regional Council	Alphabetical	Alphabetical
Taranaki Regional Council	Alphabetical	Alphabetical
Bay of Plenty Regional Council	Random	Random
Christchurch City Council	Random	Random
Canterbury Regional Council	Random	Random
Hamilton City Council	Random	Random
Napier City Council	Random	Random
Tauranga City Council	Random	Random
Wellington City Council	Random	Random
Gore District Council		Pseudo-random
Queenstown district council		Random
Southland district council		Random
Whanganui District Council		Random
Otorohanga District Council		Alphabetical
Waitomo District Council		Alphabetical
Thames Coromandel District Council		Alphabetical

38. Auckland City Council previously undertook an analysis of the impacts of candidate order on elections outcomes based on their 2010, 2013, 2016 elections. Their findings "indicated that there was no compelling evidence that candidates being listed first were more likely to be elected in the last three elections" and that it was "reasonable to conclude that the results from the last three elections were not impacted dramatically by the use of alphabetical ordering on the voting documents". The link to the Auckland City Council report can be found here.

Financial Considerations

Item 12

- 39. **Candidate Voting Order** there is no difference to the cost of printing the voting documents with any of the order of candidate name options outlined above.
- 40. The costs for the 2022 Elections have been budgeted for in the 2021-2031 Long Term Plan. A large proportion of costs are attributed to a third party provider, Elections Services, to run the elections process i.e., voting material and counting of votes.
- 41. \$599,430.00 has been allocated to the 2022 Local Elections in year two of the budget. This is the gross cost before reimbursements from Waikato Regional Council for shared services undertaken on their behalf.
- 42. Approximately \$50,000, has specifically been allocated to the communications and engagement campaign.

Legal and Policy Considerations

- 43. Staff confirm that this report complies with the Council's legal and policy requirements.
- 44. The Local Electoral Regulations 2001 allows Local Authorities to consider the order of candidate names on the voting documents. It is not mandatory to pick an option, and if no decision is reached on the matter, the order of candidate names will automatically revert to alphabetical order.

Wellbeing Considerations - Whaiwhakaaro-aa-oranga tonutanga

- 45. The purpose of Local Government changed on 14 May 2019 to include promotion of the social, economic, environmental and cultural wellbeing of communities in the present and for the future ('the 4 wellbeings').
- 46. The subject matter of this report has been evaluated in terms of the 4 wellbeings during the process of developing this report.
- 47. The proposed changes set out in this report are consistent with that purpose.
- 48. Staff have assessed the cultural considerations related to this matter and have determined that the order of candidate names does not have any specific implications for our Maaori community. It should be noted that candidates are able to provide their profile statements in both English and Te Reo Maaori.
- 49. Staff are focussed on increasing voter turnout. To this end, Council has developed a good working relationship with representatives from the Electoral Commission to support positive outcomes for local authority elections. The Electoral Commission has a strong focus on groups in the community who have traditionally had low voter turnout, including youth, Maaori, and ethnic groups.

Risks

50. If names are ordered alphabetically, there is a risk of perceived bias. If names are randomised, there is a perceived risk of increasing the complexity of the voting experience and deterring voters.

Significance & Engagement Policy Significance

51. Staff have considered the key considerations under the Significance and Engagement Policy and have assessed that the matter(s) in this report has/have a low level of significance.

Engagement

52. Given the low level of significance determined, the engagement level is low. No engagement is required.

Attachments - Ngaa taapirihanga

There are no attachments for this report.

Resolution to Exclude the Public

Section 48, Local Government Official Information and Meetings Act 1987

The following motion is submitted for consideration:

That the public be excluded from the following parts of the proceedings of this meeting, namely consideration of the public excluded agenda.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution follows.

General subject of each matter to be considered	Reasons for passing this resolution in relation to each matter	• • • • • • • • • • • • • • • • • • • •
C1. Confirmation of the Council Public Excluded Minutes of 16 December 2021) Good reason to withhold) information exists under) Section 7 Local Government	Section 48(1)(a)
C2. Confirmation of the Elected Member Public Excluded Briefing Notes - 8 December 2021) Official Information and) Meetings Act 1987)	
C3. Confirmation of the Elected Member Public Excluded Briefing Notes - 9 December 2021		

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

Item C1.	•	or use of official gain or improper	Section 7 (2) (j)
Item C2.	to prevent the	or use of official gain or improper	Section 7 (2) (j)
Item C3.	to prevent the	or use of official gain or improper	Section 7 (2) (j)