



AGENDA

Late Reports

Ordinary Council meeting

Monday, 25 July 2022

Date: Monday, 25 July 2022

Time: 9.30am

**Location: Bay of Plenty Regional Council Chambers
Regional House
1 Elizabeth Street
Tauranga**

Please note that this meeting will be livestreamed and the recording will be publicly available on Tauranga City Council's website: www.tauranga.govt.nz.

Marty Grenfell
Chief Executive

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11 BUSINESS

11.13 Attachment to Item 11.6 Three Waters Reform – Council Submission on Water Services Entities Bill #1

ATTACHMENTS

1. **Tauranga City Council Submission on the Water Services Entities Bill Number 1 - A13673253**  



Tauranga City Council and Te Rangapū Mana Whenua o Tauranga Moana Joint Submission - Water Services Entities Bill #1 21 July 2022

1. Introduction

Tauranga City Council (TCC) forms part of Entity B (to be known as Western-Central Water Services), along with 21 other Councils. The city has a population of 155,200, making it the second largest Council in Entity B. The allocation of shares in the Entity, based on the Water Services Entities Bill (Part 2, Subpart 1) for TCC would translate to 4 shares.

TCC three water assets, as at 30 June 2021, are valued at \$1.53 billion, with debt of \$447 million. The capacity to continue to service a high-growth city is the major concern of our staff and Commission.

There are 115 staff who are focused entirely on the three waters business, with a further 157 staff (estimated) that support the three waters business to varying degrees.

Te Rangapū Mana Whenua o Tauranga Moana supports the joint submission on the Water Services Entity Bill #1. There are 17 hapū and marae within Tauranga Moana whose responsibilities and duties are within the Tauranga City Council area. Tauranga City Council gives support to the autonomous body of Te Rangapū Mana Whenua o Tauranga Moana to work in partnership and ensure that Tauranga Moana interests are protected throughout this change. As recorded in the Census 2018, there were 24,912 Māori (18% of the population) living in the region.

2. Background

TCC would like to acknowledge the work of the Working Group on Representation, Governance and Accountability, the outputs of which have motivated amendments to the original draft legislation.

The last time TCC engaged with Government around the Three Water Reforms was in September 2021, following a short period of engagement with the Tauranga community.

The key concerns that were captured, and passed to DIA, as part of that process were:

- 1) Governance Arrangements,
- 2) Future privatisation concerns,
- 3) Growth and Development,
- 4) Workforce,
- 5) Protection of mana whenua (hapū, iwi) interests and concerns,
- 6) Communications and engagement
- 7) Transition timeline viability,
- 8) Stormwater infrastructure,



- 9) Finance and Debt arrangements,
- 10) Government funding package adequacy.

This submission reflects that the Water Services Entity Bill #1 (WSE Bill #1) relates to the ownership, governance, and accountability arrangements for the Entities, as well as transitional arrangements during the establishment period. Therefore, TCC has taken the opportunity to comment on items **1, 2, 3, 4, 5 and 6 above**. The remainder of the concerns raised in September 2021 are outstanding and will continue to be monitored on behalf of our community.

TCC acknowledges further legislation, related to Three Waters Reform, is expected to provide additional detailed implementation arrangements for the entities and service delivery, including asset and liabilities transfers, pricing and charging arrangements, economic regulation, and consumer protection. Also expected are changes to other existing legislation, including Treaty settlement legislation, to ensure settlement obligations are carried forward to Water Service Entities and detailed changes to the Local Government Act, and other legislation to transfer service delivery arrangements to the new entities.

In addition to the above, many ratepayers and residents have voiced a wish for a referendum. TCC's expressed position is that a referendum would not be appropriate, as this is central government's reform, and that parliamentary processes are the most appropriate means to respond. TCC will promote the opportunity for the general public to have their say by completing their own submissions, but also noting that feedback received both in opposition and in support of the reforms has been included as part of the TCC submission.

3. Key Concerns - Comments and Recommendations

The Government has identified that it has four bottom lines to achieve the outcomes for water reforms. These are:

- Public Ownership
- Mana whenua interests
- Balance sheet separation
- Good governance.

TCC would like to express the view that clear connection to communities should be added to this list.

3.1 Governance Arrangements

Comments

- TCC believes three waters reform has the potential to enable sustainable, affordable, and consistently high-quality waters services at a national, entity and local council level. Removal of current and future three waters debt from TCC's balance sheet would strengthen Council's financial position and might allow us to better deliver other services, infrastructure needs and four wellbeing benefits to our community on a long-term, sustainable basis.



- TCC strongly supports mana whenua (iwi, hapū) and their aspirations of partnership within the Regional Representation Group and Regional Advisory Panels.
- It is noted that the Regional Advisory Panel is an advisory body only. It will have no powers, nor can any powers be delegated to it by the Regional Representative Group. Furthermore, any advice a Regional Advisory Panel provides to the Regional Representative Group must take into account the interests of the whole entity, not just its own area of concern.
- TCC supports the establishment of Regional Advisory Panels to provide opportunities for the large number of councils and Iwi/hapū within the Entity B region to have a voice.
- The Regional Representative Group must collectively appoint a board appointment committee made up of members who have knowledge and experience in performance monitoring and governance, network infrastructure industries, te Tiriti o Waitangi and principles, perspectives of tangata whenua, tikanga and te ao Māori. Missing here is experience in the water industry, health and safety, public health, customer facing service delivery and engagement. Considering that an organisation's culture comes from the leadership of its Board, the knowledge and experience of its leaders needs to be widened.
- The Water Services Entities Bill #1 doesn't specify the intent of the structure of the Regional Representative Group, and this needs to be more explicitly stated. As an example, it does not reflect the diversity of the membership, metro Councils, medium-sized (provincial) councils and small-sized (rural) councils.
- As the first constitution for the entities will be established by central government, this will set out the procedures for initial appointments to the Regional Representation Group. For Entity B, there are 22 co-owning councils for which there would be 7 seats, and approximately 76 Iwi/hapū groups for which there would similarly be 7 seats. Until the first constitution is made available, there is a lack of clarity in how the appointment process will work to ensure appropriate representation within Entity B and safeguard local interests in Councils' and communities' three waters assets.

Recommendations

- TCC recommends that the Water Services Entities Bill has more detail added to include the structures of the member Councils.
- TCC recommends that the original appointment to the Regional Representative Group should include the Metro councils. This recognises the net asset value and the growth impacts on these council.
- For subsequent appointment to the Regional Representative Group, TCC recommends that 'growth/metro' councils with populations over 100,000 are guaranteed a seat on the Regional Representation Group.
- TCC recommends that the Regional Representative Group be given the authority to delegate a decision or decisions to the Regional Advisory Panels.



- TCC recommends that the guidance for the Regional Advisory Panels be amended to allow for advice to be narrowed to the specific region that the Regional Advisory Panel represents (e.g. Tauranga Moana).
- TCC recommends that the skills and experience of the Board appointed committee be widened to include experience in the water industry, health and safety, public health, customer facing service delivery and engagement.

3.2 Future privatisation concerns

Comments: -

- TCC supports the public ownership of the Water Service Entities, through the direct shareholding interest each Council will hold on behalf of its community.
- TCC supports the protection from privatisation provisions in the Bill and believes these provide sufficient protection from future privatisation of the entities.

3.3 Growth and Development

Comments

- Our community needs assurance that investment will be available to cater for the service growth required by new housing development, intensification within the city's existing footprint and redevelopment of the inner city. This investment needs to align with the respective agreed requirements of the relevant spatial/ resource management plans that are in place. Without such alignment there is a high risk of investment not occurring when required and severely impacting on the ability of TCC to facilitate the provision of land for housing and employment.
- Mana whenua needs assurance that service equity of infrastructure to Māori land is given the same priority as general land.
- Mana whenua needs assurance that environmental, cultural values and Mātauranga Māori are protected in line with Te Mana o Te Wai.
- Mana whenua support the principles of interconnectedness is at the heart of Te Ao Maori, or the Maori worldview
- Removing the debt associated with three waters infrastructure from councils' balance sheets would allow investment in other infrastructure required to enable growth. There would need to be certainty that the three waters investment component of that equation would be delivered when and where needed to cater for growth.
- The integration of spatial planning processes, resource management and other planning processes at local, regional, and national level are vital to support timely decision-making, especially in growth councils. The terms of reference of the government-appointed Planning Technical Working Group have been noted, TCC awaits the recommendations from this group.



Recommendations

- That 'growth/metro' councils and mana whenua with populations over 100,000 are guaranteed a seat on the Regional Representation Group.
- That investment will be available to cater for growth through serviced land for new dwellings including intensification opportunities and that there are clear and transparent mechanisms in place as noted above, to ensure there is appropriate and timely investment that aligns with the agreed spatial/ resource management plans.
- That service equity of infrastructure to Māori land is given the same priority as general land.
- That environmental, cultural values and Mātauranga Māori are protected in line with Te Mana o Te Wai.

3.4 Workforce

Comments

- TCC acknowledges the additional stress and pressure on TCC staff supporting and delivering water services and delivering significant infrastructure projects.
- It is vital that TCC retains and develops staff to ensure 'business as usual' levels of service are maintained for our community, through to when water service provision is delivered by the new entity.
- All TCC staff, whether directly impacted by Three Water reforms or not, need to be treated fairly and supported throughout transition.
- There is a recognised shortage of qualified resources within the Water sector, impacting our ability to retain and acquire resources.
- The legislation provides some protection for those staff 'primarily' engaged in delivery of water services. This protection is not extended to those holding senior management roles or engaged at a less than 'primary' level. There is an inability to provide certainty regarding the impact on individuals, adding to the uncertainty and anxiety for staff.
- TCC is focused on developing and supporting viable workforce capability and capacity to deliver services to our community at the required levels, post reforms.
- Mana whenua seeks assurance regarding the importance of each entity developing its own relationship with mana whenua through the establishment of its own autonomous Three Waters Takawaenga team.

Recommendations

- TCC supports the added certainty of job security for those staff 'primarily engaged' in provision of water services.
- That Te Rangapū Mana Whenua o Tauranga Moana advocates that the entity must be supported by its own Three Waters Takawaenga team.



- In order to provide clarity for staff, TCC recommends an amendment to provide criteria to define 'primarily engaged', being staff who work more than 50% of their time in the support or delivery of water services.
- In order to provide further clarity for staff, TCC recommends an amendment to provide definitions for 'primarily engaged', 'senior management' and 'partially engaged'. These definitions will enable effective individual transition support for staff, reducing the risk of losing valuable resource from the industry and helping to manage the ongoing delivery of water services for our community. Also, understanding the impact on individual staff enables TCC to develop consistent transition support and management processes equally across all TCC employees.
- TCC supports the development of a Workforce Development strategy to attract new resources into the Water sector.

3.5 Chief Executive

Comments

- TCC acknowledges that the Chief Executive will be appointed by the Entity's Board.

Recommendations: -

- TCC suggests the inclusion of the authority of the Chief Executive to employ staff, and that those staff are responsible to the Chief Executive.

3.6 The Minister

Comments

- TCC acknowledges that the Minister will set the Government's priorities in relation to water services by way of a policy statement. The Water Service Entities must give effect to the Government's policy statement on water services. There is no mention of any funding between the Government and the Water Service Entities.

Recommendations

- TCC suggests the inclusion and setting out of how funding may be made available for the Water Services Entities, to give effect to the Government policy statement on water services.

3.7 Communications and Engagement

Comments

- Because the intent of these reforms has been so poorly communicated by Government, the general level of community and mana whenua understanding around key aspects of the reforms is lacking and local government has been placed in the difficult position of trying to



keep our communities and mana whenua informed about a process we are not leading and do not have full information about.

- Complex issues take time to convey effectively to a wide audience. Shortened timelines have restricted the ability to engage appropriately with iwi/hapū and the wider community.
- TCC is concerned about allocating resources to improve the overall understanding of Three Water reforms within our community, potentially duplicating the efforts of central government.

Recommendations

- TCC recommends a national level communications and engagement strategy be provided to all territorial authorities to define the roles and responsibilities for communication and engagement for central and local government.
- That a Māori communication and engagement strategy be developed for each entity area in partnership with the local hapū, iwi and marae.
- TCC recommends central government releases quality and easily understood information on Three Waters reform, the expected benefits and impacts and timelines.

4. Te Tiriti o Waitangi and Te Mana o te Wai

Te Tiriti o Waitangi and Te Mana o te Wai – TCC supports the government initiative to improve the Māori voice.

Te Rangapū Mana Whenua o Tauranga Moana seeks assurance that the Water Services Entity Bill and Māori are given full functions, duties, and powers under this legislation. Specifically, that it:

- a. gives effect to the principles of Te Tiriti
- b. gives effect to Te mana o te Wai (to the extent this applies to those powers, duties, or functions)
- c. understands, enables, and supports the exercise of Mātauranga Māori, tikanga Māori and kaitiakitanga
- d. gives effect to Te Tiriti o Waitangi obligations (where applicable it is important to note that Treaty settlements prevail where there is conflict)
- e. Provides assurance that Mana whenua whose region (rohe or takiwa) includes a freshwater body in the Tauranga Moana service area may deliver a Te Mana o Te Wai statement to the Water Service entity; and that the Water Service entity must engage with mana whenua as to a response to their Te Mana o te Wai statement(s)
- f. embeds partnership and representation to uphold the Te Tiriti principles, processes, and mechanisms, resourced and designed alongside mana whenua to encourage active participation.



5. Specific Response– WSE Bill #1

Legislation Ref:	Title/contents	TCC Position
Part 1	Preliminary Provisions	
Clause 3	Purpose of Act - Establishes 4 entities and provides for their objectives, functions, service delivery areas and governance arrangements.	Supports
Clause 4 & 5	Te Tiriti o Waitangi and Te Mana o te Wai	Supports
Clause 6,7,8 & 9	Interpretation, giving effect to Schedule 1, binding the Crown, and Treaty settlement obligations prevail.	Supports
Part 2	Water Service Entities	
Subpart 1	Establishment of Water Services Entities	
Clause 10 -15	Objectives, functions, operating principles, duties to provide funding and information, legal status. Water service entities to be co-ownership by territorial authorities.	Supports
Clause 16	Shares in Water Service Entities TCC recommends that the Entity share allocation be based on both population and the value of the net assets transferred, i.e., water asset values less associated debt and not on populations. This more correctly reflects the value of the net assets each council has transferred to the entities.	Amendment
Clause 17-19	Authorised acts of water service entities	Supports
Subpart 2 Clause 20-25	Validity of acts	Supports
Subpart 3	Ministers Role	Supports
Subpart 4	Regional Representative Group Establishment, role, duties. Decision making	Amendment



Legislation Ref:	Title/contents	TCC Position
Clauses 27-31	The Regional Representative Group role should be extended to enable the group to delegate a decision or decisions to the Regional Advisory Panels.	
Clause 32	Appointment of Regional Representatives – territorial authorities Given the significance of the value of the net assets transferred to Entity B, TCC recommend an amendment to the Water Services Entities Bill, so that ‘growth/metro’ councils with populations over 100,000 are guaranteed a seat on the Regional Representation Group.	Amendment
Clause 33	Appointment of Regional Representatives – mana whenua representatives	Supports
Clause 34-37	Requirements of regional representatives, validity of acts, appointments, resignation	Supports
Clause 38 - 42	Board Appointment Committee, functions, chair, and deputy chair appointments The skills and experience of the Board Appointment Committee be widened to include experience in the water industry, health and safety, public health, customer facing service delivery and engagement.	Amendment
Clause 43 -44	Dispute resolution, official information	Supports
Subpart 5 Clause 45-55	Regional Advisory Panels The guidance for Regional Advisory Panels be amended to allow for advice to be narrowed to the specific region that the Regional Advisory Panel represents, rather than to the Entity service area.	Amendment
Subpart 6 Clause 56-89	Boards of water service entities	Supports
Subpart 7 Clause 90 - 96	Constitutions of water services entities	Supports
Clause 97-114	Qualifications, conflict of interest	Supports



Legislation Ref:	Title/contents	TCC Position
Part 3	Operation of Water Service Entities	
Clause 115-128	<p>Independence of water service entities, obligations to maintain ownership and control of water services and significant assets, employment of chief executive, good employer requirements, protections from liabilities, methods of contracting, address for service.</p> <p>Include as part of the Chief Executive role the authority to employ staff and that those staff are responsible to the Chief Executive.</p>	Amendment
Part 4 Clause 129 - 169	Financial and Accounting Matters	
Subpart 1	<p>Government Policy Statement on water services</p> <p>The Government's priorities in relation to water services will be provided within the Government Policy Statement. The Entity is required to give effect to these priorities. There is no indication of how these priorities will be funded.</p> <p>Include how funding will be made available for the Entities to give effect to the Government Policy Statement on water services.</p>	Amendment
Subpart 2	Regional Representative Group's statement of strategic and performance expectations	Supports
Subpart 3	Te Mana o te Wai statements for water services	Supports
Subpart 4	Reporting obligations	Supports
Subpart 5	Bank accounts, financial independence, borrowing	Supports
Part 5 Clause 169-194	Monitoring	Supports
Part 6	Miscellaneous provisions	Supports



Legislation Ref:	Title/contents	TCC Position
Clause 195-222	Reviews, rights, or interests in water preserved, engagement, consumer forums, regulations, amendments to other Acts	
Schedule 1	Transition and establishment arrangements	
Subpart 1 Clause 1-6	Transitional provisions – establishment and governance of entities.	Supports
Subpart 2 Clause 7-14	Transitional provisions – reporting obligations	Supports
Subpart 3 Clause 15-20	<p>Transitional provisions – employment</p> <p>TCC recommend an amendment to provide definitions for ‘primarily engaged’, ‘senior management’ and ‘partially engaged’. These definitions will enable effective individual transition support for staff, reducing the risk of losing valuable resource from the industry and help manage the on-going delivery of water services for our community.</p> <p>Also, understanding the impact on individual staff enables TCC to develop consistent transition support and management processes across all TCC employees equally.</p> <p>TCC recommend an amendment to provide criteria to define ‘primarily engaged’, being staff who work more than 50% of their time in the support or delivery of water services.</p>	Amendment
Subpart 4 Clause 21-24	Transitional provisions – oversight powers of department	Supports
Subpart 5 Clause 25-26	<p>Transitional tax relief and recovery of costs</p> <p>The inclusion of the costs of transition as part of the Entity B debt should be publicly disclosed so that the cost of transition is transparent with the community.</p> <p>By central government transferring these initial costs to future water entities there is no incentive for cost efficiency in set up and will increase future cost of water for consumers.</p>	Amendment



Legislation Ref:	Title/contents	TCC Position
	We note that once Entity B is set up and directly controlling transition expenditure decisions will be made by that entity with a greater focus on cost efficiency and the implications of expenditure on future water users.	
Schedule 2	Water Services Entities and their service areas	Supports
Schedule 3	Preparation of planning documents – Statement of intent, asset management plan, funding and pricing plan and infrastructure strategy	Supports
Schedule 4	Divestment proposals	Supports

6. SUPPORT FOR OTHER INDUSTRY BODY SUBMISSIONS

In developing this joint submission, staff have attended webinars and industry forums to gain industry overview of the proposed legislation. They have also reviewed key industry submissions (in their draft format). From this appraisal, TCC would like to confirm support for the submissions from:

- LGNZ
- Taituarā, and
- Water New Zealand.

7. COMMUNITY FEEDBACK

To ensure transparency with the community, and to take the opportunity for the community to share their sentiment, an online survey was made available. The survey covered five key areas, as well as an opportunity to review and provide feedback on our draft submission document.

The five key areas shared with our community were: -

- Governance arrangements
- Privatisation
- Growth & development needs are met
- Workforce
- Communications and engagement



The survey was accessible on TCC Three Waters Reform webpage from 30 June to 13 July. During that period, 220 individual responses were received.

7.1 Survey results

Survey Question	# Of responses that Strongly Agree and Agree (% of respondents)	# Of responses that Strongly Disagree and Disagree (% of respondents)
The governance structure does not adequately reflect local voice	80 %	18%
TCC supports the changes to add protection from privatisation	60%	37%
TCC concerns for how growth and development needs will be met	79%	18%
TCC concerns regarding the impact to our valued workforce	73%	21%
That more community understanding is needed	70%	29%

NOTE: Where the percentages don't equal 100%, the difference is the "Don't Know" response

7.2 Other comments/themes from feedback process

The online survey provided the opportunity for respondents to provide other comments. Whilst there was support for the sentiment of the TCC submission against the key points, it did not necessarily mean the community agreed with three waters reform. The three key themes communicated were:

- Rejection of the three waters reforms
- Doubt around benefits to be achieved
- Rejection of the transfer of assets to the new water services entity
- Rejection of the co-governance approach for the Regional Representation Group
- That TCC should not be participating in the reforms.

Not all respondents provided negative feedback about the reforms. Those that provided positive comments alongside the survey questions communicated the following key themes:

- That there is a lack of understanding about the benefits of reform
- Concern that the Tauranga city can't continue to afford to fund and invest in infrastructure to cope with the rapid growth of the city
- Support for a more efficient and financially effective model for delivery
- Recognition of the duplication of effort across New Zealand, particularly with business systems
- Support for co-governance arrangements.

7.3 Survey demographics

Demographic information relating to the responses was captured as part of the survey. Key points, as evidenced from the graphs below indicate that:

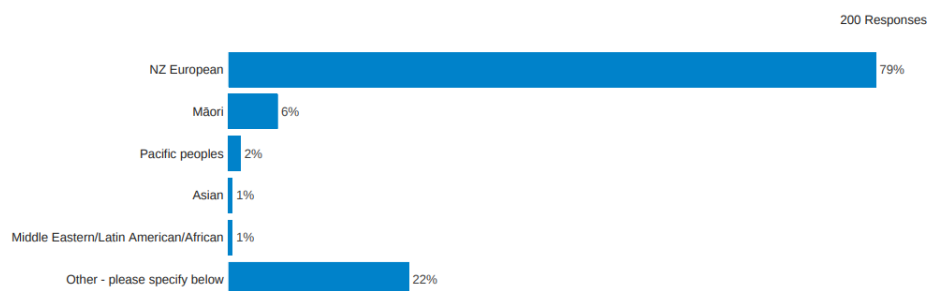
- The community under the age of 55 years have a low representation at only 14%
- Low response from the community who identify as Māori, at only 6%
- Low response from females at only 28%



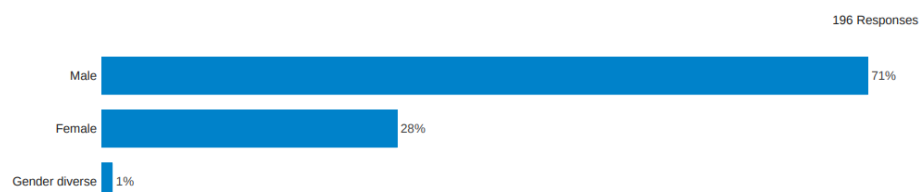
Age



Ethnicity



Gender



7.4 Direct communication with Commissioners or Council

Outside of the online survey, which has been analysed above, 3 emails were received through council's email channel, and 87 emails were received by Commissioners. The feedback from these



communications was analysed and was found to align with the overall survey feedback noted in 7.2 above, with the additional request that TCC should withdraw membership with LGNZ.

7.5 Conclusions from community feedback

As demonstrated with the demographics in 7.3 above, the online survey information received does not provide certainty that the responses are representative of the wider community.

However, the overall feedback provided highlighted the issues which will need to be addressed in future community engagement. That engagement needs to come from Government, given these reforms are being mandated through legislation. Key points that TCC recommends are covered are:

- Future costs for service
- Highlighting the benefits of having co-governance at the Regional Representation Group, or Regional Advisory Panel level
- Greater understanding on asset ownership, asset transfer and debt transfer.

On behalf of Tauranga City Council, Te Rangapū Mana Whenua o Tauranga Moana and the Tauranga community,

Anne Tolley

Commission Chair

Tauranga City Council

Matire Duncan

Chair

Te Rangapū Mana Whenua o Tauranga Moana

0 PUBLIC EXCLUDED SESSION**RESOLUTION TO EXCLUDE THE PUBLIC****RECOMMENDATIONS**

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter 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 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
L.14 - Access Options to Parau Farms - Update	s7(2)(h) - The withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities s7(2)(i) - The withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	s48(1)(a) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7