AGENDA

Ordinary Council meeting
Monday, 20 March 2023

I hereby give notice that an Ordinary meeting of Council will be held on:

Date: **Monday, 20 March 2023**

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

Terms of reference – Council

Membership

Chairperson	Commission Chair Anne Tolley
Members	Commissioner Shadrach Rolleston Commissioner Stephen Selwood Commissioner Bill Wasley
Quorum	Half of the members physically present, where the number of members (including vacancies) is even; and a majority of the members physically present, where the number of members (including vacancies) is odd.
Meeting frequency	As required

Role

- To ensure the effective and efficient governance of the City
- To enable leadership of the City including advocacy and facilitation on behalf of the community.

Scope

- Oversee the work of all committees and subcommittees.
- Exercise all non-delegable and non-delegated functions and powers of the Council.
- The powers Council is legally prohibited from delegating include:
    - Power to make a rate.
    - Power to make a bylaw.
    - Power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term plan.
    - Power to adopt a long-term plan, annual plan, or annual report
    - Power to appoint a chief executive.
    - 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 local governance statement.
    - All final decisions required to be made by resolution of the territorial authority/Council pursuant to relevant legislation (for example: the approval of the City Plan or City Plan changes as per section 34A Resource Management Act 1991).
- Council has chosen not to delegate the following:
    - Power to compulsorily acquire land under the Public Works Act 1981.
- Make those decisions which are required by legislation to be made by resolution of the local authority.
- Authorise all expenditure not delegated to officers, Committees or other subordinate decision-making bodies of Council.
- Make appointments of members to the CCO Boards of Directors/Trustees and representatives of Council to external organisations.
- Consider any matters referred from any of the Standing or Special Committees, Joint Committees, Chief Executive or General Managers.

Procedural matters

- Delegation of Council powers to Council's committees and other subordinate decision-making bodies.
- Adoption of Standing Orders.
- Receipt of Joint Committee minutes.
- Approval of Special Orders.
- Employment of Chief Executive.
- Other delegations of Council's powers, duties, and responsibilities.

Regulatory matters

Administration, monitoring and enforcement of all regulatory matters that have not otherwise been delegated or that are referred to Council for determination (by a committee, subordinate decision-making body, Chief Executive or relevant General Manager).

Order of Business

1 OPENING KARAKIA

2 APOLOGIES

3 PUBLIC FORUM

4 ACCEPTANCE OF LATE ITEMS

5 CONFIDENTIAL BUSINESS TO BE TRANSFERRED INTO THE OPEN

6 CHANGE TO THE ORDER OF BUSINESS

7 CONFIRMATION OF MINUTES

7.1 Minutes of the Council meeting held on 27 February 2023

File Number: **A14490862**

Author: **Robyn Garrett, Team Leader: Governance Services**

Authoriser: **Robyn Garrett, Team Leader: Governance Services**

RECOMMENDATIONS

That the Minutes of the Council meeting held on 27 February 2023 be confirmed as a true and correct record.

ATTACHMENTS

1. Minutes of the Council meeting held on 27 February 2023

MINUTES

Ordinary Council meeting
Monday, 27 February 2023

Order of Business

MINUTES OF TAURANGA CITY COUNCIL
ORDINARY COUNCIL MEETING
HELD AT THE BOP REGIONAL COUNCIL CHAMBERS, REGIONAL HOUSE, 1 ELIZABETH STREET, TAURANGA
ON MONDAY, 27 FEBRUARY 2023 AT 9.30AM

PRESENT: Commission Chair Anne Tolley, Commissioner Shadrach Rolleston, Commissioner Stephen Selwood, Commissioner Bill Wasley

IN ATTENDANCE: Christine Jones (Acting Chief Executive/General Manager: Strategy, Growth & Governance), Paul Davidson (Chief Financial Officer), Nic Johansson (General Manager: Infrastructure), Alastair McNeill (General Manager: Corporate Services), Sarah Omundsen (General Manager: Regulatory and Compliance), Gareth Wallis (General Manager: City Development & Partnerships), Ceilidh Dunphy (Community Relations Manager), Kim Martelli (Resilience Specialist: Natural Hazards and Infrastructure), Margaret Batchelar (Manager: Customer Services), Jeremy Boase (Manager: Strategy & Corporate Planning), Brendan Bisley (Director of Transport), Kelvin Hill (Manager: Water Infrastructure Outcomes), Amanda Davies (Manager: Spaces and Places Project Outcomes), Coral Hair (Manager: Democracy & Governance Services), Robyn Garrett (Team Leader: Governance Services), Sarah Drummond (Governance Advisor), Anahera Dinsdale (Governance Advisor), Janie Storey (Governance Advisor)

1 OPENING KARAKIA

Commissioner Shad Rolleston opened the meeting with a karakia.

2 APOLOGIES

Nil

3 PUBLIC FORUM

Nil

4 ACCEPTANCE OF LATE ITEMS

Nil

5 CONFIDENTIAL BUSINESS TO BE TRANSFERRED INTO THE OPEN

Nil

6 CHANGE TO THE ORDER OF BUSINESS

Nil

7 CONFIRMATION OF MINUTES

7.1 Minutes of the Council meeting held on 7 February 2023

RESOLUTION CO2/23/1

Moved: Commissioner Stephen Selwood
Seconded: Commissioner Bill Wasley

That the minutes of the Council meeting held on 7 February 2023 be confirmed as a true and correct record.

CARRIED

8 DECLARATION OF CONFLICTS OF INTEREST

Commissioner Rolleston noted that he was involved with Ministry for the Environment reforms which connected into Three Waters and would not speak to that topic in item 11.3.

9 DEPUTATIONS, PRESENTATIONS, PETITIONS

9.1 Mohinder Singh on behalf of the Sikh Indian community - Request for installation of covered bus stop at 61 Te Okuroa Drive (Papamoa Gurudwara Sahib).

A petition was tabled from the Sikh Indian community requesting:
We request to install covered bus stop for the people of Papamoa, specially kids and senior citizens during rain they face problem. Located 61 Te Okuroa Drive, Papamoa in front of Sikh temple, Sri Guru Granth Sahib ji. There's no bus stop nearby.

RESOLUTION CO2/23/2

Moved: Commissioner Stephen Selwood
Seconded: Commissioner Shadrach Rolleston

That the petition be received.

CARRIED

10 RECOMMENDATIONS FROM OTHER COMMITTEES

Nil

11 BUSINESS

11.1 Bay Venues User Fees Review and Office Refurbishment

Staff Christine Jones, Acting Chief Executive
Paul Davidson, Chief Financial Officer

External Chad Hooker, BVL Chief Executive
Adam Ellmers, BVL General Manager: Finance and Commercial

Key points

- The review had benchmarked user fees against other cities and all fees - except for Baywave -

sat well below the benchmark of other areas.
- Increasing fees would have an impact on some sectors of community and needed to be weighed up against the responsibility to get the balance right between user pays and the public good ratepayer perspective.
- BVL considered they had reached a fair and reasonable balance. When considering a dollar term basis per user per visit it was a minor increase and would still sit below the benchmark.
- Office accommodation currently had staff at 10 different locations. Would like to bring the staff together to build good teamwork and a better organisational culture, and to deliver their community outcomes. Funding would be reallocated from the existing Baypark budget.

In response to questions
- In regard to timing of the proposed increases, it was noted that the general admissions fees would be implemented on 1 July 2023, and the regular user groups on 1 January 2024, to enable them time to have their budgets in place.
- Consideration was given to a number of scenarios when setting the recommended fees, noting that the quality of some of the facilities were lower than others.
- It was noted that there was time to reconsider the fee structure to bring the increases more in line with the benchmark and report back to the 20 March 2023 meeting.

Discussion points raised
- Discussion ensued on the balance of user pays fair share versus ratepayer funding, and the need to have sufficient funding to invest in the facilities to improve the level of service provided.
- It was agreed to defer the decision until the 20 March 2023 Council meeting to allow for reconsideration of the fees, and to also consider the Council grant to allow for increased upkeep in some of the facilities. This would also provide transparency to the public.
- There was a need to be mindful that it had been a tough year for many and some people in the area were suffering quite badly.
- Commissioners acknowledged Bay Venues for their good work and for attempting to get the balance right between the community use and service provision.

RESOLUTION CO2/23/3

Moved: Commissioner Stephen Selwood
Seconded: Commissioner Bill Wasley

That the Council:

(a) Receives the Bay Venues User Fees Review and Office Refurbishment report.

(b) Approves in principle to support the user fees with a view to increasing fees where possible, and requests a further report on the grant for the use of community facilities.

(c) Approves the reallocation of Bay Venues capital budget to fund the support office refurbishment, noting that this project has been approved by the Bay Venues Board and is in alignment with the Baypark Masterplan.

(d) Approves additional rates funding of $186,000 per annum to cover depreciation and interest costs associated with the Baypark office refurbishment.

CARRIED

11.2 Traffic & Parking Bylaw Amendment 42

Staff Nic Johansson, General Manager: Infrastructure Services

Key points
- The proposed changes were for safety and operational reasons and to enable enforcement.

RESOLUTION CO2/23/4

Moved: Commissioner Bill Wasley
Seconded: Commissioner Shadrach Rolleston

That the Council:

(a) Receives the report "Traffic & Parking Bylaw Amendment 42".

(b) Adopts the proposed amendments to the Traffic and Parking Bylaw (2012) Attachments as per Appendix B, relating to minor changes for general safety, operational or amenity purposes, to become effective on or after 28 February 2023 subject to appropriate signs and road markings being implemented.

CARRIED

11.3 Executive Report

Staff Nic Johansson, General Manager: Infrastructure Services
Paul Davidson, Chief Financial Officer
Christine Jones, General Manager: Strategy, Growth & Governance
Alastair McNeil, General Manager: Corporate Services
Sarah Omundsen, General Manager: Regulatory and Compliance
Gareth Wallis, General Manager: Central City Development

Infrastructure Services
Key points
- The summer holiday waste collection campaign had gone well with no increase noted in the feedback. There had been improved communication prior to the holiday season and increased collections. Further information would be provided in March along with a full analysis.

In response to questions
- Comment would be sought from local litter collector Sue Hodkinson whether she had noticed an improvement in the waste collection.
- The construction period for the Te Maunga transfer station redevelopment was expected to take 18 months once the contract had been let.
- The Corporate Sustainability Plan was expected to be in draft form to Council for consideration in October 2023.
- While the recent rainfall in the city was not extraordinary, the water coming from the ranges down through the streams had caused damage. It was a 1:20 event in the city and 1:100 in the ranges. The rainfall over the summer had completely saturated the area with 400mm falling in January when the norm was 75mm.

Discussion points raised
- Information was requested on whether there was an increase in the patronage of the cycleway along Totara Street on weekends and weekdays before and after the installation of the lights; and a further update in 6 months was requested.
- Key metrics were requested on issues such as congestion over the summer holidays and how well the transport system performed.
- The need to consider a whole catchment view was highlighted with the rain events, which also highlighted the need for the Council to meet with the Western Bay District Council, Bay of Plenty Regional Council and the Crown to focus on a sub-region strategy for the Wairoa River.

Community Services

Discussion points raised

- Higher level of service was noted for the cemeteries as a result of this activity being taken back in house.
- There was a need to ensure that any new facilities provided had maintenance plans so that they remained befitting to the city.
- Commissioner Rolleston noted that he had attended the youth climate change action plan hui at Huria Marae which had 30-40 young people engaged in assisting with the development of a plan. It was refreshing to hear from young people and listen to their perspective and views around climate change.
- It was requested that dual park names be used in future reports.

Strategy, Growth and Governance

Key points

- Submissions were included in the report on the Resource Management Act reform and the Local Government Electoral Legislation Bill seeking retrospective approval.
- The strategic framework and Te Ao Māori approach would be provided to the Strategy, Finance and Risk Committee for endorsement.

Corporate Services

Key points

- The community responded well to the way in which Council reacted to a situation – many people used the Council portal for information during the recent disasters.
- Digital Services had 400,000 customer records and a programme was being carried out to create more accurate records.
- Staff turnover was nearly 16% and consideration would be given to what staff needed in an attempt to get this down to 10%.

Discussion points raised

- Commissioners acknowledged the work done by staff on the recent submissions.
- It was noted that paragraph 82 of the report was confusing and further explanation was needed so the public could easily understand it.
- Staff were asked to be mindful when using internal naming as external users also needed to understand the terminology.

Regulatory and Compliance

Key points

- Staff were prioritising catching up on getting consents out within the timeframes, with this now sitting at 70%.
- The building warrant of fitness programme had been amended by MBIE and staff were working closely with businesses. There was also a reputational risk and Council staff were making it clear to the business owners that it was a MBIE guideline change and advising what was now required.
- The gap in planning staff was being filled by consultants at this stage. There was also work with the metro councils to share resources or do things differently and to bring new planners in and build their skills.

Discussion points raised

- It was noted that building firms needed to be able to get on with building, and it was requested that staff work towards improving the timeframes for consenting.

City Development and Partnerships

Key points

- External fundraising was paying dividends for a number of opportunities within the city.
- TCC were currently advertising for the CCO board for the new Te Manawataki o Te Papa

development and the art gallery.
- It had been confirmed that the installation of the railway underpass would be carried out over Easter.
- Willis Bond and LT McGuiness were well in advance for the 90 Devonport Road construction with the blessing taking place on 3 March 2023 when the first spade would be put in the ground.
- Local mana whenua water service projects would be covered within the normal budget.

In response to questions
- A chart noting all of the projects within the CBD and outlining the milestone points for each would be provided to Commissioners.
- Memorial Park and Tunks Reserve - Council would go to market for a design partner within the next two weeks and for a construction partner within three weeks. Key decisions would be made as part of the Long-term Plan (LTP) and staff were currently updating the costings for the programme as envisaged.
- Staff were assessing the seismic issues with the indoor court to decide whether to fix it or rebuild it. The decision would be made as part of the LTP considerations.

RESOLUTION CO2/23/5

Moved: Commissioner Stephen Selwood
Seconded: Commissioner Bill Wasley

That the Council:

(a) Receives the "Executive Report".

(b) Retrospectively endorses the submissions to the:

(i) Natural and Built Environment Bill and Spatial Planning Bill;

(ii) Inquiry into the 2022 Election; and

(iii) Sale and Supply of Alcohol (Community Participation) Amendment Bill.

CARRIED

It was noted that Commissioner Rolleston did not vote on this item.

11.4 Submission to Local Government Official Information and Meetings Act Amendment Bill

Staff Margaret Batchelar, Manager: Customer Services

RESOLUTION CO2/23/6

Moved: Commissioner Bill Wasley
Seconded: Commissioner Stephen Selwood

That the Council:

(a) Approves Attachment 1 – Tauranga City Council's "Submission to Local Government Official Information and Meetings Act Amendment Bill 2022".

CARRIED

11.5 Appointment of Tangata Whenua Representatives to SmartGrowth Leadership Group

Staff Christine Jones, General Manager: Strategy, Growth & Governance

RESOLUTION CO2/23/7

Moved: Commissioner Bill Wasley
Seconded: Commissioner Shadrach Rolleston

That the Council:

(a) Receives the report "Appointment of Tangata Whenua Representatives to SmartGrowth Leadership Group".

(b) Accepts the recommendation of Te Rangapū Mana Whenua o Tauranga Moana and confirms the appointment of Whitiora McLeod as a Tangata Whenua Representative to the SmartGrowth Leadership Group.

(c) Accepts the recommendation of Te Kāhui Mana Whenua o Tauranga Moana and confirms the appointment of Riki Nelson as a Tangata Whenua Representative to the SmartGrowth Leadership Group.

(d) Notes that this appointment is also to be confirmed by Western Bay of Plenty District Council and Bay of Plenty Regional Council.

CARRIED

11.6 Draft submission on Future for Local Government draft report

Staff Christine Jones, General Manager: Strategy, Growth & Governance
Jeremy Boase, Manager: Strategy & Corporate Planning

Correction - Paragraph 17 final sentence should read:
However, we do not *believe that review should be led by central government*.

Discussion points raised

- Commissioners had no vested interest as they were not elected members which allowed them to take a more independent view.
- It was disappointing that the current discussion had not taken the opportunity to look at the wider picture of rules and regulations and where Council functions could lie.
- Commissioners agreed with a four-year term and discussions being held with central government to better align local and central government with regards to commitment of funding, terms of appointment and long-term planning.
- It was essential to highlight the need for a special place for metro councils, especially with timeliness, conflict with timing for central government funding and for metro councils to be able to expand. They continually had to work with surrounding territorial authorities whose residents used the metro facilities. There were many smaller town subdivisions that required services to be provided by the metros and these points needed to be recognised in local government reform.
- There was a disconnect with the various reforms taking place which would increase with planning and climate change legislation and would remain highly complex structures and systems. The submission needed to include that these needed to be aligned so that councils could move forward and get on with development.
- Paragraph 108 noted a potential structure for the Bay of Plenty and functions needed to be established first before it focused on the form.
- Include a recommendation capping elected member service to a set number of terms.

- Include a suggestion that a system of split-elections, whereby only half of a council is elected at each election, be investigated.

RESOLUTION CO2/23/8

Moved: Commissioner Bill Wasley
Seconded: Commissioner Stephen Selwood

That the Council:

(a) Receives the report "Draft submission on Future for Local Government draft report".

(b) Approves the draft submission included at **Attachment 1** with the following amendments:

(i) Addition of the word 'not' to the second sentence of paragraph 17;

(ii) inclusion of a recommendation that the Review Panel should recommend capping elected members' service to a set number of terms;

(iii) inclusion of a recommendation that, if four-year terms were not approved, a system of split-elections (whereby only half of a council is elected at each election) be investigated

(c) Delegates authority to the General Manager: Strategy, Growth & Governance to make minor drafting, typographical, and presentation amendments as required prior to formally submitting the submission ahead of the 28 February deadline.

(d) **Attachment 2** can be transferred into the open when both councils have finalised their submission to the Review Panel.

CARRIED

11.7 2024-2034 Long-term Plan - Significant Forecasting Assumptions

Staff Christine Jones, General Manager: Strategy, Growth & Governance
Josh Logan, Team Leader: Corporate Planning

Key points

- The forecast assumptions work was required as part of the LTP.

In response to questions

- A lot of modelling had been done for climate change, stormwater and natural hazards, the upper catchments and impacts and how these were accounted for or accommodated. Considerable work went into planning and taking into consideration the trends and spikes that were then included in the general modelling within the LTP. There was a solid plan for those and the definition of resilience in this context was more about what do with the existing infrastructure.
- Examples included route solutions in the eastern corridor and where to locate wastewater pipes. The more information provided allowed more accurate planning.
- The population table increases and declines were also based around the availability of land. Planning was done with a 30-year lens and constantly monitored. With planning in place development could be pushed forward or pulled back as needed.
- Statements around the wider region and the effect on transport, commercial amenities etc were noted. The SmartGrowth strategy was a good avenue to have subregional conversations. Further information would be provided to the Council in April and to the June SmartGrowth meeting.

Discussion points raised

- Include in the projections the special role that metros played for residents from the surrounding districts with services catered for in the city. Many lived outside the city but worked in the city.
- Noted in the 2018 census that 5,500 people drove into the region for work on a daily basis, so wider needs such as the transport system needed to have a clear indication of what it was servicing so it could be factored into the decision making.

RESOLUTION CO2/23/9

Moved: Commissioner Bill Wasley
Seconded: Commissioner Stephen Selwood

That the Council:

(a) Receives the report "2023-2034 Long-Term Plan – Significant Forecast Assumptions".

(b) Approves the draft 2023 – 2034 Long-Term Plan Significant Forecasting Assumptions and associated mitigation actions as set out in **Attachment 1.**

(c) Additional points to include:

a) Assumption 12 risk to be reworded to " …. reveal more cost-effective methods of delivering services and desired outcomes which may be preferred"
b) Add an assumption that growth outside of the city boundaries will impact on planning and investment in infrastructure.
c) Add an assumption that legislative change including Resource Management and associated risks of impacts on planning and investment.
d) Review the waters assumption based on announcements by both Labour and National political parties on the nature, extent, and timing of reform.

CARRIED

11.8 Existing Use Rights in the Mount Maunganui Industrial Area

Staff Christine Jones, General Manager: Strategy, Growth & Governance

Key points

- The report provided an update on the industrial area at the Mount and the number of workstreams underway for spatial planning, the Mount Industrial study and zoning issues.
- Iwi were wanting changes and staff were working with Whareroa Marae hau kainga, but had not yet come to a formal conclusion.
- Work was also continuing with the Bay of Plenty Regional Council (BOPRC) on the Air Quality Plan change and the Environment Court interim decision.
- Legal advice was attached to the report relating to existing use rights, which noted that those who had built had existing use rights and there was no legal mechanism under the district plan to move those activities. Future activities may have an avenue through BOPRC through a series of tests relating to soil conservation, water, ecosystems, and natural hazards.
- There were opportunities only with future actions or activities within the resource management area.

In response to questions

- Modelling for the area for natural hazards would be a crucial part of the Mount plan.

Discussion points raised

- The Tauranga Moana Advisory Group started the inquiry and part of the process would be to report back to their meeting in June 2023.
- It was important when talking about planning being undertaken for the future to acknowledge

that this was a significant port which had much industry associated with it. Discussions should be about emitters/emissions rather than the industry. Businesses were there and had the right to be there and Council did not have the mechanism to change that.

- The report clearly outlined what the situation was, and it was suggested that the report and legal advice be provided to the working group, as it would be helpful for everyone to have the advice and be involved in the discussion of where to go from there. There were 800 businesses employing 12,000 people in that area, so it was a significant area for the city. The emissions related to a relatively small handful of those businesses.
- There was also a perceived impact on the residential community. It was noted that the industry groups had invested heavily to reduce the impact as they were aware of impact and their social licence to operate. Many were well below the consenting emission thresholds and were still seeking to do more and this should be noted.
- It was requested to request a change within SmartGrowth from heavy industry to emitters as there was no proposal to stop industry.

RESOLUTION CO2/23/10

Moved: Commissioner Bill Wasley
Seconded: Commissioner Stephen Selwood

That the Council:

(a) Receives the report "Existing Use Rights in the Mount Maunganui Industrial Area".

(b) Notes the legal advice received, in particular that:

(i) Many industrial activities in the Mount Maunganui Industrial Area have existing use rights.

(ii) Rezoning under the City Plan could potentially constrain future activities but not activities that are protected by existing use rights.

(iii) No feasible legal mechanism open to the Tauranga City Council has been identified to compel existing industry to relocate away from Whareroa Marae.

CARRIED

At 11.39am the meeting adjourned.

At 11.47am the meeting reconvened.

11.9 Project delivery update - verbal report

Staff Nic Johansson, General Manager: Infrastructure Services
Amanda Davies, Manager: Spaces and Places Project Outcomes
Brendon Bisley, Director of Transport
Kelvin Hill, Manager: Water Infrastructure Outcomes
Gareth Wallis, General Manager: Central City Development

Key points

- Overall projects were where they were expected to be by year end.
- Much of the works were inground which was too silty for much of this summer.
- Inflation was likely to take longer to come down.
- Cyclone cost to the Government were likely to be around $13b, and was likely to have an impact on the local market; some Crown funding was likely to be less than anticipated.
- Risks included resource availability, funding, and cost escalation.
- There was a need to look at the viability of some projects in the LTP.

Transportation

- Funding was available for 150 bus shelters over the next 24 months. One could be installed as requested next to the Sikh Temple at Te Okuroa Drive, Papamoa.
- Much of the project delivery was weather dependent. The initial target of 99% budget had now been reduced to 93%.
- Extra sealing resources had been secured, but the risk was that days were being lost because of the bad weather.
- The main change was the Tauriko West budget for which the forecast had been reduced from $50.7 to $11.4 spend this year. This had been offset by the Cameron Road project being completed sooner.
- Top five projects - there had been a 10-30% cost increase with Stage 1 of Cameron Road which was now likely to be completed in early 2024.
- The Area B cycleway, when completed, would create a circuit in the western part of the city network.
- Risks included funding being tightened heading forward, but the assumption was that it would remain the same until told otherwise.
- Four business cases had been moved out three months and would not be finished until later in the year. Costings were 20-30% higher.
- Waka Kotahi were partners on all the business case projects and they were acutely aware that these were the key to unlocking other areas for growth. They would not delay these four projects as they were aligned with the government's mode shift and outlook of what they were trying to achieve.

City Waters

- Stormwater issues had kept staff busy behind scenes over the summer, but the systems had coped well.
- The Waiāri water treatment plant would officially open on 22 March 2023 and had cost $200m to build over a 15-year period from start to finish.
- The bioreactor site had included methodology above and below ground with two separate contracts. The area had to be pumped out after each rain event.
- The Waiāri stream had risen five metres at the intake site. This may have been caused by a slip upstream which had temporarily dammed the stream as the water came very quickly. The plant was designed to take a 1:100 event and they were confident the intake had been designed correctly. One of the pumps required some additional protection to be put in place to stop any future silt damage.
- A slight overspend had occurred on renewals, with other projects running to form.
- The weather had an impact, but they were still on track for expenditure with no concerns at this stage.
- The Te Maunga desludging project had increased from an 8-hour workday to a 16-hour day and may still increase to a 24-hour day.
- Risks - some forward work may have up to a 50% increase in cost with the main driver being lack of people resource to carry out the work.

Spaces and Places

- Delivering a lot of community assets such as the park playground, cycleway rides, upgrades in the Historic Village and at Ila Park. Two project teams were fully resourced.
- Budget - bad weather had caused some delays for some of the larger projects like Marine Parade, but they were still on track and confident projects would be completed.
- Risks included cross council project dependency. The skatepark had a working group in place.

Civic Development

- The Dive Crescent carpark was underway and due for completion in April. When this was fully operational the Stand north carpark would be closed and work commenced on that.
- The design for the Strand reserve would be provided to the Council in April.
- Tunks Reserve work was due to start in May 2023 and would be a 164-day work programme.

- The landlords and tenants around Masonic Park would be given an update on the programme in the near future.
- The waterfront playground would be completed as budget allowed. It was hoped that it would be fully completed within budget.
- Risks included the completion of the railway underpass, cost escalation and inflation.

In response to questions

- In response to a query regarding the cost increases, it was noted that the best gauge for costings was the tender box. Currently TCC was in a good position with people lining up for the various panels, and had received a good uptake on what was put to market. Increased visibility of the project work pipeline going forward and the procurement strategy within market had been achieved. Council was continuously rolling out a lot of work and implementing the contemporary procurement practices had helped. Staff were also holding some tough negotiations with contractors when they did not meet expectations.

Discussion points raised

- The Commissioners thanked staff for the update and their efforts and noted that they had seen considerable lift in the capability of the organisation. They were pleased to see that staff were as invested as the commissioners to turn Tauranga into a great place to live and work.

RESOLUTION CO2/23/11

Moved: Commissioner Bill Wasley
Seconded: Commissioner Shadrach Rolleston

That the Council:

(a) Receives the report "Project delivery update – verbal report".

CARRIED

Attachments

1 Presentation - Project Delivery Update - PDF

12 DISCUSSION OF LATE ITEMS

Nil

13 PUBLIC EXCLUDED SESSION

Resolution to exclude the public

RESOLUTION CO2/23/12

Moved: Commissioner Bill Wasley
Seconded: Commissioner Stephen Selwood

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
13.1 - Public Excluded minutes of the Council meeting held on 7 February 2023	s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons s7(2)(b)(ii) - The withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information 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
13.2 - Tauriko Public Transport Facility	s7(2)(g) - The withholding of the information is necessary to maintain legal professional privilege 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
13.3 - Exemption from Open Competition - Biosolids refuse disposal	s7(2)(h) - The withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities	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
11.6 - Draft submission on Future for Local Government draft report - Confidential Attachment 2	s7(2)(c)(i) - The withholding of the information is necessary to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied	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

CARRIED

At 12.38pm the meeting adjourned.

At 1.31pm the meeting reconvened in public excluded.

14 CLOSING KARAKIA

Commissioner Shad Rolleston closed the meeting with a karakia.

The meeting closed at 2.00 pm.

The minutes of this meeting were confirmed as a true and correct record at the Ordinary Council meeting held on 20 March 2023.

.....

CHAIRPERSON

8 DECLARATION OF CONFLICTS OF INTEREST

9 DEPUTATIONS, PRESENTATIONS, PETITIONS

Nil

10 RECOMMENDATIONS FROM OTHER COMMITTEES

Nil

11 BUSINESS

11.1 Bay Venues' Proposed Draft User Fees and Charges Schedule

File Number: **A14466387**

Author: **Anne Blakeway, Manager: City Partnerships**

Authoriser: **Paul Davidson, Chief Financial Officer**

PURPOSE OF THE REPORT

1. The purpose of this report is to present Bay Venues proposed draft user fees and charges schedule for Council to adopt as a draft for public consultation.

RECOMMENDATIONS

That the Council:

(a) Receives the report "Bay Venues' Proposed Draft User Fees and Charges Schedule".

(b) Adopts Bay Venues proposed draft user fees and charges as set out in Option 1 and Attachment 1, as a draft for public consultation, incorporating any further amendments as directed by Council at this meeting.

(c) Noting that Council staff are currently working with Bay Venues on a wider piece of work around sustainable funding and financing in the longer term, which will come to Council on 29 May.

EXECUTIVE SUMMARY

2. On 27 February 2023, Bay Venues presented a report to Council recommending increasing user fees across the network of community facilities to align their user fees with national market benchmarks of comparable community facilities in other major cities.

3. Council resolved to "*approve in principle to support the user fees, with a view to increasing fees where possible and request a further report on the grant for the use of community facilities."*

4. Following feedback from Council, Bay Venues has come back with a proposal to increase some of the user fee recommendations in accordance with those proposed in Appendix 1, to align more closely with the current user fees of benchmark community facilities around the country. This has resulted in a further revenue increase of $105,000, to a total estimated increase in user fees of $1.1 million per annum.

5. It should be noted that the last significant review of Bay Venues' user fees for community facilities was undertaken in 2020 and no changes were made, other than normal CPI increases, due to the financial impact of COVID on the community.

6. Bay Venues recommend a one-off upfront adjustment to the benchmark in Year 1 (Option 1). The second option from the 27 February report, which was to spread user fee increases over two years, has been removed.

7. Council also requested that Bay Venues separate the funding request from the user fees recommendation. This will now be presented to Council on 29 May and will include a more transparent view of all Bay Venues funding, including operating subsidy, debt and depreciation funding. This recognises that there may be a funding shortfall in the 2024 financial year and if this is not able to be funded will be rectified as part of this wider review to be implemented in the 2024/34 Long Term Plan.

BACKGROUND

8. Bay Venues commissioned RSL to review user fees in the funded network against a national benchmark (comprising 7 other New Zealand cities). On average, Bay Venues' analysis concluded that current user fees are, in nearly all cases, significantly below national benchmark (see detailed table in Attachment 1). Current user fees are between 27% & 90% of the benchmark (excluding Baywave which is slightly ahead of benchmark). Most high use facilities are between 49% and 90% of benchmark.

9. Typical comparisons to the national benchmark are provided in the table below for an example of how fees compare to equivalent facilities (all prices include GST):

	Aquatics	**Indoor Courts**	**Community Halls**	**Community Centres**
	Adult Greerton	**Youth/Senior Community Trustpower Arena**	**Adult Community Bethlehem Hall**	**Yth/Sen Community XL Room**
Bay Venues current user fee	$2.60	$24.90	$19.40	$21.50
Current % of national benchmark	63%	49%	66%	61%
Comparisons with other cities:				
Wellington	$3.40	$64.00	$19.00	$30.00
Hamilton	$4.00	$44.00	$35.00	$40.00
Christchurch	$4.50		$15.30	$25.00
Pukekohe	$2.70			
Auckland	$5.00 $4.30	$50.00	$26.00 $53.00	$28.80 $40.80
Dunedin		$22.50	$20.00	
Lower Hutt		$75.00	$24.00	

10. In some areas of the user fees review, Bay Venues identified that the national benchmark did not reflect the standard of the facilities or felt it would significantly impact affordability. Where this is the case, the recommended user fee has been reduced to reflect the standard of the facility and perceived affordability.

STRATEGIC / STATUTORY CONTEXT

11. As a council-controlled organisation (CCO), Bay Venues is required to operate in a financially prudent manner and is intended to produce an operating surplus (after a Council operating subsidy to fund community outcomes).

12. Bay Venues purpose as a whole is to provide a service to the community on behalf of Council rather than to operate a business for profit.

OPTIONS ANALYSIS

13. Bay Venues recommend a one-off upfront adjustment to the benchmark in year 1. The second option from the 27 February report, which was to spread user fee increases over two years, has been removed.

RECOMMENDED OPTION

Increase user fees to broadly align more closely with national benchmark in Year 1 (FY24).

14. This will result in a user fee increase of between $0.25 - $2.00 per person in Year 1 (FY24), reverting to a normal CPI increase from year 2 (FY25) onwards.

	Current: User Fee Range	New User Fee Range	Increase range per user
Aquatic Entry Fee (per person, excluding Baywave which is increasing by CPI only)	$1.30 - $5.50	$3.30 - $6.60	$1.30 - $2.00
Squad Swimmer (per person per hour, assuming 4 swimmers per lane, including entry)	$4.83 - $6.53	$5.85 - $7.65	$1.03 - $1.13
Indoor Court User (per person per hour, assuming 16 players per court)	$0.96 - $2.99	$1.83 - $3.73	$0.73 - $1.23
Community Hall User (per person per hour, assuming 20 people per group)	$0.34 - $1.21	$0.81 - $1.65	$0.25 - $0.56
Community Centre User (per person per hour, assuming 20 people per group)	$0.39 - $1.53	$0.78 - $2.63	$0.39 - $1.13

15. Revenue increase through user fee contribution in year 1 (FY24) will be $1.1 million.

Advantages	Disadvantages
• Reduces the operating subsidy burden on TCC and supports a more sustainable “user-pays” model. • User fees are fair & reasonable, aligned with comparative national benchmark. • Straightforward to implement. Will bring user fees into line with national benchmark in one step. • Unlikely to require further significant user fee increases in the short to medium term.	• Will result in “bill shock” at a time of increased cost of living and high inflation. • Likely to be a negative response from areas of the community impacted by user fee increases.

Other Options

16. A range of other options were considered to address the operating deficit, e.g. increasing fees in the non-funded network and reducing costs. These were found to be not viable without significant impacts on the community outcomes and levels of service expected of Bay Venues. Bay Venues will continue to investigate other options.

FINANCIAL CONSIDERATIONS

17. The financial considerations are outlined above and in Attachment 1.

LEGAL IMPLICATIONS / RISKS

18. It has been assumed that no significant decline in demand will result from an increase in Bay Venues user fees, given that most facilities are running at or close to full capacity, and that the proposed increases are relatively low on a per person basis.

CONSULTATION / ENGAGEMENT

19. Bay Venues' pricing review will be included, along with Tauranga City Council's annual review of user fees and charges, in the community consultation undertaken as part of the Annual Plan 2023/24 and Long-term Plan 2024-2034 processes.

SIGNIFICANCE

20. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy. Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.

21. In making this assessment, consideration has been given to the likely impact, and likely consequences for:

    (a) the current and future social, economic, environmental, or cultural well-being of the district or region

    (b) any persons who are likely to be particularly affected by, or interested in, the decision.

    (c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.

22. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the decision is of medium significance.

ENGAGEMENT

23. Taking into consideration the above assessment, that the decision is of medium significance, officers are of the opinion that consultation is required under the Local Government Act (2002). This will take place along with TCC's annual user fees and charges review as part of the Annual Plan 2023/24 community consultation process.

Click here to view the TCC Significance and Engagement Policy

NEXT STEPS

24. If the pricing review proposal is approved by Council, this will be included in TCC's annual user fees and charges review as part of the Annual Plan 2023/24 community consultation process.

25. Subject to the outcome of community consultation, Bay Venues will increase user fees in the financial year 2023/24 to broadly align with the national benchmark.

ATTACHMENTS

1. Bay Venues Proposed User Fees and Charges Schedule - A14466389 ⇩

Bay Venues Community Facility User Fees Review

Attachment 1 - Detailed user fees & charges schedule

	Annual users	Current Price FY23	Current % benchmar	FY24 Price	$ Change vs	New % Benchma rk
Aquatics General Entry						
Baywave						
Adult	57,831	8.50	118%	9.00	0.50	119%
Senior	4,429	5.70	121%	5.70	0.00	116%
Child	69,361	5.70	146%	5.70	0.00	139%
Child 2-4	15,701	2.40	68%	4.30	1.90	115%
Family	8,087	22.80	114%	25.20	2.40	120%
Hydroslide	38,412	5.90	69%	6.40	0.50	71%
Spa/Sauna - additional to entry fee	n/a	5.40	n/a	5.80	0.40	n/a
Spa/Sauna Only - Adult		8.90		10.00	1.10	
Spa/Sauna Only - Senior		6.70		7.20	0.50	
Greerton						
Adult	14,376	5.50	90%	6.60	1.10	103%
Senior	3,704	2.60	63%	4.60	2.00	107%
Child	10,172	2.60	68%	4.00	1.40	100%
Child 2-4	3,158	1.30	45%	3.30	2.00	108%
Family	1,366	13.00	65%	19.60	6.60	93%
Memorial/Otumoetai						
Adult	11,399	5.30	84%	6.60	1.30	100%
Senior	1,632	2.60	55%	4.60	2.00	93%
Child	39,558	2.60	79%	4.00	1.40	115%
Child 2-4	1,854	1.30	45%	3.30	2.00	108%
Family	1,127	13.00	76%	19.60	6.60	109%
Aquatics Lane Hire						
Standard Lane Hire	28,562	9.30	59%	13.00	3.70	79%
Adult Squad Baywave		4.20	n/a	4.40	0.20	n/a
Adult Squad Greerton/Memorial/Otumoetai		2.50	n/a	2.60	0.10	n/a
Child Squad Baywave		4.10	n/a	4.30	0.20	n/a
Child Squad Greerton/Memorial/Otumoetai		1.90	n/a	2.00	0.10	n/a
Aquatics Memberships						
Baywave	122	433.10	n/a	585.00	151.90	n/a
Greerton/Memorial/Otumoetai	177	277.68	n/a	375.00	97.32	n/a
Indoor Sports						
Trustpower Arena						
Adult – Standard	226	47.90	86%	59.60	11.70	102%
Adult - Community Regular	1,568	38.30	69%	50.70	12.40	87%
Youth/Senior - Standard	1,427	31.10	61%	50.70	19.60	94%
Youth/Senior - Community Regular	3,175	24.90	49%	41.70	16.80	78%
QEYC						
Adult - Standard	363	33.60	60%	47.70	14.10	82%
Adult - Community Regular	571	26.80	48%	40.50	13.70	69%
Youth/Senior - Standard	213	23.80	47%	40.50	16.70	75%
Youth/Senior - Community Regular	1,005	19.00	37%	33.40	14.40	62%
Aquinas / Merivale / Mount Sports						
Adult - Standard	249	25.70	58%	41.70	16.00	90%
Adult - Community Regular	1,445	21.90	50%	35.50	13.60	76%
Youth/Senior - Standard	157	17.60	69%	35.50	17.90	132%
Youth/Senior - Community Regular	1,109	15.40	60%	29.20	13.80	109%

	Annual users	Current Price FY23	Current % benchmark	Option 1 (FY24)	$ Change vs current	New % Benchmark
Community Halls						
Bethlehem / Greerton / Matua / Welcome Bay						
Adult - Standard	660	24.20	78%	33.00	8.80	102%
Adult - Community Regular	1,630	19.40	66%	28.00	8.60	91%
Youth/Senior - Standard	1,532	18.80	61%	28.00	9.20	86%
Youth/Senior - Community Regular	2,201	15.20	52%	23.10	7.90	76%
Tauriko Settlers Hall / Waipuna						
Adult - Standard	130	21.40	84%	26.40	5.00	98%
Adult - Community Regular	441	14.50	76%	22.40	7.90	111%
Youth/Senior - Standard	109	16.30	64%	22.40	6.10	83%
Youth/Senior - Community Regular	1,329	13.70	71%	18.50	4.80	92%
Cliff Rd / Elizabeth Street						
Adult - Standard	1,574	12.00	50%	23.10	11.10	92%
Adult - Community Regular	900	9.70	60%	19.60	9.90	115%
Youth/Senior - Standard	254	8.50	35%	19.60	11.10	78%
Youth/Senior - Community Regular	180	6.80	42%	16.20	9.40	95%
Community Centres						
Arataki / Papamoa Sport & Recreation Centre						
XL Room (Heron/Dotterel Combined)						
Adult - Standard	364	30.50	60%	52.60	22.10	98%
Adult - Community Regular	208	24.30	69%	42.10	17.80	114%
Youth/Senior - Standard	140	26.40	52%	42.10	15.70	79%
Youth/Senior - Community Regular	1,117	21.50	61%	34.20	12.70	92%
Large Room (Heron, Dotterel)						
Adult - Standard	736	19.60	36%	42.10	22.50	73%
Adult - Community Regular	612	15.70	50%	33.70	18.00	102%
Youth/Senior - Standard	398	15.10	27%	33.70	18.60	58%
Youth/Senior - Community Regular	953	12.00	38%	27.40	15.40	83%
Medium Room (Kingfisher, Penguin)						
Adult - Standard	1,451	14.30	38%	33.70	19.40	86%
Adult - Community Regular	363	11.40	52%	27.00	15.60	116%
Youth/Senior - Standard	244	12.40	33%	27.00	14.60	69%
Youth/Senior - Community Regular	1,124	10.00	45%	21.90	11.90	94%
Small Room (Sandpiper, Oystercatcher)						
Adult - Standard	539	11.00	50%	23.80	12.80	102%
Adult - Community Regular	551	9.10	63%	19.00	9.90	126%
Youth/Senior - Standard	269	9.70	44%	19.00	9.30	82%
Youth/Senior - Community Regular	1,242	7.80	54%	15.50	7.70	102%
Papamoa Community Centre						
Large Room (Tohora, Aihe)						
Standard	221	28.70	52%	42.10	13.40	73%
Community Regular	183	23.00	73%	33.70	10.70	102%
Medium Room (Mako)						
Standard	435	26.50	71%	33.70	7.20	86%
Community Regular	109	19.60	89%	27.00	7.40	116%
Small Room (Tamure, Tarakihi, Patiki, Atrium)						
Standard	162	20.70	93%	23.80	3.10	102%
Community Regular	165	13.90	97%	19.00	5.10	126%

APPENDIX 2 – OTHER OPTIONS TO OFFSET OPERATING DEFICIT

OPTION	CONSIDERATION	RECOMMENDATION
Increase user fees & charges in the funded network.	Pricing review indicates current fees are well below national benchmark, therefore there is scope to increase prices to align with market.	Recommended
Increase User Fees & Charges in the non-funded network.	The non-funded network is more commercial in nature, therefore prices are reviewed on an annual basis to ensure they align with the market. There is limited scope to increase prices further.	Recommended where possible
Increase Operating Subsidy	The operating subsidy has historically increased by CPI only. Significant growth in user volume and cost to run facilities provides scope to increase the operating subsidy.	Recommended
Reduce operating costs	• As a service industry staff costs represent 60% of total operating cost. Staff shortages have had a significant impact on Bay Venues ability to operate therefore we do not see any scope to reduce staff costs. Reducing staffing would impact negatively on levels of service and create additional health and safety risks that are not considered acceptable. • Other Costs are comprised primarily of facility maintenance, compliance & utilities which have risen significantly in recent years. Bay Venues have controlled these costs where possible, but any further reduction will impact significantly on levels of service and/or patron and staff health and safety.	Recommended where possible
Close Community Facilities	Not considered at this stage.	Not Recommended

11.2 Tauranga Art Gallery - approval of funding arrangements for new entranceway onto Masonic Park

File Number: **A14431330**

Author: **Anne Blakeway, Manager: City Partnerships**

Authoriser: **Gareth Wallis, General Manager: City Development & Partnerships**

PURPOSE OF THE REPORT

1. The purpose of this report is to present the Warren and Mahoney feasibility report, and the updated cost estimates, for the new Tauranga Art Gallery entranceway as part of the Masonic Park development project, for approval and to enable works to proceed to developed and detailed design.

RECOMMENDATIONS

That the Council:

(a) Receives the report "Tauranga Art Gallery - approval of funding arrangements for new entranceway onto Masonic Park".

(b) Notes that, following a feasibility report prepared by architects Warren and Mahoney, the full cost of requirements needed to deliver on the project objectives has been identified at a total cost of $3.38 million.

(c) Approves the $1.88 million balance of funds needed to create a total project budget of $3.38 million, to be phased over the next two financial years, noting that this will not have an impact on rates because:

- $250,000 will be funded through a private benevolent fund donation;
- $754,000 will come from already approved Tauranga Airport Reserves; and
- $876,000 will be funded through corporate sponsorship and/or other external funding sources, with details to be confirmed once formal agreements are in place.

(d) Notes that these cost estimates will be further refined through the developed and detailed design phases, and will be reported back to the Public Realm and Waterfront Steering Group Committee, and the Te Manawataki o Te Papa Governance Group.

EXECUTIVE SUMMARY

2. Council adopted the Te Manawataki o Te Papa preliminary design and cost report on 12 December 2022.

3. This report presents an update on the proposed new Art Gallery entranceway onto Masonic Park, including a high-level feasibility study (provided at Attachment 1), and finalised cost estimates (provided at Attachment 2).

4. An initial placeholder budget of $1.5 million was included in the Long-term Plan Amendment (2022) for external works associated with the relocation of the Art Gallery entranceway.

5. The results of the attached feasibility report, prepared by architects Warren and Mahoney, means that the costs associated with the internal changes and fitout needed for the project have now been identified and can be included in the overall project budget.

6. The projected cost is therefore expected to total $3.38 million, $1.88 million above the original placeholder budget of $1.5 million included in the Long-term Plan Amendment (2022).

7. It is important to note that included in this estimate is a 15% project contingency sum of $441,000, and escalation costs of $442,000. However, if the work is completed in 2023/24, escalation costs will reduce to $150,000.
8. The cost estimates will be further refined through the developed and detailed design process and will be reported back to the Public Realm and Waterfront Steering Group Committee, and the Te Manawataki o Te Papa Governance Group.
9. The $3.38 million costs will be funded by the following means:
    - $1.5 million already committed in the Long-term Plan Amendment (2022)
    - $250,000 will be funded through a private benevolent fund donation;
    - $754,000 will come from already approved Tauranga Airport Reserves; and
    - $876,000 will be funded through corporate sponsorship and/or other external funding sources, with details to be confirmed once formal agreements are in place.
10. This project is scheduled to be delivered by July 2024.

BACKGROUND

11. Warren and Mahoney have been engaged to assist in the development of two workstreams at Tauranga Art Gallery as part of the Te Manawataki o Te Papa civic precinct development programme.
12. They have proposed a two-stage process to allow rapid iteration of options and sign-off of a preferred design direction under Stage One, and subsequent development of this option into a concept design as Stage Two. Further details of this approach are provided at Attachment 1 – Tauranga Art Gallery Feasibility Report.
13. Stage One includes re-orientating the Gallery entrance, which will increase the prominence and visibility of the main entry, while also improving connectivity to Masonic Park and the rest of Te Manawataki o Te Papa precinct.
14. The addition of ‘jewel box’ pop outs will expand the Gallery footprint to the property boundaries, while also providing an opportunity for a potential café and retail offering.
15. The feasibility report also proposes changes to the existing internal feature stairway, to further open up the main atrium space, increasing flexibility, spaciousness, and exhibition wall space.
16. In parallel with this piece of work, Warren and Mahoney considered future development options to ensure that the Stage One piece of work does not prejudice or restrict development of the Art Gallery in the future.
17. Stage Two works will commence on formal signoff of the preferred development option.

STRATEGIC / STATUTORY CONTEXT

18. Our community has told us loud and clear that they want a vibrant, well-planned city centre that is inclusive, accessible, and diverse, with more activities and events for all to enjoy.
19. The Tauranga Moana Waterfront Plan, adopted by Council on 5 September 2022, provides a comprehensive conceptual layout to guide future development along the city centre’s waterfront from Dive Crescent to Tunks Reserve, including Masonic Park. The overall purpose of the Waterfront Plan is to reconnect and amplify the city centre’s connection to the harbour through the transformation of the waterfront into a premier recreational destination.
20. Te Manawataki o Te Papa has clear alignment with the city and Council’s strategic direction, from the aspirational community vision to Council’s action and investment plans.
21. One of six strategic priorities for Council is to drive delivery of the City Centre Masterplan – Te Manawataki o Te Papa, the broader City Centre Action and Investment Plan, and the Te Papa Peninsula Spatial Plan to revitalise and reactivate the heart of the city.

22. Te Manawataki o Te Papa clearly seeks to establish Tauranga's city centre as the commercial, civic and cultural heart of the Western Bay of Plenty sub region – the cultural and community focus of the city centre, and a unique civic destination for the stories and decision making of Tauranga and its people.

23. As Tauranga continues to grow, our city centre will continue to transform from a commercial business centre into a sub-regional destination, providing a wide range of activities and facilities that support our economy, strengthen our community, and celebrate who we are.

OPTIONS ANALYSIS

Option 1 – Council approves a total project budget of $3.38 million for the Tauranga Art Gallery Masonic Park entrance re-realignment project – RECOMMENDED

24. Noting that $1.5 million was previously approved as a placeholder budget in the Long-term Plan Amendment (2022).

25. Noting that the $1.88 million balance of funds required will not have an impact on rates, but will be funded by other sources:

- $250,000 will be funded through a private benevolent fund donation;
- $754,000 will come from already approved Tauranga Airport Reserves; and
- $876,000 will be funded through corporate sponsorship and/or other external funding sources, with details to be confirmed once formal agreements are in place.

Advantages	Disadvantages
• Improved functionality of design, as per recommendations from Warren and Mahoney, and feedback from Tauranga Art Gallery. • Increased prominence and visibility of the Art Gallery main entrance, whilst also improving connectivity to Masonic Park and the rest of Te Manawataki o Te Papa precinct. • Expands the Art Gallery footprint to the property boundaries, while also providing an opportunity for a potential café and retail offering. • The project can proceed at pace, with Council making progress towards delivering on the broad community benefits of the Te Manawataki o Te Papa programme. • Additional costs will not have an impact on rates.	• Will cause disruption to the short-term Art Gallery operations, in particular to the education programme.

Option 2 – Council does not approve a total project budget of $3.38 million for the Tauranga Art Gallery Masonic Park entrance re-realignment project. – NOT RECOMMENDED

26. This will mean that the total budget remains at the $1.5 million, for external work associated with the relocation of the Art Gallery entranceway only.

Advantages	Disadvantages
• Limits further expenditure on this particular project, which may present an opportunity cost for the external funding from the corporate sponsor to be utilised elsewhere.	• Will still cause significant disruption to Art Gallery operations, in particular to the education programme. • Decreased functionality of design, not incorporating recommendations from Warren and Mahoney, or feedback from the Art Gallery.

	• Lack of alignment with the Tauranga Moana Waterfront Plan, and the City Centre Action and Investment Plan (2022). • Decreased prominence and visibility of the main entry, with no opportunity to expand the Art Gallery footprint, or realise increased opportunities for a café and retail offering. • Council will make less progress towards delivering on the broad community benefits of the Te Manawataki o Te Papa programme.

FINANCIAL CONSIDERATIONS

27. Attachment 2 outlines the project costs for key elements of the development, as outlined in the Tauranga Art Gallery Feasibility Report.

Location		**Total cost NZD**
Masonic Park corner		$1,072,000
Wharf Street corner		$456,000
Stairway upgrade		$33,000
Internal works		$85,000
Front of house staircase		$139,000
Estimated net cost		**$1,785,000**
Margins and adjustments		
Design development risk	7.5%	$134,000
Professional fees and consents	19%	$365,000
Client direct costs	5%	$114,000
FF&E, AV and ICT		$100,000
Escalation for three years	17.7%	$442,000
Project contingency	15%	$441,000
Estimated total cost		**$3,381,000**

LEGAL IMPLICATIONS / RISKS

28. The projects that make up this overall programme of work include conservative assumptions regarding the level of project contingencies and cost escalation. However, there is always a risk that significant unplanned events may have an impact on overall and eventual project costs.

29. Included in the estimate from Rider, Levett and Bucknall, is a 15% project contingency sum of $441,000, and escalation costs of $442,000. However, if the work is completed in FY2023/24, the escalation cost allowance will reduce to $150,000.

30. The additional $1.88 million of costs, over and above the original placeholder budget of $1.5 million, are expected to be fully funded through external funding, which may be at risk if the funders decide not to contribute towards this project.

SIGNIFICANCE

31. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy. Council acknowledges that in some instances, a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.

32. In making this assessment, consideration has been given to the likely impact, and likely consequences for:

    (a) the current and future social, economic, environmental, or cultural well-being of the district or region;

    (b) any persons who are likely to be particularly affected by, or interested in, the decision; and

    (c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.

33. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the decision is of low significance.

ENGAGEMENT

34. The proposal to implement Te Manawataki o Te Papa required an amendment to the Council's Long-term Plan 2021-31 under section 93(5) of the Local Government Act 2002. As such, a full consultation process was undertaken between 25 March to 26 April 2022.

35. Taking into consideration the above information, if Council approves Option 1, further community consultation is assessed as not being required at this stage of the project.

Click here to view the TCC Significance and Engagement Policy

NEXT STEPS

36. The cost estimates will be further refined through the developed and detailed design phases, and will be reported back to the Public Realm and Waterfront Steering Group Committee, and the Te Manawataki o Te Papa Governance Group.

37. This project is due to be delivered, in conjunction with the Masonic Park development, by mid-2024.

ATTACHMENTS

1. Tauranga Art Gallery - Feasibility Report - A14434870 (Separate Attachments 1)
2. Tauranga Art Gallery Estimates - Baseline Scheme - A14434874 ⇩

TAURANGA ART GALLERY MODIFICATIONS OCTOBER 2022

TAURANGA CIVIC CENTRE MASTERPLAN

RLB Rider Levett Bucknall

TAURANGA CIVIC CENTRE MASTERPLAN

TAURANGA ART GALLERY MODIFICATIONS OCTOBER 2022

Rider Levett Bucknall

LOCATION SUMMARY

GFA: Gross Floor Area
Rates Current At October 2022

Ref	Location	GFA m²	GFA NZD/m²	Total Cost NZD
A	**MASONIC CORNER**			**1,072,000**
B	**WHARF STREET CORNER**			**456,000**
C	**STAIR UPGRADE**			**33,000**
D	**INTERNAL WORKS**			**85,000**
E	**FRONT OF HOUSE STAIRCASE**			**139,000**
ESTIMATED NET COST				**1,785,000**
MARGINS & ADJUSTMENTS				
Design Development Risk		7.5%		134,000
Professional Fees and Consents		19%		365,000
Client Direct Costs		5%		114,000
FF&E, AV and ICT				100,000
Escalation for Three Years (RLB Forecast 102)		17.7%		442,000
Project Contingency		15%		441,000
ESTIMATED TOTAL COST				**3,381,000**

TAURANGA CIVIC CENTRE MASTERPLAN

TAURANGA ART GALLERY MODIFICATIONS OCTOBER 2022

LOCATION ELEMENTS/MAIN HEADING ITEM

A MASONIC CORNER

Rates Current At October 2022

Ref	Description	Unit	Qty	Rate NZD	Total Cost NZD
SP	**Site Preparation**				
9	Remove vinyl floor covering	m²	48	30.0	1,440
26	Remove section of angled aluminium facade	m²	48	310.0	14,880
27	Remove reinforced concrete wall	m²	32	800.0	25,600
28	Remove double door	No	1	150.0	150
29	Remove aluminium framed window	m²	16	150.0	2,400
31	Remove asphalt surfacing	m²	48	20.0	960
	SP - Site Preparation				**45,430**
SB	**Substructure**				
16	Reinforced concrete floor slab complete	m²	48	400.0	19,200
	SB - Substructure				**19,200**
FR	**Frame**				
18	Allowance for structural frame to "glazed box"	m²	48	1,200.0	57,600
30	Allowance for structural frame to Masonic elevation	m²	77	1,000.0	77,000
	FR - Frame				**134,600**
WW	**Windows and Exterior Doors**				
19	Glazed box with "spider fixings"	m²	151	2,400.0	362,400
32	EV for pair of auto doors	No	2	15,000.0	30,000
	WW - Windows and Exterior Doors				**392,400**
FF	**Floor Finishes**				
33	Basalt floor tiles	m²	88	400.0	35,200
	FF - Floor Finishes				**35,200**
CF	**Ceiling Finishes**				
23	Make good ceiling	m²	48	75.0	3,600
	CF - Ceiling Finishes				**3,600**
HV	**Heating and Ventilation Services**				
22	Allowance for alterations and additions to the heating and ventilation system	Item			30,000
	HV - Heating and Ventilation Services				**30,000**
FS	**Fire Services**				
7	Relocate fire sprinkler valve room and mimic panel	No	1	50,000.0	50,000
21	Allowance for alterations and additions to the fire protection system	Item			15,000
	FS - Fire Services				**65,000**
EL	**Electrical Services**				
20	Allowance for power and lighting	Item			30,000
	EL - Electrical Services				**30,000**

TAURANGA CIVIC CENTRE MASTERPLAN

TAURANGA ART GALLERY MODIFICATIONS OCTOBER 2022

Rider Levett Bucknall

LOCATION ELEMENTS/MAIN HEADING ITEM

A MASONIC CORNER (continued)

Rates Current At October 2022

Ref	Description		Unit	Qty	Rate NZD	Total Cost NZD
SU	**Sundries**					
40	Allowance for signage		Item			10,000
34	BWIC		Item			12,000
35	Allowance for passive fire		Item			39,000
36	Allowance for sundries		Item			19,000
		SU - Sundries				**80,000**
PG	**Preliminaries**					
37	Preliminary and General		Item			167,000
		PG - Preliminaries				**167,000**
MG	**Margins**					
38	Main Contractor's Margin		Item			70,000
41	Rounding		Item			(430)
		MG - Margins				**69,570**
MASONIC CORNER						**1,072,000**

TAURANGA CIVIC CENTRE MASTERPLAN

TAURANGA ART GALLERY MODIFICATIONS OCTOBER 2022

LOCATION ELEMENTS/MAIN HEADING ITEM

B WHARF STREET CORNER

Rates Current At October 2022

Ref	Description	Unit	Qty	Rate NZD	Total Cost NZD
SP	**Site Preparation**				
8	Remove floor tiles	m²	21	100.0	2,100
9	Remove vinyl floor covering	m²	14	30.0	420
10	Remove external concrete paving	m²	14	100.0	1,400
11	Remove glazed double door	No	1	200.0	200
12	Remove pair of glazed auto doors	No	1	1,000.0	1,000
13	Remove reinforced concrete wall/eyebrow	No	1	10,000.0	10,000
14	Remove glazed surround to "eyebrow"	No	1	1,000.0	1,000
15	Remove PVC clad corner including framing	No	1	1,500.0	1,500
	SP - Site Preparation				**17,620**
SB	**Substructure**				
16	Reinforced concrete floor slab complete	m²	13	400.0	5,200
	SB - Substructure				**5,200**
FR	**Frame**				
17	Allowance for structure frame to existing building corner	Item			5,000
18	Allowance for structural frame to "glazed box"	m²	13	1,200.0	15,600
	FR - Frame				**20,600**
RF	**Roof**				
39	Extend glazed canopy to match existing	m²	29	3,000.0	87,000
	RF - Roof				**87,000**
WW	**Windows and Exterior Doors**				
19	Glazed box with "spider fixings"	m²	63	2,400.0	151,200
	WW - Windows and Exterior Doors				**151,200**
FF	**Floor Finishes**				
24	Flooring to match existing	m²	48	150.0	7,200
	FF - Floor Finishes				**7,200**
CF	**Ceiling Finishes**				
23	Make good ceiling	m²	33	75.0	2,475
	CF - Ceiling Finishes				**2,475**
HV	**Heating and Ventilation Services**				
22	Allowance for alterations and additions to the heating and ventilation system	Item			10,000
	HV - Heating and Ventilation Services				**10,000**
FS	**Fire Services**				
21	Allowance for alterations and additions to the fire protection system	Item			10,000
	FS - Fire Services				**10,000**

TAURANGA CIVIC CENTRE MASTERPLAN

TAURANGA ART GALLERY MODIFICATIONS OCTOBER 2022

RLB Rider Levett Bucknall

LOCATION ELEMENTS/MAIN HEADING ITEM

B WHARF STREET CORNER (continued)

Rates Current At October 2022

Ref	Description		Unit	Qty	Rate NZD	Total Cost NZD
EL	**Electrical Services**					
20	Allowance for power and lighting		Item			15,000
		EL - Electrical Services				**15,000**
SU	**Sundries**					
34	BWIC		Item			4,000
35	Allowance for passive fire		Item			16,000
36	Allowance for sundries		Item			9,000
		SU - Sundries				**29,000**
PG	**Preliminaries**					
37	Preliminary and General		Item			71,000
		PG - Preliminaries				**71,000**
MG	**Margins**					
38	Main Contractor's Margin		Item			30,000
41	Rounding		Item			(295)
		MG - Margins				**29,705**
WHARF STREET CORNER						**456,000**

TAURANGA CIVIC CENTRE MASTERPLAN

TAURANGA ART GALLERY MODIFICATIONS OCTOBER 2022

LOCATION ELEMENTS/MAIN HEADING ITEM

C STAIR UPGRADE

Rates Current At October 2022

Ref	Description	Unit	Qty	Rate NZD	Total Cost NZD
SC	**Stairs and Balustrades**				
1	Allowance for upgrading existing stair for new public fire egress stair	M/R	5	5,000.0	25,000
	SC - Stairs and Balustrades				**25,000**
SU	**Sundries**				
36	Allowance for sundries	Item			1,000
	SU - Sundries				**1,000**
PG	**Preliminaries**				
37	Preliminary and General	Item			5,000
	PG - Preliminaries				**5,000**
MG	**Margins**				
38	Main Contractor's Margin	Item			2,000
	MG - Margins				**2,000**
STAIR UPGRADE					**33,000**

TAURANGA CIVIC CENTRE MASTERPLAN

TAURANGA ART GALLERY MODIFICATIONS OCTOBER 2022

LOCATION ELEMENTS/MAIN HEADING ITEM

D INTERNAL WORKS

Rates Current At October 2022

Ref	Description	Unit	Qty	Rate NZD	Total Cost NZD
SP	**Site Preparation**				
2	Remove steel and timber framed stair	No	1	23,000.0	23,000
3	Remove timber and plasterboard partition	m²	138	50.0	6,900
4	Remove glazed partition	m²	15	75.0	1,125
6	Remove reception desk	No	1	500.0	500
	SP - Site Preparation				**31,525**
SC	**Stairs and Balustrades**				
5	Glazed balustrade to match existing	m	9	1,500.0	13,500
	SC - Stairs and Balustrades				**13,500**
PN	**Interior Walls**				
25	Framed partition complete	m²	38	500.0	19,000
	PN - Interior Walls				**19,000**
SU	**Sundries**				
36	Allowance for sundries	Item			2,000
	SU - Sundries				**2,000**
PG	**Preliminaries**				
37	Preliminary and General	Item			13,000
	PG - Preliminaries				**13,000**
MG	**Margins**				
38	Main Contractor's Margin	Item			6,000
41	Rounding	Item			(25)
	MG - Margins				**5,975**
INTERNAL WORKS					**85,000**

TAURANGA CIVIC CENTRE MASTERPLAN

TAURANGA ART GALLERY MODIFICATIONS OCTOBER 2022

LOCATION ELEMENTS/MAIN HEADING ITEM

E FRONT OF HOUSE STAIRCASE

Rates Current At October 2022

Ref	Description	Unit	Qty	Rate NZD	Total Cost NZD
SC	**Stairs and Balustrades**				
42	Allowance for front of house staircase & handrails	M/R	5	21,000.0	105,000
	SC - Stairs and Balustrades				**105,000**
SU	**Sundries**				
36	Allowance for sundries	Item			3,000
	SU - Sundries				**3,000**
PG	**Preliminaries**				
37	Preliminary and General	Item			22,000
	PG - Preliminaries				**22,000**
MG	**Margins**				
38	Main Contractor's Margin	Item			9,000
	MG - Margins				**9,000**
FRONT OF HOUSE STAIRCASE					**139,000**

11.3 Three Waters Reform - Council Submission on Water Services Legislation Bill and Water Services Economic Efficiency and Consumer Protection Bill

File Number: **A14445448**

Author: **Diane Bussey, Contractor - Three Water Reforms**

Authoriser: **Nic Johansson, General Manager: Infrastructure**

PURPOSE OF THE REPORT

1. To present Tauranga City Council's submission document made to the Water Services Legislation Bill (WSL) and Water Services Economic Efficiency and Consumer Protection Bill (WSEECP).

RECOMMENDATIONS

That the Council:

(a) Receives the report "Three Waters Reform - Council Submission on Water Services Legislation Bill and Water Services Economic Efficiency and Consumer Protection Bill".

(b) Notes the submission made to Government in relation to the Water Services Legislation Bill and Water Services Economic Efficiency and Consumer Protection Bill as attached.

BACKGROUND

2. The first piece of legislation related to Three Waters Reform, the Water Services Entities Bill, was enacted on 14 December 2022. Two further bills had their first reading on 14 December 2022, being the Water Services Legislation (WSL) bill and the Water Services Economic Efficiency and Consumer Protection (WSEECP) bill. This suite of legislation provides the basis for Three Waters Reform.

3. The WSL Bill amends the Water Services Entities Act, and other related Acts and outlines the functions, powers, obligations, and oversight arrangements of the water services entities.

4. The WSEECP Bill establishes an economic regulation and consumer protection regime for the three waters sector and appoints the Commerce Commission as the regulator.

5. Submissions were open for a short period, with a deadline of 17 February 2023. Tauranga City Council (TCC) was successful in applying for a one-week extension, moving the submission deadline to 24 February 2023.

6. TCC and Te Rangapū Mana Whenua o Tauranga Moana completed a joint submission for the WSL bill, and TCC completed a submission for the WSEECP bill, which were both submitted on 24 February 2023. These submissions are attached.

7. Both submissions advocate for Tauranga and its communities, the protection of its interests, established accountability to local government, iwi / hapū, residents, and to reflect on the key concerns consistently raised with Central Government since September 2021.

KEY ISSUES – WATER SERVICES LEGISLATION BILL

8. The following key issues are noted within the joint submission on the Water Services Legislation Bill, the full detail of which can be found in the attached documentation:-

9. Governance Arrangements: TCC position is that the Bill amends the governance arrangements set out in the Act to establish the new entities as statutory bodies in the

ownership of local authorities with the initial shareholding based on the value of the net assets transferred (water asset values less associated debt). The shareholding would then be adjusted over time by increasing by area for each 10,000 additional population. This would ensure that the initial asset value and future growth are reflected in the shareholding of each area, thereby addressing the principal concerns about expropriation of assets raised by communities across the nation, whilst allowing for the scale of consolidation and efficiency for the Water Services Entity (WSE) to provide for water services.

10. Growth and Development: Our community needs assurance that three waters 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. The Bill provides for the WSE to be plan 'takers' rather than plan 'makers', however there are further provisions within the Bill requiring the WSE to develop stormwater management plans and other operational plans. Council is required to promote the social, economic, environmental, and cultural wellbeing of our communities both now and into the future. A WSE is required to pursue statutory objectives which may not always align with TCC's objectives, either in substance or timing. It is unclear how any misalignment will be addressed, with the only possible action to escalate to the Regional Representative Group. TCC's position is that further clarity be provided on how potential misalignment of planning between Councils and WSE will be managed. 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 growth and development. The requirements for gaining consent from all landowners in relation to new works on Māori land with more than 10 owners are onerous and likely to place significant practical impediments to timeframes and costs for new developments. In addition, if an owner does not consent, or does nothing at all, or imposes unreasonable conditions the onus is on the Water Services Entity to obtain "approval" from the District Court. This will mean increased delay and cost, negatively impacting on the speed and efficiency in delivering water services infrastructure.

11. Workforce: TCC have in excess of 270 staff that will be impacted by the reforms, whose skills and talents are highly valued. As a good employer, TCC will support all affected staff through the transition process and support the provision of The Staff Room portal and Staff Transition Guidelines as tools in the transition process. Transition support funding has been utilised to provide staff transition support. TCC intends to continue to invest in our staff and enable a smooth transition process.

12. Protection of Mana Whenua (Hapū, iwi) Interests and Concerns: In summary these concerns are:

    a) Undermining of iwi and hapū rights and interests in water.

    b) Upholding Tiriti o Waitangi settlements.

    c) Partnering and engaging with mana whenua.

    d) Te Mana o te Wai statement for water services.

13. Communications and Engagement: The intent of these reforms has been poorly communicated by Government, such that 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. TCC's position is that communicating quality and easily understood information on Three Waters reform with our communities, including the expected benefits, impacts and timelines is the role of Government and is urgently required to support the next stages of reform.

14. Transition Timeline Viability: The WSL Bill outlines several areas where the WSE can require Councils to continue to provide services such as 'pass through billing' and stormwater charging on behalf of the WSE. This 'soft launch' approach adds significant complexity, uncertainty, and cost for Councils, with potential confusion for our customers. TCC's position

is that from Day 1 the WSEs should provide all water related services, directly to their customers. This would smooth the transition process for those most impacted and remove the requirement for further transition activities in the coming years. The transfer of stormwater assets, debt and services requires an extended timeframe to fully resolve the complexities and provide a smooth transition. It is our position that the transition timeline needs to ensure that from Day 1 the WSE provides all water related services, without residual service provision from councils, and that the transition timeline for stormwater is extended.

15. Stormwater Infrastructure and Service Provision: There is uncertainty regarding the residual stormwater services functions that council will be expected to provide post reform and the powers to undertake those services require reinstatement, including development contributions, bylaws, and ability to construct works on private land. The definition of the interface between the WSE stormwater network and council's transport stormwater system is not clear, providing challenges of determining stormwater infrastructure to transfer to the WSE and infrastructure that will be retained by council. Our position is that further clarity and detail is required regarding stormwater infrastructure and service provision to provide confidence in ensuring a cohesive, effective, and efficient stormwater service is provided to our community.

16. Transfer of Asset and Debt Arrangements: To date, the approach in relation to the transfer of assets and debt arrangements has yet to be finalised. This is a function of the National Transition Unit, but we would like to highlight that this is still an area of concern for staff.

17. Government Funding Package Adequacy: To date, there is no confirmed approach to the establishment of 'No worse off' funding, definition of stranded costs or transition support funding post June 2023.

KEY ISSUE – WATER SERVICES ECONOMIC EFFICIENCY AND CONSUMER PROTECTION BILL

18. The following key issue is noted within the submission on the Water Services Economic Efficiency and Consumer Protection Bill, the full detail of which can be found in the attached documentation:-

19. Drivers of water quality: It is TCC's position that the Bill does not adequately acknowledge the nature of water infrastructure services. Consumer demands are not the only driver of water quality. Health, climate change, and other broader drivers such as Taumata Arowai and Regional Councils also need to be considered. The purpose needs to focus on providing a level of service to consumers at an efficient cost model.

TAURANGA CITY COUNCIL'S SUBMISSION PROCESS

20. A full review and analysis of the legislation was completed by Simpson Grierson, on behalf of all Councils within Water Services Entity B. This review provided a generic clause by clause analysis of both bills and was the basis for the detailed sections within the submissions.

21. TCC staff completed draft submissions, ensuring an update of the key concerns raised by the community in September 2021 was included.

22. Presentations and workshops were provided by Taituarā, Local Government New Zealand and Water NZ, which TCC staff attended and contributed to.

23. The draft submissions were made available for relevant TCC staff to review and provide feedback. Revisions were completed as a result of the staff feedback.

24. Due to the timeframe available, a public consultation process was not completed.

25. Commissioner briefings were held on 9 and 13 February 2023, with Simpson Grierson presenting on the WSL bill. Further revisions were made as a result.

26. A Te Rangapū working group was established to review the WSL bill and review the draft WSL bill submission. Feedback and additional content were provided and incorporated into the joint WSL submission.

27. Final submissions (attached) were co-signed by the Commission Chair and Chair of Te Rangapū, prior to submission on 24 February 2023.

28. Links to the final submissions have been made available on TCC website and TCC intranet 'Insider'.

29. An oral presentation of TCC's submissions will be made to the Finance and Expenditure Select Committee, on 6 March 2023.

ATTACHMENTS

1. **Council - 20 March 2023 - Tauranga City Council Joint Submission on Water Services Legislation Bill - A14446023** ⇩
2. **Council - 20 March 2023 - Tauranga City Council Submission on Water Services Economic Efficiency and Consumer Protection Bill - A14446027** ⇩

Tauranga City Council and

Te Rangapū Mana Whenua o Tauranga Moana

Joint Submission - Water Services Legislation Bill

24 February 2023

Section 1

1. Introduction

Tauranga City Council (TCC) forms part of Entity B Water Services Entity (WSE) that will 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.

TCC 3 water assets, as of 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.

The relationships between TCC and Mana Whenua o Tauranga Moana are highly valued. There are 17 hapū and iwi within Tauranga Moana whose responsibilities and duties are within the TCC area. TCC 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.

We have taken this opportunity to work together on a joint submission on the Water Services Legislation Bill. While this Bill puts the building blocks in place for the WSE, there is still work to be done to alleviate some of our concerns about reforms.

NB: A separate Te Rangapū submission was also lodged on 12 February 2023, in order to secure an oral submission spot.

2. Background

There are 140 TCC staff who are focused on the three waters business, 30 of whom are between 50% and 100%, with a further 157 staff (estimated) that support the three waters business functions to varying degrees. It is important to note the impacts from the 3 Waters Reform will be far reaching for our staff, our council, and our community.

We would like to acknowledge that the key outcomes that underpin the 3 Waters Reform are outcomes that TCC and Te Rangapū fully support:

- Safe, reliable drinking water
- Better environmental performance of wastewater and stormwater services
- Efficient, sustainable, resilient, and accountable water and sewage services
- Making water affordable for future generations.

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 the four wellbeing benefits to our community on a long-term, sustainable basis.

3. Waters Reform Reset

We note that Cabinet has asked the new minister of Local Government to report back on how to refine the reforms. The Prime Minister has signalled that any change to the structure would likely include a change to the governance structure and that the Government will work with authorities on this. https://www.nzherald.co.nz/nz/politics/pm-chris-hipkins-to-announce-bonfire-of-the-policies-today-rnztvnz-merger-gone-income-insurance-scheme-changing/E4RYAKQ27JD53B7LHUCTOXUQYY/.

In respect of Māori representation, DIA have confirmed that engagement / representation will be with iwi and post settlement groups. This is unlikely to accurately represent the kaitiaki of particular whenua or taonga. The legislative description implies a national 'one size fits all' and does not allow for local representation on 'local' whenua or taonga. TCC / Te Rangapū position is for a partnership 'place based' approach with the primary focus being the appropriate utilisation and care of the local assets and kaitiakitanga over the natural resource, not necessarily ownership.

We recommend that:

3.1 Local Government Ownership and Shareholding

that the Bill amend the governance arrangements set out in the Act to establish the new entities as statutory bodies in the ownership of local authorities with the initial shareholding based on the value of the net assets transferred (water asset values less associated debt). The shareholding would then be adjusted over time by increasing by area for each 10,000 additional population. This would ensure that the initial asset value and future growth are reflected in the shareholding of each area, whilst allowing for the scale of consolidation and efficiency for the Water Services Entity to provide for water services.

3.2 Place Based Kaitiakitanga for Maori

that Māori representation and participation is based on a partnership "place based" approach with the primary focus being the appropriate utilisation and care of the local assets and kaitiakitanga over the natural resource, not necessarily ownership.

The suggested "place based" approach is:

- Determine the area or "place" under consideration
- Undertake an analysis to determine kaitiaki - likely to be iwi and / or Hapū, possibly marae groups, or adjacent landowner. Every situation could potentially be different
- Engage directly with those kaitiaki in the management of water services at "place" or over a particular water resource
- Ensure kaitiaki views are contingent to any decision making.

3.3 Stormwater Timeline

We support the transfer of all three waters to WSEs to align with Te Mana o te Wai obligations and also deliver the expected Three Water reform outcomes. The Bill provides clarity in some areas regarding the transfer of stormwater services, whilst raising issues and questions in others, which are noted in Section 2 below.

In order to ensure an effective and efficient stormwater service for our communities, our position is that the timeline for transferring stormwater assets, debt and services should be extended. The complexities of transferring stormwater assets and services, as well as understanding WSE and Council's ongoing obligations in delivering a cohesive stormwater service for customers requires further consultation and time.

4. Key Concerns

TCC has previously sought feedback from the community where the following key concerns were captured. The impact of 3 Waters reform to these concerns is monitored on a regular basis.

4.1 Governance Arrangements

Our position is outlined at 3.1 above, in that the Bill amends the governance arrangements set out in the Act to establish the new entities as statutory bodies in the ownership of local authorities with the initial shareholding based on the value of the net assets transferred (water asset values less associated debt).

The shareholding would then be adjusted over time by increasing by area for each 10,000 additional population.

This would ensure that the initial asset value and future growth are reflected in the shareholding of each area, thereby addressing the principal concerns about expropriation of assets raised by communities across the nation, whilst allowing for the scale of consolidation and efficiency for the Water Services Entity to provide for water services.

4.2 Growth and Development

Our community needs assurance that three waters 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.

The Bill provides for the WSE to be plan 'takers' rather than plan 'makers', however there are further provisions within the Bill requiring the WSE to develop stormwater management plans and other operational plans.

Council is required to promote the social, economic, environmental, and cultural wellbeing of our communities both now and into the future. A WSE is required to pursue statutory objectives which may not always align with TCC's objectives, either in substance or timing. It is unclear how any misalignment will be addressed, with the only possible action to escalate to the Regional Representative Group.

TCC's position is that further clarity be provided on how potential misalignment of planning between Councils and WSE will be managed. 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 growth and development.

The requirements for gaining consent from all landowners in relation to new works on Maori land with more than 10 owners are onerous and likely to place significant practical impediments to timeframes and costs for new developments. In addition, if an owner does not consent, or does nothing at all, or imposes unreasonable conditions the onus is on the Water Services Entity to obtain "approval" from the District Court. This will mean increased delay and cost, negatively impacting on the speed and efficiency in delivering water services infrastructure.

4.3 Workforce

TCC have in excess of 270 staff that will be impacted by the reforms, whose skills and talents are highly valued. As a good employer, TCC will support all affected staff through the transition process and support the provision of The Staff Room portal and Staff Transition Guidelines as tools in the transition process.

Transition support funding has been utilised to provide staff transition support. TCC intends to continue to invest in our staff and enable a smooth transition process.

4.4 Protection of Mana Whenua (Hapū, iwi) Interests and Concerns

The detail of the submission points of Te Rangapū Mana Whenua o Tauranga Moana have been included in Section 3, below.

In summary these concerns are:

a) Undermining of iwi and hapū rights and interests in water.

b) Upholding Tiriti o Waitangi settlements.

c) Partnering and engaging with mana whenua.

d) Te Mana o te Wai statement for water services.

4.5 Communications and Engagement

The intent of these reforms has been poorly communicated by Government, such that 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.

TCC's position is that communicating quality and easily understood information on Three Waters reform with our communities, including the expected benefits, impacts and timelines is the role of Government and is urgently required to support the next stages of reform.

4.6 Transition Timeline Viability

The Bill outlines several areas where the WSE can require Councils to continue to provide services such as 'pass through billing' and stormwater charging on behalf of the WSE. This 'soft launch' approach adds significant complexity, uncertainty, and cost for Councils, with potential confusion for our customers.

TCC's position is that from Day 1 the WSEs should provide all water related services, directly to their customers. This would smooth the transition process for those most impacted and remove the requirement for further transition activities in the coming years.

As noted in 3.3 above, the transfer of stormwater assets, debt and services requires an extended timeframe to fully resolve the complexities and provide a smooth transition.

It is our position that the transition timeline needs to ensure that from Day 1 the WSE provides all water related services, without residual service provision from councils, and that the transition timeline for stormwater is extended.

4.7 Stormwater Infrastructure and Service Provision

There is uncertainty regarding the residual stormwater services functions that council will be expected to provide post reform and the powers to undertake those services require reinstatement, including development contributions, bylaws, and ability to construct works on private land.

The definition of the interface between the WSE stormwater network and council's transport stormwater system is not clear, providing challenges of determining stormwater infrastructure to transfer to the WSE and infrastructure that will be retained by council.

Our position is that further clarity and detail is required regarding stormwater infrastructure and service provision to provide confidence in ensuring a cohesive, effective, and efficient stormwater service is provided to our community.

4.8 Transfer of Asset and Debt Arrangements

To date, the approach in relation to the transfer of assets and debt arrangements has yet to be finalised. This is a function of the National Transition Unit, but we would like to highlight that this is still an area of concern for staff.

4.9 Government Funding Package Adequacy

To date, there is no confirmed approach to the establishment of 'No worse off' funding, definition of stranded costs or transition support funding post June 2023.

5 Submission Approach

The timelines given for submissions on this extensive Bill were short and did not allow for any form of public consultation with the Tauranga Moana community. We have relied on customer feedback previously sought in 2021 and 2022, along with the insight from subject matter experts.

In order to be able to do justice to this complex Bill, TCC commissioned a legal review by Simpson Grierson. This review was endorsed by the Water Services Entity B CEO's forum, and the report has been shared with the Entity

B Councils on the basis that we are all entitled to use the content as part of our own submissions. That review forms a large part of our joint submission (Section 2).

Te Rangapū also commissioned a specialist review in relation to the sections on the Powers to carry out work on Māori land. This review forms part of the joint submission (section

6 Industry Submissions

TCC support the submissions of the following key industry organisations:

1. Taituarā (and Development Contributions Working Group submissions in relation to infrastructure charges and their impacts on existing development and financial contribution systems).
2. Local Government New Zealand.
3. Water New Zealand.

7 Submission Sections

There are two further sections to this submission. Section 2 represents a joint submission by TCC and Te Rangapū. Section 3 represents Te Rangapū submission points.

MDuncan

Anne Tolley
Commission Chair
Tauranga City Council

Matire Duncan
Chair
Te Rangapū Mana Whenua o Tauranga Moana

Section 2:

Joint Submission of Tauranga City Council and Te Rangapū Mana Whenua o Tauranga Moana - Water Services Legislation Bill

Topic 1: Water Services Functions Remaining with Councils

Summary of Key Points

- Given the complications associated with the transfer of stormwater services to WSEs and the risk of a disconnect with land use planning which remains a council function, further clarity and detail is required and an extended timeframe considered.
- If stormwater function is transferred to WSEs, Bill should have clear statement of what water services functions remain with councils, which seem to be:
    - stormwater outside urban areas (although proposed section 261 of the WSEA envisages councils having urban stormwater networks)
    - transport stormwater systems
    - agricultural and horticultural (cf drinking) water
    - regulation of private drainage and nuisances
    - land drainage and flood control.
- Definition of *transport stormwater system* and interface with WSE's *stormwater network* (from which transport stormwater systems are excluded) is problematic and requires clarification
- Bill also needs to address combined sewers in the context of transport stormwater systems
- To support residual council functions the Bill needs to reinstate:
    - the power to require development contributions for agricultural water supply and stormwater drainage provided by the council
    - the power under section 181 of the Local Government Act 2002 (**LGA02**) to construct works on private land for stormwater (including transport stormwater systems)
    - express power to make bylaws relating to transport stormwater systems.
- Bill should include a clear statement of what private drainage functions continue to be exercised by councils
- Reconsider desirability and workability of Bill's proposal that councils continue to exercise certain Local Government Act 1974 (**LGA74**) private drainage functions, given their close connection to the WSE's functions
- Circumstances in which a council has to obtain WSE consent before exercising LGA74 powers is uncertain and only applies to stormwater (and not wastewater), rationale for this is unclear
- Proposed amendments to the Health Act 1956 do not include reference to wastewater but only to water supply or stormwater. The rationale for this is also not clear.

Discussion

Water services functions remaining with councils

1. The Bill would benefit from a provision which clearly states what water services functions may continue to be exercised by councils - either because they will not pass to WSEs or because councils may to some

extent still exercise the function alongside the WSE. At present it is necessary to determine this through a process of interpretation of the definitions in the WSEA, including the proposed amended definitions of "stormwater network" and "water supply", and by inference from other sections in that Act. This leaves uncertainty in this very important area.

2. For example, WSEs have the function of providing water services in their areas (section 13 WSEA), which are water supply, wastewater, and stormwater. The proposed amended definition of "water supply"[1] excludes water supplied for agricultural or horticultural purposes unless supplied by the WSE, and proposed amendments to the LGA02 (in Part 1, subpart 12 of the Bill) indicate that councils will still have the function of agricultural and horticultural water supply. However, this is not directly stated.

3. In the case of stormwater, the WSEA's definition of "stormwater network" is limited to WSE infrastructure in an urban area (although it includes an "overland flow path" as defined in section 6 – see further below). Therefore, the understanding is that stormwater outside urban areas will remain a council function, notwithstanding that the WSE's statutory stormwater function applies to its entire service area.

4. Other provisions in the Bill, for example proposed sections 260 and 261 of the WSEA, envisage that councils and CCOs may also own stormwater networks in urban areas (which may connect to or discharge into the WSE's network), and proposed amendments to council regulatory powers (e.g., the bylaw-making powers in section 146 of the LGA02 – see clause 99 of the Bill) are consistent with a general ongoing council role in relation to stormwater. Again, however, this is not express.

5. The Bill also proposes excluding "transport stormwater systems" from the definition of "stormwater network", presumably on the basis that these systems will remain the responsibility of the relevant transport corridor manager, although this is not stated either.

6. It would be helpful for the Bill to clearly set out what the respective roles and functions of WSEs, councils and transport corridor managers are in relation to stormwater, rather than this being left to interpretation. Such a statement would also help in interpreting other provisions which involve the use of powers relating to stormwater.

Relationship between transport stormwater systems and WSE's stormwater network

7. The definition of "transport stormwater system" (clause 5 of the Bill) and the interface between such a system and the WSE's stormwater network (from which transport stormwater systems are excluded) is problematic. The definitions need refinement to avoid practical problems and, potentially, disputes as to where responsibility lies.

8. To take an example, a road may discharge to a stream or drainage channel located within the road corridor. That stream / channel would presumably be "green water services infrastructure", and part of a transport stormwater system for which the transport corridor manager remains responsible, and not part of the WSE's stormwater network.

9. But at some point, along its length that drainage channel or stream may no longer be in the road corridor or part of the transport stormwater system and become part of the stormwater network for which the WSE is responsible. Under the Bill, this dividing line is unclear. This is in part because the definition of "transport stormwater system" refers to infrastructure *used* or operated by a transport corridor manager to drain or discharge stormwater *affecting* a transport corridor: i.e., the infrastructure (including green water services infrastructure) will not necessarily be located within the transport corridor. The same applies to overland flow paths, which could arguably be part of the "transport stormwater system" or part of the "stormwater network" and are expressly referred to in both definitions.

10. Under the definitions, in order for infrastructure to be part of the transport stormwater system, and excluded from WSE's stormwater network, it is sufficient for it to be a "process" used by a transport corridor manager to deal with stormwater "affecting" a transport corridor. There is no requirement that the infrastructure be located within the road corridor. Therefore, both upstream and downstream of the

1 This amendment proposes inserting a new paragraph (c) in the definition of "water supply", whereas there is already a paragraph (c). It is assumed the intent is to replace the existing paragraph (c).

road corridor, infrastructure could be regarded as part of the transport stormwater system if it is being used by the transport corridor manager e.g., to divert or manage the stormwater before it reaches the road, or to drain or treat it after it leaves the road.

11. As a related point, the Bill does not address the situation of combined (wastewater and stormwater) sewers and roads. It seems that if a combined sewer is located within a road and drains stormwater from that road it is part of the transport stormwater system, notwithstanding that councils and transport corridor managers do not otherwise have wastewater responsibilities. The position of combined sewers, and who has responsibility for them when located within a transport corridor such as a road, needs to be covered the Bill.

Whether responsibility for stormwater services should be transferred to WSEs at all, at least at this time

12. As illustrated by the above discussion, there are particular complications with transferring responsibility for stormwater services to WSEs which do not apply to water supply and wastewater. These difficulties do not seem to have been fully worked through in the Bill. It may be imprudent to transfer stormwater functions to WSEs at this time, without fully considering such matters.

13. Some components of the "stormwater network" as defined perform various functions not limited to stormwater e.g., urban streams also have an ecological and recreational function. Councils have a legitimate interest in continuing to be involved in managing and regulating such infrastructure. The same rationale for excluding transport stormwater systems (namely that roads in particular serve a dual transport and stormwater function) would seem to apply to them. See also paragraphs 39 to 46 below, in the context of stormwater management plans and rules.

14. In our submission the timing for the transfer of stormwater services needs be reconsidered. This should take place in the context of a full understanding of all of the implications of such a change, and how the proposed new system can operate effectively, side by side with council functions and responsibilites.

Council powers under the LGA02 and elsewhere relating to their residual water services functions

15. The Bill appropriately repeals council powers which will no longer be necessary once water services functions transfer to WSEs. However, in places it seems to 'forget' that councils will have some residual water services functions and will still need access to statutory powers for those purposes. Based on the discussion above (and ideally confirmed by a clear statement in the Bill) these residual functions appear to be:

- Stormwater services and associated infrastructure, including transport stormwater systems;
- Land drainage and flood control, to the extent this overlaps with stormwater;
- Certain powers in relation to private drainage – in the Health Act 1956 and LGA74 (see immediately following sections of this submission); and
- Water supplied for agricultural or horticultural purposes.

16. As such, the following powers (which the Bill proposes removing) should be reinstated:

(a) the power to recover development contributions for the above infrastructure. Clause 106 of the Bill proposes replacing the definition of "network infrastructure" in section 197(2) of the LGA02 to read "the provision of roads and other transport (including transport stormwater systems)". It should include agricultural water supply and council stormwater infrastructure;

(b) the power to construct works on private land in section 181 of the LGA02 should also extend to works considered necessary for stormwater (including transport stormwater systems) – refer clause 103 of the Bill.

17. The proposed amended bylaw-making powers in section 146 of the LGA02 (refer clause 99 of the Bill) do include powers relating to agricultural water and stormwater drainage, which is supported. However, it

would be desirable for this to expressly include transport stormwater systems, to remove any uncertainty.[2]

Powers under the LGA74 in relation to private drains

18. Council powers in relation to private drains (both wastewater and stormwater) are found in the LGA74. The Bill does not remove these powers but requires a council to obtain the WSE's agreement before exercising some of them (proposed new Part 25A LGA74). The Bill does not confer equivalent powers on WSEs.

19. The intent and effect of this new Part 25A, and in particular the residual role of councils in this area, is insufficiently clear. The Bill would benefit from a clear statement as to what LGA74 private drainage functions and powers councils are still responsible for exercising, and whether there is there a division of responsibility between council and WSE or an overlap.

20. Under the Bill, councils retain their powers relating to private drainage e.g., to require a property to be properly drained or to require separation of combined sewers, and WSEs do not. There is a question mark over how workable this will be given the very close connection to WSE's functions and responsibilities – i.e., private drains must connect into the WSE network and satisfactory provision of water services (by the WSE) depends on adequate private drainage as well.

21. Even if these powers are to stay with councils, the Bill does not include a mechanism for WSEs to request or require their use in appropriate circumstances. The Bill adverts to councils contracting with WSEs in relation to water services and LGA74 powers (new section 468A(3)), but it is doubtful whether such a contract could include regulatory matters such as the section 459 power to require private drains or the section 468(1) power to require tree root removal.

22. The threshold in the new section 439A of the LGA74 for a council to obtain the agreement of the WSE – if "a stormwater network or stormwater management plan would be affected" – is also problematic.

23. In the first place, the test is somewhat vague – when is the network or management plan "affected"? The exercise of private drainage powers can be controversial and opposed by landowners; uncertainty as to when WSE agreement must be obtained will add to the risk of challenge.

24. Secondly, the new section 439A of the LGA74 limits the WSE's role to stormwater effects, even though council private drainage powers apply to wastewater as well. It is unclear why this is the case.

Health Act functions in relation to water services

25. The proposed amendments to sections 33 to 35 of the Health Act, applying relevant provisions to WSEs, do not include reference to wastewater but only to water supply or stormwater drainage. Again, the rationale for this is not clear, as the nuisances in section 29 of the Health Act could also include wastewater issues.

More Detailed Recommendations

Provision	Recommendation	Reason
Clause 5, section 6 WSEA, definition of *transport stormwater system*	If intent is the restrict *transport stormwater system* to infrastructure within the road or other transport corridor, amend definition: (a) means the infrastructure owned or operated by, or the processes used by, a transport corridor manager to collect, treat, drain, store, reuse, convey or discharge stormwater ~~affecting~~ in a transport corridor; and (b) …	Greater clarity as to demarcation between transport stormwater system and WSE stormwater system. Addition of "convey" for completeness.

2 The opportunity could also be taken to tidy up section 146(a) which separately lists both "waste management" and "solid wastes", when these are the same thing.

Clause 99, amendment to section 146 of the LGA02	Amend section 146(b)(iv) as follows: …(iv) stormwater drainage, <u>including transport stormwater systems,</u> provided by the territorial authority…	For avoidance of doubt.
Clause 103(1), amendment to section 181(1) of the LGA02	Amend as follows: A local authority may construct works on or under private land or under a building on private land that it considers necessary for: (a) the supply of agricultural water; (b) <u>stormwater drainage, including transport stormwater systems;</u> (c) land drainage and rivers clearance	Necessary for section 181 powers to extend to all residual council stormwater infrastructure.
Clause 106, new definition of *network infrastructure* in section 197(2) LGA02	Amend as follows: **Network infrastructure** means the provision of roads and other transport ~~(including transport stormwater systems)~~, <u>agricultural water supply, and stormwater collection and management (including transport stormwater systems)</u>	Necessary for DC powers to extend to all residual council stormwater infrastructure.

Topic 2: Proposed Regime Strays into Land Use Planning

Summary of Key Points

- Bill should include a clear statement (in either the WSEA or the Bill's provisions) that WSEs are "plan takers", as opposed to "plan makers"
- Select Committee should reconsider the extent to which WSEs are empowered to develop and adopt plans, strategies and rules that overlap with land use planning and regulation, which is properly the function of councils
- Bill should make it clear that WSEs are required to comply with any applicable regional plan and district plan rules and adopted growth management and spatial planning strategies and plans
- Reconsider the definition of "urban area" to ensure that future development areas are not captured in WSE plans until such time as land is ready for release / development
- Bill lacks an integrated relationship with either the Resource Management Act 1991 or the proposed Natural and Built Environment Bill and Spatial Planning Bill.

Discussion

Plan-takers, not plan-makers

26. Through the development of the WSEA, the Select Committee report sought to clarify that the WSEs were to be "plan-takers", and not "plan-makers".[3] The outcome of this clarification was to amend clause 12(d) of the WSE Bill so that the section as enacted reads "support and enable <u>planning processes</u>, growth, and housing and urban development".

3 "Clause 11 sets out the objectives of WSEs. We consider that the bill should be clear that the entities' role would be to support planning processes as "plan-takers", rather than "plan-makers" (that is, territorial authorities would retain control over planning, and WSEs would give effect to their plans). To address this, we recommend amending clause 11(c) so that the objectives of WSEs include supporting and enabling planning processes, growth, and housing and urban development...." Water Services Entities Bill 136-2 (2022), Government Bill Commentary – New Zealand Legislation Water Services Entities Bill 136-2 (2022), Government Bill Commentary – New Zealand Legislation

27. Not only is there no discernible hierarchy within section 12 (which states the objectives of WSEs), there is no clear hierarchy within paragraph (d) of the section. The objective of supporting and enabling planning processes is placed on an equal footing with enabling growth, housing, and urban development, which does not give any precedence or greater importance to local authority urban growth strategies or plans.

28. The concern expressed through submissions on the first Bill remains live, and it would be an improvement to the Bill if there were a clear statement that the WSEs are not empowered to stray into "plan-making". In conjunction with this, there should be a clear requirement in the Bill that states that the WSEs must observe and adhere to any regional and district plans and strategies, rather than enabling and supporting planning processes only. Plan making should remain the responsibility of the territorial authority. This change could potentially be introduced into the operating principles of WSEs (in section 14 of the WSEA).

Overlap with land use regulation

29. The Bill empowers WSEs to prepare a wide array of documents, including controlled drinking water catchment areas and plans, stormwater management plans (**SWMP**s) and rules, water services assessments. The scope of these documents may extend beyond three water service delivery and into land use regulation, a core council function. This leaves the potential for overlap between the two, creating uncertainty in terms of land use regulation and enforcment, which is undesirable.

Controlled drinking water catchment areas and plans

30. Proposed sections 231 and 232 provide for the designation of a controlled drinking water catchment area, and the issue of a plan for any such area. There is no clear purpose statement for either matter, which would assist to clarify the scope of the powers.

31. A plan, issued under proposed section 232, is allowed to "set out prohibitions, restrictions, or requirements relating to activities that may be undertaken in the area" (see proposed section 232(2)(b)). This power directly engages with land use regulation, which is the role of councils under the RMA.

32. The Bill should make it clear that the ability to prohibit, restrict, etc any activities should be limited to the purpose of protecting the drinking water catchment as a water source. If expressed in that way, the potential overlap with land use regulation will be narrowed, which will assist with administration of any plan.

33. As drafted, it is not clear from the Bill how the provisions for establishing a controlled drinking water catchment area interact with regional and district planning rules, or the National Environmental Standards for Protecting Sources of Human Drinking Water. In the case of any conflict, a clear statement may be needed to provide those rules and standards with an RMA foundation will prevail.

34. With reference to proposed section 231, and the designation of catchment areas, there is no requirement for the WSE to give reasons for any designation. This should be addressed alongside a new purpose provision, that guides when and why designations should be made.

35. In addition, because any non-WSE owner will need to consent to both a designation and a catchment plan, there should be a requirement for the WSE Board to provide reasons in support of the exercise of its functions under sections 231 and 232.

36. There is also a drafting issue to address with proposed section 231. The wording used in that clause is that a WSE "may, by notice, designate". This language differs from that used in other legislation that confers powers to make declarations relative to land (e.g., Reserves Act 1977 and Public Works Act 1981). That other legislation typically provides for the issuing of "declarations by notice in the Gazette". As the same publication requirements are intended to apply, the wording in section 231(1) should reference the same "declaration" process. This change would also remove any confusion with the RMA concept of a designation (as the WSEs will be requiring authorities with those functions).

37. In order to improve administration, the proposed new section 232(5) should be amended to take into account the possibility that WSE assets may be located outside its service area.

38. We also note that proposed section 226 of the Natural and Built Environment Bill requires consideration of source water risk management plans under the Water Services Act 2021, when considering resource consent applications. There is a need to ensure alignment between all of the planning and existing legislative requirements relating to source water and drinking water catchments, and it would be beneficial for the terminology to be consistent.

Stormwater management plans and rules

39. The SWMPs provided for under proposed section 256 create the potential for WSEs to stray into land use planning and regulation. The Bill should be amended to clarify that a SWMP is not a regulatory document, and to require that any SWMP must be consistent with key documents in the RMA planning hierarchy e.g., spatial plan, regional plan, and district plan.

40. Of particular concern is the potential that an SWMP may include and set strategic intentions that will impact on later land use planning processes. The reason for this concern is that the proposed section 254 states that the purpose of a SWMP is to provide a WSE with "a strategic framework for stormwater network management". This wording is broadly expressed, and if given regulatory effect through stormwater network rules, may act to constrain urban policy planning, and growth strategies.

41. Proposed section 256 provides a further cause for concern in that it allows a SWMP to "state the outcomes that the water services entity wants to achieve". This again relates to policy matters and tends to suggest that the WSE is a plan maker rather than plan taker.

42. "Stormwater network" is defined in section 6 of the WSEA as meaning the "infrastructure owned or operated by, or processes used by, a water services entity to collect, treat, drain, store, reuse, or discharge stormwater in an urban area". The Bill proposes adding a definition of "urban area" to the WSEA that, by referring to land "primarily zoned, **or intended to be used for**, residential, industrial, commercial and mixed use, or settlement activities", would include land identified in district plans as "future urban". It is submitted WSEs should not have responsibility for stormwater services in these areas, which will not be "development ready". The provision of infrastructure to such land needs to be integrated and carefully managed by councils', rather than led by the WSE. Stormwater functions for future urban land should (which is typically rural) should remain with councils, consistent with the exclusion of rural zoned land from the proposed definition of urban area.

43. We note that proposed section 255 requires that a WSE "must" comply with its stormwater management plan. This mandatory direction could prove problematic if the SWMP contains detailed policy and outcomes that must be adhered to. Unless there is a requirement for the WSEs to adopt and follow existing RMA planning undertaken by councils, there is no certainty that the SWMP process will not conflict with other forms of strategic planning.

44. Similarly, the provision to make stormwater rules in proposed section 260 does not have a clear relationship with RMA planning documents, yet it provides an ability to set restrictions, requirements, conditions on discharges and works in certain areas, and set quality standards for discharges. Clarification of this relationship is particularly important given the clear intention that stormwater rules are to have regulatory effect. Section 260 lacks any purpose provision, or link to the SWMP which provides the foundation for the rules. This disconnect should be addressed.

45. Proposed section 260(2) states that certain stormwater rules "may not conflict with or restrict the rights or obligations of landowners or road owners under section 221 or 222". However, those two sections are in themselves misconceived insofar as they allow a landowner or road owner to "require" the WSE to move water services infrastructure. As discussed below, landowners and road owners should not be given "rights" or obligations under these sections, let alone rights / obligations that prevail over stormwater rules.

46. Proposed section 262 requires engagement with councils when making stormwater rules, but there is no legislative direction that addresses alignment between rules and existing RMA planning methods. If the WSEs are to be empowered to make rules in this way, the Bill should be amended to include a specific purpose for any rules, and a requirement to remain consistent with rules under the RMA and the future Natural and Built Environment Act.

Water services assessments

47. In relation to water services assessments, planning for the water services needs of communities should be closely linked to the planning activities undertaken by councils, for example planning for urban growth and the potential managed retreat from coastal inundation. This link is necessary to achieve coordination between key stakeholders, and avoid inefficiencies created by non-integrated planning. There is a clear need for greater council participation in water services assessments than simply being invited to 'participate' (proposed section 247).

48. Although section 247(2)(d) proposes that an assessment could be carried out by a council on behalf of the WSE, most councils will no longer have the appropriate staff resources to carry out a full assessment. That said, council planning staff should play a key role in this process.

49. There would be benefit in the Select Committee ensuring that the water services assessment process is aligned with planning processes under the RMA, and the processes that are proposed to be introduced through the Natural and Built Environment Bill and Spatial Planning Bill (currently being consulted on), which are intended to replace the RMA.

50. In particular, the 'access' assessment should be formally linked to the regional spatial strategy process, to achieve collaborative input on general community needs, and specifically adopt a shared set of assumptions (about population growth and changes etc) that would be used by both councils and WSE.

Interplay between RMA processes and the Bill

51. In general, there is a lack of integration between the functions and powers conferred on the WSEs and the RMA and its processes. The Select Committee should ensure that the WSE's functions complement those of the council, in its regulatory or consent capacity, rather than potentially creating tension between them. One example of tension is through the three-stage approval process for connections, which provides the WSEs with a broad power to approve a number of aspects associated with new connection applications. To the extent that those aspects capture design, and integration with existing environments, it is considered that they extend into the realm of council's functions under section 31 of the RMA. It would be helpful for the Bill to clearly set out what the respective roles and functions of WSEs are in relation to such approvals, relative to councils, so that there is reduced scope for disagreement between these two key stakeholders.

Concerns with the inclusion of stormwater more generally due to its inherent relationship with land use planning

52. Land use planning, especially for councils with high growth and development needs, will be further complicated with the requirement for development and joint interpretation of land use plans across the WSE's service region. This is especially so with stormwater services, as multiple infrastructure services are involved, both within councils and WSEs. How any misalignment of these plans, either in substance or timing, will be addressed is not clear. Without such alignment there is a risk of investment not occurring when required and severely impacting on the ability of TCC to provide land for growth and development in a timely and co-ordinated manner. TCC's position is that further clarity be provided on the hierarchical priority and alignment process of land use related plans.

More Detailed Recommendations

Section of WSEA	Recommendation	Reason
Section 6	Amend (b) in the definition of urban area so that it does not include any area notified by a territorial authority to the WSE under section [x] and provide a corresponding section giving territorial authorities that notification power. Alternatively, delete in (b) the words "or intended to be", so as to exclude future urban zoned land from the definition of "urban area".	Reduce potential demand on councils to develop land and allow councils to plan infrastructure provision in future urban zoned land.

Sections 13/14	Add function and / or operating principle that WSE's must observe and adhere to existing RMA planning rules and strategies.	Consistency with Select Committee findings.
Section 231	Add purpose statement for controlled drinking water catchment areas.	Clarity and to improve operation.
Section 231	Relabel designation to 'declaration' and include a requirement to provide reasons for making a designation. Amend the wording in section 231(1) to refer to "may, by notice in the Gazette, declare the following"…	Reduce litigation risk. Clarity of terminology.
Section 232(5)	Amend s232(5) to add the underlined wording: "(5) When developing a controlled drinking water catchment plan, the board of the water services entity must engage with the territorial authorities, regional councils, mana whenua, consumers, and communities in (and where appropriate outside) the service area of the entity in accordance with section 461."	Clarify position where assets are outside WSE service area.
Section 256	Amend this section to *establish a relationship between SWMPs and local government planning processes and include a requirement that they be consistent with these plans.*	
Section 260	Add a purpose statement for stormwater network rules.	Clarity and to improve operation.

Topic 3: WSE Powers to Carry Out Works on Land (Part 6, sections 200 to 230 WSEA)

Summary of Key Points

- Water services infrastructure and WSEs are materially different from private utility operators (such as gas, electricity and telecommunications):
  - water supply and wastewater services are essential to life, with potentially significant public health implications, if necessary, works are delayed;
  - WSEs are public or quasi-public bodies, with public accountabilities;
  - compared to other utility operators, WSEs will have greater recourse to statutory powers because of specific locational requirements e.g to rely on gravity, and because existing infrastructure is often on private land, dictating the location of repairs, maintenance and replacement.
- Proposed Part 6 powers, based on legislation applying to private network utility operators, are not fit for purpose and will risk significant delays and costs in obtaining approval
- Instead, Part 6 should replicate existing council powers and processes for works on land in LGA02
- Provide greater statutory guidance as to what are "reasonable conditions", including confirmation that issues of compensation are excluded and addressed under a separate process
- Remove the rights of appeal from a District Court or Maori Land Court decision under Part 6, and provide that those Courts' decisions are final. Note the specific Te Rangapū submission points within Section 3 below
- Provide a fairer costs regime where a road owner requires water services infrastructure in the road to be moved, including WSE responsibility for costs if the infrastructure is or has become dangerous or unsafe.

Discussion

Works on private land - WSE regime based on private utility provider model

53. The model adopted in the Bill is largely based on that applying to gas, electricity, and telecommunications providers under their respective Acts. This is not the appropriate model for WSEs, given the nature and location of the infrastructure which will be vested in them, the significance of the services which they will provide, and the public or quasi-public nature of the WSEs themselves.

54. WSE powers to carry out works on land must be fit for purpose, which means a regime which is much closer to that currently applying to councils.

55. Key differences between the rights and processes applying to councils (in section 181 and Schedule 12 of the LGA02) and that proposed for WSEs are:

    - under the Bill, the onus is on the WSE to obtain "approval" from the District Court if an owner does not consent or imposes unreasonable conditions cf under the LGA02 it is the landowner who must appeal. In the case of new works, this applies even if the landowner does nothing at all in response to a notice. This reversal of the practical onus together with delays of District Court referral will place significant practical impediments on WSE works being approved and carried out in a timely fashion;

    - the requirement that works can only proceed in accordance with a landowner's reasonable conditions (unless modified by District Court on appeal) assumes that landowners will be equipped to determine what is "reasonable" and advise accordingly. But in many private situations landowners will have no experience of such matters and what is or is not likely to be justifiable. Nevertheless, the process will be delayed while the WSE is required to take the matter to the District Court.

56. Overall, this is likely to result in a significantly greater number of works having to be approved by the District Court, either following an application by the WSE or an appeal against unreasonable conditions. This will mean increased delay and cost, negatively impacting on the speed and efficiency in delivering water services infrastructure.

57. There are various reasons why water services are not just "another utility" like gas or telecommunications, and therefore justify a bespoke approach.

58. First, the relative importance of water services, as compared to, say, telecommunications, is self-evident, and illustrated by the Water Services Act and the WSEA themselves. Efficient and effective water supply and wastewater services are essential to life, with significant public health implications if they are impaired, which includes where necessary works are delayed.

59. Secondly, WSEs (unlike gas, electricity, or telecommunications providers) are quasi-public bodies, with detailed public accountabilities. In that regard they are more akin to councils than to private companies.

60. Thirdly, there are unique characteristics of water services networks which mean a greater potential need for recourse to statutory powers as compared to other utilities. The existing networks which WSEs will assume responsibility already, in many instances, pass through private land. This determines the location of repairs, maintenance, or replacement of that infrastructure, but that layout also influences the location of future works, as do other practical requirements unique to water and wastewater e.g the reliance on gravity wherever possible (for engineering, cost, environmental and resilience reaons) to convey water, wastewater, and stormwater.

61. The fact that WSEs will need to use the statutory processes more than other utility operators counts in favour of a more streamlined procedure. The existing LGA02 procedure is familiar, and while not perfect, is satisfactory in most cases, and is an appropriate model.

62. Using a regime which more closely mirrors the existing LGA regime would not mean any reduction in the protection of private rights – the WSE would still need to justify its position before the District Court if necessary. But the altered process would reduce the risk of unnecessary delays because of landowners who either choose not to participate at all or who act unreasonably.

63. Even if (contrary to what is submitted above) the powers and processes in proposed Part 6 are broadly retained, there are some specific aspects which require further consideration:

(a) under proposed section 200(5)(a), the WSE's powers to carry out works on someone else's land does not apply to Crown land. This is a significant limitation for which there is no obvious justification - if anything, Crown land should be regarded as more suitable for WSE works than private land. It is submitted that section 200(5)(a) should be deleted;

(b) it would be valuable for the Bill to confirm that "reasonable" conditions may not relate to questions of compensation, which is a separate issue dealt with elsewhere (proposed section 218) if that is the intent. Experience shows that reaching agreement about works on private land can often founder on the issue of compensation, even if not strictly relevant because the legislation provides for full Public Works Act compensation under a separate process;

(c) the subpart 5 appeal rights from the District Court or Māori land Court (proposed sections 227, 228 and 2306 to 230) are too extensive. The matters being referred to those Courts, either be application or appeal, are essentially factual in nature, involving an assessment of the necessity of the works in that location, the impact on the landowner and the reasonableness of conditions. This is suitable subject matter for the District Court or Māori Land Court, as the case may be, and the Bill should provide that the decision of those courts is final. At present, under Schedule 12 of the LGA, the District Court's decision is final.

WSE infrastructure on roads (subpart 2)

64. WSEs are given powers to carry out works in roads. WSEs will become "utility operators" (clause 184 of the Bill) and therefore the regime in the Utilities Access Act 2010 (**UAA**), including the Code of Practice under the UAA and the identification of reasonable conditions, will apply.

65. Proposed section 222 of the WSEA addresses the situation where the road owner or transport corridor manager requires the water services infrastructure in the road to be moved. This provides that the reasonable costs of such work are payable by the road owner or corridor manager. This could work unfairly if the need for the alteration or removal is something which is the WSE's responsibility e.g., if the infrastructure is or becomes dangerous or unsafe.

66. It is recommended that section 222 be amended to more fairly reflect where the costs should lie in various scenarios. A useful model may be section 147B(2) of the Telecommunications Act 2001.

More Detailed Recommendations

Provision of WSEA	Recommendation	Reason
Sections 200(2), 210, 202, 203	Replace with process modelled on LGA02 section 181 and Schedule 12. In particular, put onus on the landowner to challenge proposed works / conditions in the District Court, not on WSE to obtain District Court approval.	Significantly limits WSE performance.
Section 200(3) [if not replaced as submitted above]	Clarify scope and subject matter of possible "reasonable conditions", including that issues of compensation are excluded.	Current wording greatly increases likelihood of landowner imposing unmeritorious conditions - necessitating lengthy and costly court process.
Section 200(5)(a)	Delete	Excluding Crown land as site of potential works unduly limits WSE's ability to choose best location.

Section 226 to 230	Delete appeal rights to High Court, Court of Appeal, Supreme Court, and Māori Appellate Court in sections 227, 228 and 230. Provide instead that decisions on applications or appeals to District Court or Māori Land Court are final.	Public interest in relatively short process and finality. District Court and Māori Land Court well equipped to decide issues.

Topic 4: Connection to Water Services Infrastructure (Part 10, sections 288 to 317 of the WSEA)

Summary of Key Points

- Provide express statutory linkages between 3-step water services connection approval process and relevant resource and building consent application processes, in order to encourage and facilitate coordination and procedural efficiencies
- Authorise WSEs to delegate to councils the power to exercise their Part 10 approval powers, to allow for a "one stop shop" in appropriate cases
- Enact transitional provisions which preserve existing engineering plan approvals and approval conditions, and addressing approval processes which are in train but not completed as at establishment date.

Discussion

Linkage to and coordination with other consent processes

67. The three-stage WSE infrastructure connection process will frequently occur at the same time as resource and / or building consent processes. There is passing reference to this in the Bill (e.g., the validity of WSEA approvals may not exceed the expiry date of "any applicable resource consent or building consent"), but in general it is silent on the linkage between the processes and how the Bill can promote and achieve efficient coordination between them.

68. While some matters between the WSE and councils can be covered in relationship agreements, this will not always be the case, as such an agreement cannot affect an applicant's statutory rights.

69. To give an example, it is not clear whether a resource consent or building consent could be put "on hold" pending the applicant producing a stage 1 approval under the WSEA; or vice versa. There is a possible scenario where neither the WSE nor the consent authority may want to be the first to give approval, because its exercise is dependent on the other consent. The Bill should address such situations and provide for appropriate coordination.

70. At present, territorial authorities grant all three approvals, including engineering plan approval for water and wastewater infrastructure that is to vest in them. This simplifies the procedural and documentation requirements, supports coordination of the timing of the various steps, and enables a holistic approach to be taken. There is a risk of these benefits being lost if the Bill has a 'silo' approach, focusing solely on approval for connection to WSE infrastructure, and without regard for the other consents which will be required as part of the same development or activity.

71. Under the Bill, there is no express ability for a WSE to allow a council to authorise approval on its behalf or in its place, which will limit the ability of WSEs and councils to collaborate on their consenting services in the interests of efficiency for all. Some examples where a WSE and a larger council are likely to find this flexibility desirable include:

    (a) having an efficient streamlined single point of approval for simple developments (including simple connections);

    (b) efficient on-site inspection services for straightforward development (this relates to the stage 3 approval step);

    (c) in respect of vesting under the proposed section 317, having a single point of acceptance for developed land i.e., sufficient flexibility to operate a cohesive vesting process (water services infrastructure and other asset classes - notably roading - together), avoiding situations where say

pipes are vested, but other infrastructure is not and vice versa (this relates to Stage 3 approval step). As per the earlier discussion, it may be unclear as to whether, say, green water services infrastructure such as bioretention vests in the WSE as part of the stormwater network, or vests in the territorial authority or other road controlling authority as part of a transport stormwater system. A single process to align timing of acceptance can assist developers, WSEs and councils.

72. A WSE Board's powers to delegate (section 87 of the WSEA) are limited to "internal" delegations, and we are not aware of any power for a WSE to transfer functions to a council. However, especially in this context of approvals to connect, it would be useful to provide for the possibility of delegations to councils, in order to facilitate a more efficient "one stop shop" for related consents / approvals.

Transitional issues

73. The Bill does not contain any transitional provisions carrying over relevant engineering plan approvals existing at the establishment date, preserving ongoing approval conditions (e.g., vesting requirements) or addressing approval processes which are in train but not completed. These will need to be added.

More Detailed Recommendations

Provision of WSEA	Recommendation	Reason
New	Add provisions which provide for linkages between water services connection consent process and RMA and Building Act consent processes.	Will encourage and facilitate coordination and procedural efficiencies.
New	Add a power for WSE to delegate 3 – step approval decision-making to councils.	More efficient and cost effective.
New	Include transitional provisions continuing existing engineering plan approvals, conditions and approval processes which have been commenced.	To help to ensure smooth and workable transition.

Topic 5: Water Services Charges (Part 11, sections 318 to 350 of WSEA)

Summary of Key Points

- Cost sharing between WSEs and councils for information in the rating information database should be based on Rating Valuations Act formula
- Consider adding a consultation or engagement obligation before a WSE sets charges. At the very least the WSE should engage with the regional representative group
- Require WSE charging decisions to be in accordance with its funding and pricing plan
- Broaden the charging principles in proposed section 331 of the WSE to enable charging decisions to take into account matters such as:
    - the affordability of the charges to consumers or groups of consumers;
    - the need for or desirability of incentivising consumer behaviour;
    - the extent to which consumers or groups of consumers are causing or contributing to the need for particular services or the costs of that service (this may be relevant to trade waste charges in particular);
    - the administrative costs and benefits to the WSE of uniform vs differentiated charging;
    - the overall impact on consumers and communities.
- Clarify whether the section 331 mandatory considerations are exclusive or inclusive
- Provide a closer link between sections 331 and 334, in particular to confirm that the charging principles do not limit the power to charge geographically averaged prices

- Delete proposed new section 133(3)(a)(vii) which says that a GPS may include expectations as to geographic averaging, on the basis that this inherently risks being directory contrary to section 117
- Align liability for trade waste charges with the holder of the trade waste permit (if there is one) rather than the occupier of the property
- Confirm that volumetric wastewater charging may be calculated based on volume of water supplied
- Remove the option of WSEs being able to charge councils for stormwater services in lieu of direct charging of their consumers, until 1 July 2027. If the option remains, confer specific rating powers on councils to recover the relevant expenditure and enact timing requirements to enable accommodation within normal council planning and financial cycles.

Discussion

Sharing of rating information by councils

74. The Bill provides (proposed sections 319 and 320 of the WSEA) that councils must give WSEs information from the rating information database (**RID**) that the WSE reasonably needs to charge its customers. This information must be provided on "a reasonable cost basis". There is no further guidance as to what a "reasonable cost basis" would be, including whether it encompasses just the cost of extracting and providing the information, or also the cost of the information itself.

75. Much of the information in the RID will be derived from the district valuation roll (**DVR**) prepared under the Rating Valuations Act 1998 (**RVA**). That DVR information is used by both territorial authorities and regional councils and section 43 of the RVA contains a formula for the sharing of costs in its preparation (if not otherwise agreed), which depends on the respective rates revenue generated by the councils and the costs incurred in preparing and maintaining the particular information required by the regional council.

76. It would be fair for WSEs to likewise share in the costs of the preparation of the relevant information in a manner proportionate to their revenue which is received through the use of that information, otherwise councils will be subsidising the operating costs of WSEs. It is therefore submitted that proposed section 319 be amended to make it clear that WSEs can be required to pay a share of the costs calculated on a specified basis - the same or similar to section 43 of the RVA. This would obviously be subject to the parties agreeing otherwise.

Process for setting charges

77. There is no requirement for WSEs to consult or otherwise engage before setting charges (other than infrastructure contributions) under proposed section 330 of the WSEA. This will be quite a significant change: presently, customers of councils are consulted on proposed rates / charges, and Watercare engages with its shareholder, Auckland Council, prior to new customer charges coming into force at the start of each financial year.

78. At the very least, it is submitted that a WSE should be required to engage with its regional representative group prior to fixing charges.

79. In addition, to provide greater accountability and predictability in its pricing, WSEs should be required to make charging decisions which are in accordance with its funding and pricing plan.

Charging principles

80. The Bill contains charging principles in proposed section 331 of the WSEA, which are mandatory considerations when setting charges. There are several issues with this section.

81. First, the section does not state whether the list of charging principles is exclusive, or whether the WSE is able to consider, and take into account, other matters as well. As section 331 is likely to be the focus of any legal challenge to water services charges (similar to challenges to development contributions or rates under the LGA, based on alleged non-compliance with statutory provisions), it is important to clarify this.

82. Secondly, the principles are far too narrowly drawn (this point is especially important if the principles are exclusive). WSEs should be able to set charges taking into account the range of considerations which councils may presently consider when setting rates for water services.

83. In line with the statutory objectives of WSEs in section 12 of the WSEA, the principles should allow WSEs to set charges taking into account:

- the affordability of the charges to consumers or groups of consumers;
- the need for or desirability of incentivising consumer behaviour (for example, reduced water consumption);
- the extent to which consumers or groups of consumers are causing or contributing to the need for particular services or the costs of that service (this may be relevant to trade waste charges in particular);
- the administrative costs and benefits to the WSE of uniform vs differentiated charging;
- the overall impact on consumers and communities.

84. It may be noted that at present, broader considerations such as these must be taken into account by local authorities when determining how water services they provide are to be funded: LGA02, section 101(3).

85. The principles currently say (proposed section 331(1)(a)(ii)) that different groups of consumers should only be charged differently if they receive different levels or types of service, or if the cost of providing the services to those groups is different. This is too restrictive – for example affordability is a recognised and generally accepted basis for charge differentiation. The example given after section 331(3), which refers to "commercial" and "residential" charges, seems to assume that such differentiation is possible, whereas this would be contrary to the section 331(1)(a)(ii) principle (assuming the level, type and costs of the service provided to these groups, such as the provision of drinking water, are identical).

86. Thirdly, there is a question mark about the relationship between the charging principles and the geographic averaging authorised under section 334. The use of geographic average pricing is supported, as it can smooth and share costs across a WSE's service area despite differences in the actual cost of servicing different communities in that area, and thereby aid vulnerable customers.

87. Arguably, however, geographic averaging is inconsistent with the charging principles. The Bill therefore needs to contain a closer link between sections 331 and 334, and in particular provide that the charging principles do not limit the power to charge geographically averaged prices.

88. Clause 13 of the Bill will amend the list of Government "expectations" which may be contained in a GPS to include "geographic averaging of residential water supply and residential wastewater service prices across each water services entity's service area". This is much more specific than the other matters listed in section 133 of the WSEA which may be included in a GPS.

89. The proposed new section 133(3)(a)(vii) relating to expectations as to geographic averaging in a GPS is not supported. It goes too far, potentially breaching the prohibition on directions being given to WSE in a GPS or other document found in section 117 of the WSEA.

Mechanics of charging / liability for charges

90. Proposed section 321(3) of the WSEA refers to the occupier being liable for trade waste charges in respect of a property that has a trade waste permit. However, under sections 266 to 268 a permit can be applied for by a person who "owns or occupies trade waste premises in the entity's service area" and the permit is issued to that person, not a property. The person liable for trade waste charges should be the permit-holder (if there is one), rather than (by default) the occupier.

91. Proposed section 329, which relates to volumetric charging, refers to charging by reference to water meters. As wastewater meters are still uncommon, it may be appropriate to add to section 329(3) a statement that a WSE may charge for a consumer's volumetric use of wastewater services based on a specified percentage of the water supplied to the consumer as measured by the water meter. This is to

avoid arguments that absent wastewater metering, wastewater charges cannot be proven to be volumetric.

WSE charging councils for stormwater until 1 July 2027

92. Between 1 July 2024 and 1 July 2027, a WSE may charge a council for stormwater services provided within that council's district, if the WSE is not charging customers directly (proposed clause 63 of Schedule 1 to WSEA).

93. This provision is opposed in principle: a WSE is providing services to its customers, not to the council, and it ought to be charging those customers in its own right, from its establishment date. The expedient of using the council as a convenient way to meet the costs is contrary to the principles of the WSEA and the LGA02, lacks transparency and is unfair to councils who then have to somehow recover the costs without having any responsibility for or relationship with the services in question.

94. It is also unclear how the provision would work in practice. The Bill gives no specific power to councils to rate to recover the costs, or puts in place any timing requirements to enable that to be accommodated within a council's normal funding and financial planning cycle.

95. If the Bill continues to allow WSEs to bill councils for stormwater instead of their customers, it should be accompanied by a specific authority for councils to rate to recover those costs, perhaps on a prescribed basis in order to reflect the fact that the council is being used as a conduit for recovering charges on behalf of the WSE. A precedent for this type of approach is section 34 of the Local Government (Auckland Transitional Provisions) Act 2010, pursuant to which Auckland Council was required to set a prescribed wastewater rate in order to meet Watercare's wastewater revenue requirements, and to transfer the money received from that rate to Watercare.

More Detailed Recommendations

Provision	Recommendation	Reason
Clause 13, amended section 133 of the WSEA	Delete proposed section 133(3)(a)(vii) (in relation to geographic averaging).	Risks being impermissibly directory.
Section 319 of the WSEA	Amend section 319 as follows: (3) The local authority must provide the rating information- ~~(a)~~ as soon as is reasonably practicable after receiving a request from the water services entity.~~; and~~ ~~(b) on a reasonable cost basis~~. (4) <u>The water services entity must pay the local authority a share of the costs of preparing and maintaining the relevant information in the rating information database, calculated in accordance with the formula in section 43(3) of the Rating Valuations Act 1998 (applied with all necessary changes), or such other amount as is agreed between them.</u>	Fairer contribution to council's costs.
Section 321 of the WSEA	Replace subsection (3) with the following: The person liable to pay trade waste charges in respect of a property is: (a) the holder of the trade waste permit if there is one;	Fairer targeting of liable party for trade waste charges and easier administration for WSE if there is a permit.

	(b) if there is no trade waste permit, the occupier.	
Section 329 of the WSEA	Add new subsection (3)(c) as follows: calculate the volumetric use of wastewater services based on a reasonable proportion of the volume of water supplied to the consumer.	For clarification.
Section 330 of the WSEA	Add new subsection (3): A charge set by the board must be consistent with its funding and pricing plan. Add new subsection (4): Before setting a charge the board of a water services entity must engage with the regional representative group. Add to section 461(1): (ka) **section 330** (relating to setting of charges).	Inappropriate for charges to be set without any consultation or engagement. Engagement with RRG is a bare minimum.
Section 331 of the WSEA	Broaden the charging principles as set out above in submission. Amend subsection (4) as follows: Subsection (1) does not override section 333 or section 334.	Current proposed section 331 limits ability of WSE to meet its statutory objectives. Amendment to subsection (4) is for clarity.
Clause 61, Schedule 1	Amend subsection (1) as follows: Despite anything in Part 11, a water services entity may adopt and use the existing tariff and charging structures of the relevant ~~territorial authority or authorities~~ local government organisations.	Enables continuation of Watercare charges.

Topic 6: Infrastructure Contribution Charges (Part 11, sections 343 to 350 of the WSEA)

Summary of Key Points

- Use accurate and consistent terminology to ensure clarity as to when particular requirements apply, i.e. *adopt* the IC plan and thereby *set* the charges in the plan; *require* or *impose* the ICs in particular cases; *invoice* the ICs. Amend some provisions accordingly (in particular proposed sections 343 and 345)
- Confirm that the general charging principles in proposed section 331 do not apply to Ics
- Consider whether service connections are a sufficient trigger for the charging of infrastructure contributions by WSEs, and potentially remove the building and resource consent triggers. If the building consent and resource consent triggers are retained, provide for WSE to pay actual and reasonable costs to Territorial Authorities for the transfer of resource and building consent information as this is likely to be a burdensome task
- Consider amending the IC Policy requirements to include information about the period over which the capex will be incurred and identification of the anticipated assets or programmes of works to which the capex relates
- Provide that the consultation report relating to the IC Policy also cover engagement with councils, consumers, mana whenua and communities
- Provide that the subject matter of relationship agreements may or should include the provision of information from councils to WSEs, and coordination of processes, relating to ICs

- Remove provisions in proposed section 349 allowing 50-year period over which ICs can be paid, including by purchasers as opposed to developers
- Confirm directly that the person liable for any ICs is the owner of the property, and that the general liability provision in proposed section 321 does not apply to ICs
- Ensure WSEs can collect infrastructure charges to recoup the cost of a local government organisation's capex where that capex continues to provide capacity for growth (eg the building of a new water treatment plant with capacity for future generations), through an amendment to proposed section 343(2). Currently, post 2027 transition period, WSEs seem to be limited to infrastructure charges only being able to cover capex they have or intend to incur themselves.
- Note the widespread use of developer agreements by Territorial Authorities instead of or in addition to the use of development and financial contributions including for the funding and delivery of waters services, and consider if this needs to be specifically addressed in the Bill.

Transitional issues with DCs and FCs

- Ensure that the provision allowing WSEs to adopt the water services components of a Territorial Authorities Development Contributions Policy until 2027 (clause 60) provides for the adoption of a Development Contributions Policy prior to its amendment under proposed clause 65 removing a territorial authority's power to require contributions for water supply or wastewater services infrastructure
- Reconsider (in proposed clause 60) how financial contribution systems that deal with payments for water services will work in the interim – these are set under District Plans under the RMA and present additional complexities that mean they are unlikely to be able to be adopted and implemented by WSEs for an interim period to 2027
- Unclear what clause 62, Schedule 1 requirement for councils to transfer "unpaid or unaccounted for" DCs or FCs means
- A simpler "first principles" approach would be that on establishment date:
    - DC and FC revenue held by councils relating to water services infrastructure transfers to WSEs
    - The right to collect unpaid DCs and FCs for water services infrastructure transfers to WSEs.
- Councils should also retain proportion of DC and FC revenue relating to infrastructure which will not transfer i.e. agricultural water supply, relevant stormwater (outside the urban area), and transport stormwater systems
- Ensure provisions that enable the efficient amendment of Territorial Authorities Development Contributions Policy also cover stormwater responsibilities that transfer to WSEs (currently only cover water and wastewater) Schedule 1 - Clause 65
- Councils should also retain powers to impose DCs and FCs for these activities cf clause 65, Schedule 1.

Discussion

"Setting" ICs

96. The Bill's approach to ICs is broadly based on the development contributions regime in subpart 5 of Part 8 of the LGA02, however some important aspects have not been adequately translated to the WSE context. In particular there is a need to address some of the terminology in the Bill, for clarity and in order to properly reflect the principles underpinning ICs.

97. There are three main steps in the IC process:

    (a) Step 1: an IC Policy is *adopted.* Adopting the policy will *set* the ICs contained in the Policy (at the abstract level);

    (b) Step 2: ICs are *required* or *imposed* in the particular case, applying the IC Policy;

(c) Step 2: those ICs are *invoiced* to the property owner.

98. Rather than using the terminology in (a) and (b) above, the Bill tends to use the word *set* throughout. This is confusing because it is sometimes unclear which step is being referred to. Further, if "set" is intended to refer to Step 1, then in some cases it is incorrect, because the relevant requirement should apply at Step 2, when particular ICs are required or imposed, and not (just) when adopting the policy.

99. Applied to the specific proposed sections, this means:

(a) section 343 – this is modelled on section 199 of the LGA02 and applies at Step 2 – it is a prerequisite to requiring contributions in the particular case. The section should therefore say *require* or *impose* rather than *set*. The cross-reference to section 343 in section 344 should make the same change;

(b) section 344 – this covers both Step 1 and Step 2. The reference to *adopts* at Step 1 is correct. The reference to *sets* at Step 2 should be changed to *requires*. The reference to "setting" in the heading can probably remain as it can broadly cover both adopting the policy and requiring the charges in a particular case;

(c) section 345 – this also applies at Step 2 rather than Step 1, and it should say *require* or *impose* rather than *set.* The IC Policy at Step 1 will contain a statement of the discounts available for demand mitigation measures – see section 346(2)(e) – and section 345 then applies when the particular ICs are imposed;

(d) section 346 – this is Step 1. The Bill says *set or adopt*; it should simply say *adopt*;

(e) section 349 – this is Step 3. The Bill could be clearer that the ICs being referred to are those already required or imposed at Step 2, i.e., it is strictly limited to the timing of the invoicing and other technical payment issues.

Other aspects of IC regime

100. Section 343(2) is modelled on section 199(2) of the LGA02 but fails to recognise that the growth related capital expenditure whose cost needs to be recouped through ICs may have been incurred by a local government organisation before the establishment date (most likely 1 July 2024), as opposed to the WSE after that date. This is because it refers to "capital expenditure already incurred **by the water services entity**". Section 343(2) needs to be amended to ensure developers who create the need for and benefit from additional capacity installed by a local government organisation before 1 July 2024, pay for a share of that capital expenditure through ICs.

101. On the face of it, the charging principles in proposed section 331 would seem to apply to ICs (as ICs are a category of charge listed in section 330). There is no express exclusion as in section 334 for geographic averaging. However, it is questionable whether it is necessary for the section 331 principles to apply to ICs, or indeed how they apply, given the purpose and nature of ICs, and the fact that section 344 already contains principles specific to ICs. It is submitted that section 331 should not apply to ICs.

102. The Bill is not consistent on whether it is mandatory for WSEs to have an IC Policy. Proposed section 346 of the WSEA says it is: the board "must…adopt" an IC Policy. However, section 343(3) refers to "any" IC Policy and section 344 says "if" an IC Policy is adopted. This needs to be clarified.

103. An IC policy must include much of same information as in a council DC policy under the LGA02 (proposed section 346 of the WSEA), but there is no requirement to specify the period over which the capex will be incurred. Nor is there any requirement to identify the anticipated assets or programmes of works to which the capex relates. In both respects, the IC regime is less rigorous than that presently applying to councils – even though WSEs will have less direct public accountability.

104. Councils know from experience that requiring clear identification of expected capex and its timing is an important discipline in the development and justification of DCs, and accountability to developers and landowners who have to pay the charges. The Select Committee may wish to consider incorporating these elements into section 346.

105. Section 347(1)(c) requires the preparation of a report on the consultation undertaken on a proposed IC Policy. This could be interpreted as referring only to the consultation under subsection (1)(b) and excluding the engagement under subsection (1)(a) – which includes councils, consumers, mana whenua and communities. Section 347(1)(c) should be amended to refer to the consultation *and engagement* undertaken.

106. The Bill provides that the Crown is exempt from paying ICs (section 348). We oppose this provision, which would extend not only to the "core" Crown (Ministers and government departments) but also to schools and Crown entities like Kāinga Ora – Homes and Communities, which may by legislation be given the privileges of the Crown.[4] There is no good reason for such an exemption, which results in the Crown not paying for the demand it generates for water services infrastructure, and local developers and their communities unfairly subsidising the general taxpayer. Even territorial authorities, who are the public owners of the WSEs, will be liable to pay ICs and it is likewise reasonable for the Crown (and Crown entities) to pay their fair share towards the costs of any growth which it has necessitated.

107. A WSE's charging of ICs, including coordination of invoicing with the statutory events in proposed section 349, will depend in part on its knowledge of council processes, in particular resource and building consents. The Bill does not expressly address practicalities in that regard e.g., provision of information from councils to WSEs, or coordination of processes. In practice there will need to be a high degree of cooperation and information sharing between the WSEs and councils. It may be desirable to specifically refer to this issue in the IC context as part of the subject matter of relationship agreements in proposed section 468 of the WSEA.

108. Proposed section 349 allows agreements for unpaid ICs to be paid off in instalments over a period of up to 50 years. While interest is payable, this type of extended payment arrangement could defeat the purpose of ICs which is to fund the impact that a development has in terms of requiring additional capital expenditure. That impact arises as soon as a development starts "consuming capacity" in water services networks. Despite the deeming provision in section 349(4), lengthy repayment periods are also likely to give rise to recovery difficulties when properties are sold.

109. We also question whether it is fair and reasonable for the proposed section 349(4) to require the new owner of a property to pay unpaid ICs: this is not currently the case with DCs or IGCs, and it is primarily the land developer (rather than the first or a subsequent purchaser) who benefits from the provision of infrastructure that allows the new property to be developed and serviced. Further, the ongoing costs of paying off the IC may in practice be unaffordable for a homeowner, when combined with water services charges payable to the WSE and local authority rates. If despite this submission section 349(4) remains, there should at least be a requirement for the unpaid IC to be registered against the land under the Land Transfer Act 2017, so that an intending purchaser of a property has notice of the liability.

110. It seems from section 349 that the person liable for any ICs is the owner of the property. It would be desirable for the Bill to state this directly, rather than indirectly in section 349.

111. It is also necessary to make it clear that the general liability provision in section 321 does not apply to ICs. As ICs are a form of water services charge (section 330) on the face of it section 321 would apply unless it is excluded.

Transitional matters relating to ICs (proposed clauses 60, 62, 64 and 65 of Schedule 1 to WSEA)

112. Proposed section 350 is clear that councils cannot, after the establishment date, charge or use DCs or FCs relating to water services infrastructure. The transitional provisions in Schedule 1 seem to comprehend a total wash-up of DCs and FCs as at the establishment date, with no on-payments to the WSE after that date. However, in some respects the Bill may not be workable or is unclear.

113. Under proposed clause 62 of Schedule 1, on the establishment date "any unpaid and unaccounted for" DC or FC in respect of water services infrastructure which was required by a council must be transferred to the relevant WSE. There is a lack of clarity as to what "unpaid and unaccounted for" contributions

4 See for example s39 of the Housing Act 1955 which applies to Kāinga Ora

mean, or how they are determined; what happens to DCs or FCs invoiced by a council but not yet been received, or paid but not yet spent, as at the establishment date; or how this regime applies to Watercare IGCs.[5]

114. A simpler "first principles" approach would be that on establishment date:

- DC and FC revenue held by councils relating to water services infrastructure transfers to WSEs;
- the right to collect unpaid DCs and FCs for water services infrastructure transfers to WSEs.

115. Councils should retain a proportin of DC / FC revenue relating to infrastructure which will not transfer i.e. agricultural water supply, relevant stormwater(outside the urban area), and transport stormwater systems.

116. Councils should also retain powers to impose DC / FCs for these categories of network infrastructure, which they may still provide. The requirement that councils amend existing DC and FC policies to remove any power to require a contribution for water supply or wastewater services infrastructure (proposed clause 65 of Schedule 1) is therefore too broad: contribution policies should be able to retain provisions relating to agricultural water supply and stormwater, including transport stormwater systems (so long they are being provided by the council).

117. Clause 65 should also refer to removing relevant FC provisions in a district plan (and not just the contributions policy), because the power to "require" FCs is really under the RMA and district plan and not directly in the section 102 policy. The same "by resolution" process should apply.[6]

118. Clause 65 should include and reference stormwater services. It is currently worded to include only water supply and wastewater services.

More Detailed Recommendations

Provision	Recommendation	Reason
Section 321 of the WSEA	Add new subsection (5) as follows: This section does not apply to infrastructure contribution charges.	For clarification.
Section 331 of the WSEA	Add new subsection: (4A) This section does not apply to the setting of infrastructure contribution charges.	For clarification.
Section 343(2) of the WSEA	Amend subsection (2) as follows: This section does not prevent the board of a water services entity from setting water infrastructure contribution charges that are used to pay, in full or in part, for capital expenditure already incurred by the water services entity, or a local government organisation before the establishment date, in anticipation of development or increased demand.	To ensure developers who create the need for and benefit from additional capacity installed by a local government organisation before 1 July 2024, pay for a share of that capital expenditure through ICs.
Section 343 of the WSEA	Heading – replace "set" with "require" Subsection (1) – replace "set" with "require" Subsection (2) – replace "setting" with "requiring"	More accurate and consistent terminology.

5 Proposed clause 50 anticipates the possibility, in Auckland, of FCs being transferred to the Northern WSE after the establishment date, which seems inconsistent with the principle underlying the other DC and FC transitional provisions.

6 The reference in clause 65(2)(b) of Schedule 1 to section 106(2) of the LGA02 in the context of amending a contributions policy appears to be in error.

Section 344 of the WSEA	Subsection (1) – replace "sets" with "requires"	
Section 345 of the WSEA	Heading – replace "set" with "require" Subsection (1) - replace "set" with "require"	
Section 346 of the WSEA	Heading – replace "set or adopt" with "adopt" Subsection (1) – replace "set or adopt" with "adopt"	
Section 349 of the WSEA	Add words to subsection (1): A water services entity may invoice a person who owns property in its service area for water infrastructure contribution charges required under section 343 when…	
Section 343 of the WSEA	Amend subsection (3) as follows: All water infrastructure contribution charges must be consistent with ~~any~~ the policy adopted under section 346.	Consistency.
Section 344 of the WSEA	Amend subsection (1) as follows: ~~If~~ When the board of a water services entity…	Consistency.
Section 347 of the WSEA	Amend subsection (1)(c) as follows: produce a report on the engagement and consultation undertaken,…	For clarification.
Section 348 of the WSEA	Delete.	Unreasonable for Crown to be exempt.
Section 349 of the WSEA	Add new subsection before present subsection (1): The person liable to pay infrastructure contribution charges is the owner of the property to which the development or the increased demand relates.	For clarification.
Section 349 of the WSEA	Change reference to "not exceeding 50 years" in subsection (2)(b) to a lesser period.	More in keeping with the purpose of ICs.
Section 349(4) of the WSEA	Delete.	Unfair for purchaser of property to assume liability for unpaid IC.
Clause 65 of Schedule 1	Amend subsection (1) as follows: This clause applies in relation to a policy on development contributions or financial contributions adopted by a territorial authority and a district plan prepared under the Resource Management Act 1991. Amend subsection (2) as follows: Each policy or plan must be amended to remove any power of the territorial authority to require a development contribution or a financial contribution for water supply or wastewater services, or stormwater services infrastructure,… …	Relevant district plan FC provisions must also be removed. The power to require DCs and FCs must continue for residual council infrastructure.

	(b) the amendment is not required to be made ~~as described in section 106(2) of~~ using the process in the Local Government Act 2002 or the Resource Management Act 1991: … Add new subclause (3) as follows: Subclause (2) does not apply a requirement in a policy or plan to pay a development contribution or a financial contribution for agricultural water supply or any stormwater services infrastructure (including transport stormwater systems) provided by the territorial authority.	

Topic 7: Council Collection of Charges/ Pass-Through Billing (sections 336 to 338 of the WSEA)

Summary of Key Points

- Council collection of WSE charges risks causing consumer confusion about who is responsible for providing water services
- CE of WSEs "may authorise" councils to collect on behalf and "reasonable steps" taken to enter agreement, but there is no clear basis for a Council to refuse
- Guidance on the assessment of "reasonable compensation" to be paid to the Council should be provided and the power for the Minister to determine terms removed
- The proposed "pass-through billing" may not be practicable because:
  - If it covers the full range of possible WSE charges, the timing / process may not align with council billing processes and capacity
  - It will place additional resource pressure on councils.

Discussion

119. Proposed section 336 provides that a WSE "may authorise" a council to collect charges on behalf of the WSE, and the chief executive of a WSE and the council "must take all reasonable steps" to enter into a charges collection agreement. The agreement must provide for "reasonable compensation" to council, and the Minister determines any terms where the parties are unable to agree.

120. It appears councils are being required to provide billing services for the WSE. The basic power in section 336(1) to "authorise" a council to collect charges, must be preceded by reasonable steps to agree (section 336(2)). Therefore, by implication, it seems councils are required to agree, particularly as the Minister will decide terms if the WSE and council cannot agree. As such, the wording "may authorise" appears disingenuous.

121. Councils may not have the capacity to provide this service to the WSE. They may need to employ additional or temporary staff to do so, but at the same time the WSE will be competing for the same human resources to help set up their systems. We submit that councils should have the ability to refuse to accept authorisation to enter into an agreement.

122. There is also concern about whether the full range of possible WSE charges are to be covered in a collection agreement, including IC charges, and whether the liable entities and timing will align with current council billing processes and capacity. The WSE should carry the risk of council resources and systems not being able to do what the WSE might want. This will need to be a term in the agreement.

123. Where a council agrees to be a collection agent, there is the potential for confusion about who is responsible for water services, if councils are still doing the billing. This can be reduced if, say, councils are required to issue invoices clearly showing it is a WSE charge. Unless WSE invoices and payments are kept entirely separate, councils may favour their own funding needs if a payer pays an "untagged" amount that could cover both council and WSE charges, or pays an amount that is insufficient to cover both WSE charges and council charges. The legislation does not specify, in the event of partial payment of this type, whether local authority or WSE charges have priority.

124. There is also the potential for arguments about what is "reasonable compensation", which could be reduced through the provision of guidance material about the type of matters that can be included. While matters such as postal costs, IT and other administration costs such as reading of meters are likely to be included would "compensation" cover improvements to council systems that might be required to address the different types of charges, or the employment of temporary staff to manage the new charges and system?

125. The final decision about compensation could then be for the council to determine, based on the guidance, and is not something that needs to be decided by the Minister. The addition of a dispute resolution process could assist where there is disagreement on terms between the WSE and the council.

More Detailed Recommendations

Section of WSEA	Recommendation	Reason
Section 336	Amend section 336(2) to delete "Before relying on subsection 1…." and replace it with: "If the local authority or authorities agree to be authorised under subsection 1…." Add a requirement for guidance on the assessment of reasonable compensation.	Councils need control over whether they carry out this service or not.

Topic 7: WSE Rates Exemption (clause 137; section 142 of the WSEA)

Summary of Key Points

- Intent seems to be that WSE land will be non-rateable, however proposed amendment to Schedule 1 of the Local Government (Rating) Act does not correspond to current wording, and so this is unclear
- If the Bill does propose non-rateable status for WSE land, it is strongly opposed. WSE land and WSEs are not inherently deserving of non-rateable status, and councils should not be financially supporting WSEs through preferential rates treatment
- Likewise, the provision granting non-rateable status to WSE infrastructure on roads (or other third party land) is unjustified and should be removed.

Discussion

Non-rateability of WSE infrastructure

126. It appears the Bill's intent is to make land owned by WSEs non-rateable. This conclusion is not certain because the relevant provision in the Bill (clause 137) proposes an amendment to the Schedule of non-rateable land in the Local Government (Rating) Act 2002 (**LGRA**) - adding a new clause 3(3)(e) - which does not correspond to the current LGRA and seems to be in error.

127. If the Bill does propose non-rateable status for WSE land, then it is strongly opposed. There is nothing about land used for water services which qualifies it for non-rateability - it is not of a nature or type which naturally brings it within the categories of non-rateable land in the Schedule. The same land used for the same purposes and presently owned by councils or their CCOs is fully rateable, and there is no good reason for removing that status, and depriving councils of much needed rates revenue, simply because the assets are transferring to WSEs.

128. Granting non-rateable status is also inconsistent with the statutory principle of financial independence of WSEs, in particular the prohibition on council owners giving their WSE financial support (section 171(1)(c) of the WSEA). An exclusion from paying rates is, in substance, a form of financial support. Councils should not be subsidising WSEs.

129. The same comments are made in relation to proposed section 342 of the WSEA, which makes WSE infrastructure such as pipes, when in or on another's land such as roads, non-rateable. This treats WSE infrastructure differently to other network infrastructure e.g., telecommunications, gas, and electricity pipes or lines, all of which is rateable when fixed in, on or under the road.

130. There is no good reason for giving WSE infrastructure special rates treatment, and doing so is inconsistent with its financial independence, as set out above. Section 342 is therefore opposed.

More Detailed Recommendations

Provision	Recommendation	Reason
Section 342 of the WSEA	Delete.	WSEs should be fully rateable.
Clause 137, amendment to Schedule 1 of the Local Government (Rating) Act 2002	Delete.	WSEs should be fully rateable.

Topic 8: Bylaws and Rules / Instruments

Summary of Key Points

- The WSE Board has power to adopt existing Council bylaws as new instruments but no engagement is required, if the application and effect of the instrument is the same, even though modifications can be made. The WSE should be required to consult with councils if modifications are made
- WSEs need the power to adopt resolutions made under bylaws, to avoid deficient or ineffective regulation of bylaw matters
- Health Act bylaws may also need to continue or alternatively be amended or revoked using the same procedure being provided for LGA02 bylaws
- Definition of "spent water services bylaw" refers to section 146 LGA02, but the position needs clarification where a bylaw is made under both sections 145 and s146.

Discussion

131. Clause 56 of proposed new part 2 to Schedule 1 of the WSEA provides for the WSE Board to make certain instruments during the establishment period (which are not effective until the establishment date). This includes the power to adopt (with or without change) existing water services bylaws to become new stormwater network rules, trade waste plans, water use restrictions, or other instruments under WSE's new powers. The normal engagement requirements do not apply provided the "instrument applies to the same area and has the same material effect as the existing bylaw".

132. While these provisions will facilitate the transition, it is not clear how easy it will be to make modifications to and consolidate bylaws to become workable instruments. If there is no requirement to engage with councils and communities how can the WSE be certain that modifications or consolidation will have the same material effect? We submit that the WSE should consult with the relevant council regarding modifications to instruments.

133. We submit that the Board's ability to adopt existing bylaws should also extend to adopting resolutions made under section 151(2) LGA02.[7] These resolutions often contain the specific detail of the regulation provided under the bylaw. If these are not also transferred to the WSE then the bylaw regulation will be deficient.[8]

134. Under proposed clauses 66 to 70 of Schedule 1, councils must amend or revoke bylaws relating to water services if they are satisfied the bylaws have ceased to have effect (and consultation is not required). Generally, a council will be satisfied a bylaw has ceased to have effect where a function has shifted to a WSE, but it may not always be straightforward to make this assessment, especially where a bylaw has a section 145 LGA02 (nuisance, public health, and safety) rationale as well. This is an area where the national transition unit could usefully provide guidance.

135. However, it seems to be an oversight that there is no equivalent provision applying to Health Act bylaws, even though there may be bylaws made under that Act that may still have effect for councils in relation to their remaining functions. Councils may still make bylaws regulating private drainage.

136. The revocation provisions in proposed clause 68 cover resolutions under section 151(2) LGA02, unless otherwise provided under the WSEA. However, consents, permits and authorisations (including trade waste consents) issued under spent bylaws continue in force for specified periods of time. As some consents, permits etc may have been made by section 151(2) resolution, the effect of the revocation of any such resolutions should be clarified.

137. "Spent water services bylaws" are defined as those made under section 146 LGA02 relating to water services. However, some bylaws are made under other provisions as well (e.g., section 145 LGA02), and it would be helpful to clarify the position where bylaws are also made under that power.

138. It is also not clear whether proposed clause 66 captures council trade waste bylaws as a spent water services bylaw. While there are inferences trade waste is part of water services (for example, in the proposed section 330 charges can be set for "wastewater services, including trade waste services"), this matter should be clarified to avoid any doubt.

More Detailed Recommendations

Clause of Schedule 1 of WSEA	Recommendation	Reason
56	Add a requirement for consultation with councils on all instruments that adopt bylaw provisions, to confirm any modifications and that an instrument has the same material effect as the bylaw. Add a provision for the WSE board to also adopt resolutions under section 151(2) made in relation to any existing bylaw.	Consistency and reduce litigation risk.
66 to 70	Amend clause 66(3) to cover bylaws relating to water services made under the Health Act 1956. Consider whether clause 66(3) should also refer to bylaws made under section 145 of the LGA02. Ensure that trade waste bylaws are clearly covered as a spent water services bylaw.	Consistency and to avoid doubt.
68	Add a further provision to clarify that although a s151(2) resolution is revoked any consents, permits	To avoid doubt.

7 Section 151(2) provides that "a bylaw may leave any matter or thing to be regulated, controlled, or prohibited by the local authority by resolution either generally, for any specified classes of case, or in a particular case".

8 We note that reference is made to the revocation of section 151(2) resolutions in caluse 68, in the context of spent water services bylaws.

	etc approved under a section 151(2) resolution are not revoked.	

Topic 9: Trade Waste (Part 6, subpart 3, sections 266 to 273 of the WSEA)

Summary of Key Points

- Requirement for all trade waste discharges to be authorised by a permit (section 270) imposes unnecessary compliance costs. Instead, trade waste plan should be given a greater role in setting relevant requirements
- Trade waste plan should be able to allow specified discharges (with or without conditions), obviating need for permit unless specific conditions are required
- Offence provisions (sections 397 and 398) should be recast accordingly to recognise role of trade waste plan in permitting or prohibiting discharges
- Bill should specifically allow for trade waste plans to have different requirements in different parts of the WSE's service area
- Subpart should recognise or provide for trade waste agreements in lieu of trade waste permits. Existing trade waste agreements must be continued in force in the Bill's transitional provisions
- Liability for trade waste charges should sit with the permit-holder (if there is one) rather than the occupier
- To improve enforceability and effectiveness, a "compliance requirement" as defined in clause 5 should include a provision in a trade waste plan or in a trade waste agreement.

Discussion

Authorisation to discharge trade waste / trade waste plan / trade waste permit

139. The Bill's approach is to make the "trade waste permit" the sole means of authorising trade waste discharges (proposed section 268 of the WSEA). This will impose unnecessary complexity and compliance costs, as well as an administrative burden on the WSEs, because it will require all trade waste discharges to be authorised by a permit.

140. Instead, the Bill should give WSEs greater flexibility by allowing for a level of authorisation simply through the trade waste plan, with or without conditions, and without the need for a permit. A plan should also be able to specify prohibited discharges. This is the approach taken in some existing council trade waste bylaws.

141. The plan could for example provide that a specified level of trade waste discharge (e.g low risk discharges from food services premises) is authorised, subject to compliance with stated conditions (for example in the case of food services premises, installation of a grease trap). Proposed section 270(2) of the WSEA, which says that a trade waste plan may specify the classes of waste or material that are not trade waste, expresses a similar idea; however, it is not the *type* of waste but compliance with an appropriate condition (e.g. use of a grease trap or sink strainer) that justifies exemption from permit requirements.

142. Unless a discharge is entirely prohibited, the issue is then what (if any) conditions should attach to the discharge. Section 270 refers to trade waste plans needing to specify which activities will be allowed, subject to restrictions, or prohibited *under a permit*. There is no need for a permit to allow (without restrictions) or prohibit activities – a trade waste plan should do that. The sole purpose of a permit is to *allow a discharge of trade wastes subject to conditions.*

143. Under this approach, there will be a need for far fewer permits. Much of the "heavy lifting" can be in the plan itself. Section 268 will need to be amended accordingly, to provide that discharges must be in accordance with the trade waste plan and any trade waste permit.

144. The offence provisions (proposed new sections 398 and 399) will also need to be recast to recognise role of the trade waste plan in permitting or prohibiting discharges.

145. Proposed section 270, dealing with the content of trade waste plans, refers to *activities* which are allowed, permitted etc. It would be more apt to refer to *discharges.*

146. Some treatment plants are better equipped than others to accept trade wastes, which may mean different requirements or standards for discharges. This may have wider implications as well – at present some councils take advantage of this by trying to attract wet industry through appropriate trade waste standards, while others may have particularly senstive receiving environments, or have wastewater treatment plants of other infrastructure that are unable to handle significant wet industry or types of trade waste, and so are happy to discourage this. Trade waste policy may therefore be relevant to broader environmental, social, cultural and economic wellbeing.

147. As this dynamic could play out within a WSE's area (and potentially influenced through the RRG and the statement of strategic and performance expectations under section 139 of the WSEA), it would be useful if section 270 confirmed that a trade waste plan may be different in different parts of the WSE's service area.

Trade waste agreements

148. The Bill does not recognise or provide for trade waste agreements. These are commonly used at present in place of trade waste permits.

149. Subpart 3 should therefore provide that:

- WSEs may enter into trade waste agreements, in lieu of compliance with the trade waste plan;
- a trade waste agreement prevails over any inconsistent provision of a trade waste plan.

150. The WSE's general approach to trade waste agreements and when they will be used could be included as a component of the trade waste plan under section 270.

151. The Bill's transitional provisions should also continue in force all existing trade waste agreements, which it does not at present. Such agreements should be treated as deemed trade waste permits granted under the WSEA.

Liability for trade waste charges

152. Proposed section 321(3) refers to the occupier being liable for trade waste charges in respect of a "property that has a trade waste permit". However, under sections 266 to 268 a permit can be applied for by a person who "owns or occupies trade waste premises in the entity's service area" and the permit is issued to that person. The person liable for trade waste charges should be the permit-holder, if there is one, rather than (by default) the occupier.

Enforcement

153. The definition of "compliance requirement" in clause 5 of the Bill, as it applies to trade waste, is too narrow. It does not include a provision in a trade waste plan. This means a compliance order cannot be issued for such breaches.

154. This significantly reduces the enforcement options and therefore effectiveness, especially if (as submitted above) it is the trade waste plan rather than the permit which will establish the compliance obligation in many cases. The provision should also reflect the need to comply with trade waste agreements (if these are going to be recognised under the Bill).

155. Accordingly, paragraph (c) of the definition of "compliance requirement" should be changed to "a trade waste plan, trade waste permit or trade waste agreement" (the definition should also cover water usage restriction rules and rules regulating customer behaviour).

More Detailed Recommendations

Provision	Recommendation	Reason
Clause 5, definition of *compliance requirement*	Amend (c) as follows: A trade waste plan, trade waste permit or trade waste agreement: Add: • A water usage restriction rule • A rule regulating consumer behaviour.	Improved enforceability by including all sources of possible trade waste obligations.
Section 268 of the WSEA	Amend as follows: **Persons may discharge trade waste into wastewater networks only if complying with trade waste plan and trade waste permits.** A person may discharge trade waste into a wastewater network only if the person complies with every requirement, condition, and limit specified in the relevant trade waste plan and any relevant trade waste permit.	More efficient approach.
Section 270 of the WSEA	Amend subsection (1) as follows: A trade waste plan must specify – (a) which ~~activities~~ discharges ~~will be~~ are allowed ~~under a permit~~; and ~~(b)~~ which ~~activities~~ discharges ~~will be~~ require a permit ~~be subject to restrictions under a permit~~; and ~~(c)~~ any ~~activities~~ discharges that ~~will be~~ are prohibited ~~under a permit~~; and (d) the water services entity's intended approach – (i) to ~~issuing permits for~~ regulating trade waste discharges over a 5-year period, including the approach to classes of trade waste, trade waste premises, and trade waste carriers: (ii) to determining the requirements, conditions, and limits that are to apply to different classes of trade waste ~~under trade waste permits~~: (iii) to determining the qualification, training, and supervision requirements that are to apply to persons who ~~are granted~~ discharge trade waste ~~permits~~: (iv) to determining the considerations that are to apply when the water services	More efficient approach.

	entity sets fees or charges in relation to trade waste and trade waste permits.	
Section 270 of the WSEA	Amend subsection (2) as follows: A trade waste plan may: (a) specify the classes of waste or material that are not trade waste: (b) specify different requirements, conditions, limits, or other matters in different parts of the water service entity's service area.	Desirable to expressly recognise possible differentiation within area.
New sections following section 273	Add the following: *Trade waste agreements* (1) A water services entity may enter into a trade waste agreement with any person who may apply for a trade waste permit under section 266. (2) A trade waste agreement prevails over any inconsistent provision of a trade waste plan.	Bill needs to take into account trade waste agreements.
Section 321 of the WSEA	Replace subsection (3) with the following: The person liable to pay trade waste charges in respect of a property is: (a) the holder of the trade waste permit, if there is one; (b) if there is no trade waste permit, the occupier.	Fairer targeting of liable party for trade waste charges and easier administration for WSE if there is a permit.
Section 397 of the WSEA	Amend heading and subsection (1) as follows: **Discharging trade waste ~~without trade waste permit~~ contrary to trade waste plan** (1) a person commits an offence if the person discharges trade waste into a wastewater network contrary to a trade waste plan (including without a trade waste permit issued under section 267 when the plan requires such a permit).	Bill needs to take into account trade waste agreements.
New clause 70A of Schedule 1	Add a clause which continues any trade waste agreement in force immediately before the establishment date.	Bill needs to take into account trade waste agreements.

Topic 10: Engagement / Involvement with Local Authorities

Summary of Key Points

- The amended functions of the WSEs (in section 13 of the WSEA) are proposed to include "to partner and engage with its territorial authority owners", but many provsions in the Bill and Act are inconsistent with or even undermine that function
- The Bill's definition of "engagement" does not make it clear what effective or meaningful engagement / consultation means in relation to decision-making

- The principles set out in proposed section 462 are inadequate insofar as they only apply to WSE engagement with *consumers*
- There is no clear feedback loop requring the WSEs to respond to any feedback provided by the WSE's council owners or others who have been consulted
- Overall, there is insufficient certainty that council owners will be able to influence WSE decision-making, particularly when the decisions intersect with remaining council functions
- The Bill fails to set out how WSEs will engage with mana whenua, being the other group (alongside territorial authorities) with whom WSEs are required to partner (under the new section 13)
- The Bill relies heavily on relationship agreements to inform the working relationship between the WSEs and other key stakeholders, but the relevant provisions are incomplete, do not provide for any transfer of functions or delegation, and are unenforceable (when they may need to be enforceable in certain cases)
- There should be a statutory dispute resolution process for the development of relationship agreements, and in relation to any disputes that arise between the parties.

Discussion

Provisions (especially in relation to the GPS) inconsistent with effective partnership

156. Clause 7 of the Bill proposes to replace section 13 of the WSEA with a wider set of functions, including a function to "partner and engage with its territorial authority owners". While the Councils support the intent behind this change, and the express acknowledgement that territorial authorities will remain the "owners" of the WSEs, it is not clear on the face of the Bill that there is any mechanism or process that reflects this partnership when the WSEs are seeking input into decision-making processes.

157. The vast majority of the decision-making functions conferred on the WSEs require "engagement" with councils or local government organisations, but there is no clear ability for those parties to influence the decisions made by WSEs.

158. It is assumed that the primary mechanism by which council owners are expected to exert influence over the WSEs is via the key documents in Part 4 of the WSEA: in particular, the statement of strategic and performance expectations and the statement of intent. Under section 140, the board of a WSE "must give effect to" the statement of strategic and performance expectations when performing its functions.

159. However, the status of the statement of strategic and performance expectations as the primary direction-setting document for a WSE is undermined by the ability for the Minister to issue a GPS that is broad ranging in its content (see section 133), and the requirement in section 136 that a WSE "must give effect to" any GPS when performing its functions. In short, it may be impossible to give effect to both a GPS and the statement of strategic and performance expectations, where those documents set different priorities or are inconsistent with one another. As wider aspects of the public interest are safeguarded through the economic and health and environmental regulation (by the Commerce Commission and Taumata Arowai respectively) there can be no justification for "central government" in the broadest sense having any residual power to set direction for the WSEs in a way that undermines local ownership and control.

Inadequacy of engagement requirements and principles

160. While properly recognising "partnership", the Bill should provide for a greater level of council involvement in relation to WSE decisions that will or could, directly or indirectly, overlap with council functions. As described in topic 2 above, there is a clear overlap between the functions and powers of the WSEs and spatial / land use planning, and this should require far greater council involvement than mere "input" or "feedback".

161. Proposed sections 461 and 462 (currently sections 206 and 209 respectively) require engagement in relation to certain matters and decisions, and prescribe principles of engagement with "consumers". They do not apply to engagement with any other stakeholders.

162. In the proposed section 461, the definition of engagement requires that a WSE or the Minister do either or both of the following before deciding on a matter:

(a) Consult on proposal:

(b) Seek input, on an iterative basis, during the formulation of a proposal, or feedback on a proposal.

163. There is no elaboration on what is meant by "consult", and clause (b) is expressed as an either / or alternative. This is inadequate, and should be amended to provide greater clarity around how the WSEs should engage with all stakeholders. In the absence of more detail in the Act, this will almost inevitably be the focus of disagreement and potentially court determination, which is obviously undesirable.

164. As a comparison, the LGA02 provides for several different forms of consultation, with principles that guide (whenever a council consults) how a council is to both consider and respond to feedback received. In almost all cases in the Bill, there is no provision requiring the WSEs to respond in writing, or via reporting, to any feedback given by councils, mana whenua, consumers or other stakeholders, and so there is no closing of the feedback loop at all. WSEs will be making decisions that affect each of these stakeholders, and it should be clear to them how WSEs considered their views before making decisions.

165. In order to partly address this issue, section 14 of the WSEA could be amended to include a new principle that requires the WSEs to be open and transparent with decision-making, and which requires the WSEs to respond – in general terms – to feedback received through consultation.

Engagement principles are generic, and do not reflect the key stakeholder status of local government

166. Proposed section 462 sets out "principles of engagement with consumers". The Bill does not include any separate principles that govern the relationship between the WSE on one hand and local government and mana whenua on the other (except to the extent that they are consumers). This is clearly inadequate.

167. Local authorities and mana whenua are the most important stakeholders for the WSEs, which is reflected in the proposed reference to a WSE's function of "partnering" with both territorial authority owners and mana whenua in the amended section 13 of the WSEA. This should also be recognised through a more specifc set of principles applicable to local authorities and mana whenua that ensures their views are given due consideration, with additional opportunities for the WSEs and local authorities and mana whenua to discuss material issues before any decision is made.

168. The above commentary highlights the potential significance of some WSE decisions to council land use decision-making, planning and regulation, and this that warrants a more developed engagement relationship. There is a place for a separate "principles" provision, that enshrines a more extensive relationship between the WSEs, local authorities and mana whenua ahead of decision-making, to ensure that any feedback is given meaningful attention, and responded to directly.

169. The Councils support the provisions in the Bill that require specific engagement with local authorities for some decisions or policy documents e.g. water supply assessments and stormwater management plans. However, there is no clear rationale for not requiring consultation with councils in all processes (including when they are not consumers of the WSEs).

170. By way of comparison, the principles in section 82 of the LGA02 apply to any consultation that a local authority undertakes, not just consultation with one particular group. The lack of any express principles applicable to WSE engagement with stakeholders other than consumers – over and above the very limited matters set out in section 461(4) – creates risk of a "lesser" form of consultation with stakeholders as compared toconsumers.

Transitional engagement – a lack of certainty

171. Proposed clause 76 of Schedule 1 of the WSEA treats any engagement that takes place between councils and the DIA / NTU before the establishment date, on a matter that requires engagement or consultation under the WSEA (as amended by the Bill), as qualifying as engagement or consultation (presumably for the purposes of any relevant statutory requirement, once enacted).

172. There is both a lack of certainty with this provision, and a lack of clarity with when it may apply. This creates a risk, particularly for councils, who may not have fully understood when they were being "consulted" on any matter.

173. While clearly a transitional provision, the reason for this provision remains unclear. If it is to remain in some form, it should be amended to ensure that DIA / NTU state when any pre-engagement will constitute engagement for the purposes of the WSEA, so that councils know that they should take appropriate advice as to the outcome that the WSE is pursuing.

Inadequate control over WSEs due to limited power to remove directors

174. Notwithstanding changes made to the WSEA through its Parliamentary stages, concerns remain about the lack of genuine accountability of WSEs (including with the new subsidiaries as discussed below) to their council owners. In particular, unlike with a council CCO, there is no provision in the WSEA for council owners of the WSE to remove directors of the WSE.[9] Section 70 of the WSEA allows the board appointment committee of the RRG to remove directors for "just cause", which is defined as including "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)". While the definition is inclusive not exclusive, even the words in bold are unlikely to allow removal for failure or refusal to implement the direction set by the RRG through the statement of strategic and performance expectations.

175. Section 70 of the WSEA should be amended by this Bill to allow the RRG to direct the board appointment committee to remove board members where there is just cause. It should also add breach of the WSE's duty under section 140 to give effect to the statement of strategic and performance expectations to the definition of "just cause" for removal of a director under section 70(4). This would bring the council owners of a WSE *closer* to the level of control they have in respect of CCO directors who fail to meet shareholder objectives set out in the statement of intent, who are subject to section 95 of the LGA02.[10] The level of control would still be less, however, as the RRG comprises both territorial authority and mana whenua representatives.

Relationship agreements and service level agreements (sections 467 - 469)

176. The Bill relies heavily on the agreement and success of relationship and service level agreements between the WSEs, councils and other stakeholders.

177. While this method is commonly utilised by councils, the concern is that these agreements can be difficult to implement without ongoing negotiations, amendments and disputes.

178. There will be benefit in DIA / NTU requiring that individual agreements are entered into with councils, and also benefit in providing standard terms to apply across all relationship agreements (particularly with councils), for national consistency, and to ensure all councils and WSEs can take a 'best-practice' approach to any issues that arise.

179. The matters that may be addressed in relationship agreements appear to be incomplete. It would be appropriate to include, as mandatory content, the following matters: customer response, community engagement, implementation of strategic planning, and environmental monitoring. We refer above to IC charges; see paragraph 105, and note other matters that cannot be covered in such agreements (see our comments at paragraph 67).

180. We also note that if the RMA reforms are progressed, there may need to be relationship agreements with the regional planning committees.

181. The lack of enforceability of relationship agreements, in their entirety, is a further area of concern. While relationship agreements are, generally, non-enforceable, given the importance of several of the matters

9 Under section 57 of the LGA, a local authority has the power to appoint directors to a CCO. Under section 45 of the Legislation Act 2019, this power to appoint includes the power to remove, suspend and reinstate a director.

10 This states that the principal objective of a CCO is, amongst other matters, to achieve the commercial and non-commercial objectives of its shareholders set out in the statement of intent.

that may be addressed in this way, there could be a place for the parties to agree, between themselves, whether certain aspects should be enforceable or not. This would provide increased certainty for parties, and remove potential for disputes to arise. It should also be made clear that service level agreements can be enforced (to avoid any doubt about this).

182. There is a lack of any clear dispute resolution process in the Bill, as the development of those provisions is left entirely to the relationship agreement process. If relationship agreements are not made enforceable (in part, or whole) then greater emphasis on the partnership between WSEs and councils and dispute resolution may be needed to ensure effective implementation.

183. In addition, it is not clear whether a service level agreement referred to in section 467 is the same thing as a contract under the current section 119 of the WSEA (contracts relating to the provision of water services), or whether they can be different. This requires clarification.

More Detailed Recommendations

Proposed Section	Recommendation	Reason
Section 13, WSEA	Amend functions to fully reflect partnership, by requiring that WSEs involve territorial authority owners in decision-making.	Effective partnership.
Section 14, WSEA	Amend operating principles to expand "open and transparent" requirement to all decision-making.	Effective partnership.
461	Make it clear that there must be engagement with councils (territorial authorities) and mana whenua.	To reflect the functions of the WSE in new section 13.
462	Incorporate feedback loop in principles, so that open / transparent decision-making is achieved.	Effectiveness of engagement.
New provision	Consider introducing new principles for engagement with mana whenua and local government to reflect s13 "partnering" function.	Effectiveness of engagement.
New provision	Amend s70 to allow the RRG to direct the board appointment committee to remove board members where there is just cause; and add breach of the WSE's duty under section 140 to give effect to the statement of strategic and performance expectations to the definition of "just cause" for removal of a director under section 70(4).	Increase accountability of WSE to territorial authority owners.
468	Include specific reference to cooperation over IC charges information and processes as mandatory subject matter of a relationship agreement.	There will need to be a high degree of cooperation and information sharing between the WSEs and councils in relation to IC charges.
468	Clarify relationship of service level agreements with contracts under section 119 of the WSEA.	Clarity.
469	Provide for relationship agreements, or parts of them, to be enforceable. Alternatively, add provisions to strengthen the partnership between councils and WSEs, and make it clear that service level agreements are enforceable.	Strengthen the relationship between WSEs and Councils.

Clause 76 of Schedule 1	Add provision for DIA / the NTU to clearly identify when contact by them is being relied on under this clause as engagement under the Act, and for what purpose.	Clarity.

Topic 11: Transition / Allocation Schedule and Asset Transfer

Summary of Key Points

- Asset transfer provisions require reconsideration, particularly in relation to process and dispute mechanisms
- Clarification needed in relation to the linkage between clauses 42, 43 and 44 of Schedule 1
- Bill should include a dispute mechanism for the payment of water services infrastructure debt (clause 54 of Schedule 1)
- There should be a requirement for the establishment CE to give reasons for not accepting LGO comments on an allocation schedule
- Comments from an LGO should be received before the Minister exercises the power to amend the allocation schedule
- Before any transfer powers are exercised, there should be a clear statement in the Bill about the functions and powers that will remain with councils.

Discussion

Consultation and approval of allocation schedule (proposed clauses 39 and 40 of Schedule 1 of the WSEA)

184. The Bill requires consultation with each local government organisation on the draft allocation schedule and provides opportunities to make written comments. After comments are provided, the establishment CE is obliged by proposed clause 39(d) to inform councils in writing of the reasons for any "amendments made" to the draft.

185. This requirement, if not amended to respond to comments provided by councils, will only capture additions to the draft allocation schedule. The reason this is an issue is that requests by councils to add to allocation schedule may be important, and there is no specific requirement on the establishment CE to address those as part of the consultation process. We recommend proposed clause 39(d) be amended to provide for this.

186. Proposed clause 40 of the Bill provides the Minister with the power to approve the allocation schedule, and power to make "any amendments the Minister considers appropriate". This is an unconstrained power that should be, at the least, linked to a requirement to consider the written comments provided by a council, the response from the establishment CE, and a requirement to provide reasons for any changes to the allocation schedule.

187. We note that proposed clause 40 does not provide a timeframe within which the Minister must approve the allocation schedule (although implicitly the Minister will need to approve the schedule before the establishment date). To ensure that there is certainty about the content of the final allocation schedule, a timeframe should be included, for example "as soon as practicable after receiving the draft allocation schedule, but no later than [20 working days] after it is received".

Transfer and vesting of assets in WSE, and payment of debt (proposed clauses 42, 43 and 44, and clause 54 of Schedule 1)

188. Proposed clauses 42 and 43 of Schedule 1 of the WSEA provide for the vesting in the new WSEs or subsidiaries of assets, liabilities, and other matters relating to water services. This vesting is to occur by Order in Council (**OiC**) on the recommendation of the Minister (under clause 42) or directly under statute, except to the extent that an OiC provides otherwise (clause 43).

189. There does not appear to be any reason why assets, etc should vest in a subsidiary under proposed clause 42. We note that clause 43 does not provide for the vesting in any entity other than the WSEs. We recommend that reference to 'subsidiary' in clause 42 be removed. This issue is discussed further below.

190. There appears to be overlap between proposed clauses 42 and 43 which should be reconsidered. For example, while clause 42 relies on an OiC for the vesting, a number of the assets, liabilities and other matters that can vest overlap with what is captured by clause 43. There is no clarity around when, or why, the OiC option should be used (on the Minister's recommendation), and no provision that provides any accountability around when that power is used.

191. There is a disconnect between the Minister's role under proposed clause 42 and the Minister's functions as set out in clause 7 of Schedule 1 of the WSEA. The Minister is described as having an "oversight" role during the establishment of the WSEs. The provisions in the Bill however provide an unfettered ability to decide or amend the allocation schedule, which extends beyond oversight and into a substantive decision-making role.

192. This extension of Ministerial powers is a concern, as it is not linked to any of the existing principles that govern the preparation of the allocation schedules. For example, proposed clause 42 should be guided by principles relating to the allocation schedule process, including those included in Schedule 1 of the WSEA (see, for example, clause 6). As drafted, there is no link between the substantive powers and those principles, which creates a risk of unfettered decision-making with no dispute resolution process, which is a real issue for mixed assets and property that has a primary purpose or use that is not the delivery of water services (and which should not transfer). The Minister and the establishment CE should be focused on identifying and transferring only those assets that are "wholly" for the provision of three waters services, with no ability to trump any disputes by transferring mixed assets by OiC, which would leave no ability for disputes.

193. Another 'overlap' issue is that proposed clause 42(1)(d) does not specify that the assets, liabilities etc must relate wholly or partly to the provision of water services. This appears to allow an OiC to transfer assets etc that do not relate to water services. This provision should be amended to provide only for the transfer of items if they relate "wholly" to the provision of water services, which is what the policy intent of the reforms is understood to be.

194. We note that proposed clause 43(1)(f) does not provide for the transfer of any statutory approvals or consents that have been applied for before, but not granted or issued by the establishment date. This is a live issue in relation to any RMA application that will be relied on by the WSEs from 1 July 2024. Given the policy intent of Schedule 1, any approvals or consents should also transfer from local government organisations to the WSEs.

Disputes

195. Proposed clause 43(2)(b)(iii) does not apply to any charges or debts payable to or by a council, or local government organisation, in respect of the provision of water services before the establishment date. We consider that unpaid charges payable **to** an LGO at the establishment date should be treated as part of the assets, liabilities, or debt, transferred to the WSE under clause 43(1)(e) of Schedule 1. From 1 July 2024, the WSE is the only entity with a legitimate interest in unpaid debts, and on this basis, the words "to or" in clause 43(2)(b)(iii) should be deleted.

196. We agree that the parties should have access to a dispute resolution process to determine ownership of contentious assets and liabilities, but there appears to be a process gap. Proposed clause 44 only allows for disputes in relation to clause 43, with no ability to raise a dispute in relation to a clause 42 matter. This should be rectified, as there may be good reason to dispute a transfer recommendation made by the Minister.

197. If a dispute is raised under clause 44, there is no provision that excludes any disputed assets, etc from vesting. The Bill should be amended to ensure that any disputed assets do not vest or transfer until such time as any disputes are resolved. In addition, there needs to be a mechanism for amending the allocation

schedule if a dispute is upheld, which removes or amends the disputed item from the allocation schedule before the vesting is then confirmed.

198. The dispute resolution process in clause 44 provides for the referral of any dispute to arbitration. There is no clear ability to attend mediation as an intermediate step. Arbitration can be a costly and time-consuming process, which could extend beyond 1 July 2024. If that occurs, and the asset has already vested as required by clause 43, then the WSEs will be responsible for that asset while the dispute is resolved. This creates some uncertainty, as local government organisations may intend on including that disputed asset in its long-term planning, and other decision-making.

199. As a result, the dispute process in the Bill warrants reconsideration, to ensure that it captures these scenarios.

Debt transfer

200. In terms of water services infrastructure debt, we note that there is no dispute resolution provision associated with proposed clause 54 of the Bill.

201. Clause 54 requires that a WSE must pay an amount (to be determined by the chief executive of the department) equivalent to the total debt owned by a territorial authority. What this clause does not anticipate is that there could be disputes in relation to what equates to this "total debt". As a result, a dispute process such as that provided for in clause 44 should also apply to any dispute over the amount to be paid under clause 54.

More Detailed Recommendations

Clause	Recommendation	Reason
39(d)	Amend the clause to also require that the establishment CE give reasons responding to comments on a draft allocation schedule from an LGO.	Clarity and reduce legal risk.
40	Amend so that the Minister is to be provided with the information exchanged as part of clause 39, and to require the Minister to provide reasons for any changes to the allocation schedule. Prescribe a timeframe for approval of a schedule by the Minister.	Clarity and reduce legal risk.
42	Delete all references to subsidiary.	Not appropriate to vest assets in a subsidiary of a WSE.
42(1)(d)	Add wording to the end of this clause such as: "and relate wholly to [OR are for the primary purpose of] the provision of water services by the local government organisation".	Clarity.
43(1)(f)	Amend the clause to also ensure it covers resource consents and other approvals that are "applied for by" an LGO.	Clarity.
43(2)(b)(iii)	To delete the wording shown: "any charges or debts payable ~~to or~~ by a local government organisation in respect of the provision of water services before the establishment date".	
42, 44	Extend the dispute resolution process provided for in this clause to cover disputes arising under clause 42.	Efficient process.

45(2)(a)	Clause 45(2)(a) incorrectly refers to clause 42 rather than clause 43.	Correction.
54, 44	Amend clause 54 to provide that the territorial authority is required to determine the amount to be paid and / or provide a dispute resolution process (as in clause 44) if there is disagreement over the amount to be paid.	Efficient process.

Topic 12: Amendment to Clause 27 of Part 6 of Schedule 1AA of the Local Government Act 2002 (in force under section 2(g) of the Water Services Entities Act 2022))

Summary of Key Points

- Clause 27 of Schedule 1AA to the LGA provides that any long-term planning (which includes amendments to a long-term plan (**LTP**)) during the establishment period[11] must exclude content related to three waters matters (i.e., delivery of services, asset management, funding arrangements, etc)
- Clause 27 does not recognise that councils retain water services functions through the establishment period, and may need to amend their LTPs relating to water services for valid reasons
- The capture of LTP amendments requires councils to make assumptions about what assets may transfer ahead of the allocation schedule being confirmed, and creates undue complexity for the preparation of financial information supporting any LTP amendment
- **Recommendation:** amend clause 27 of Part 6 of Schedule 1AA of the Local Government Act 2002 to address the above matters.

Discussion

202. Clause 27 of Schedule 1AA of the LGA02 appears too broad, in capturing amendments to a long-term plan.

203. Councils will be required to provide three water services during the establishment period, while also working with the establishment WSEs about what assets with transfer.

204. While the primary intent of clause 27 appears to concern the preparation of LTPs for the 2024/34 period (with the assumption being that three waters will at that time be a WSE responsibility), some councils may need to amend their 2021/31 LTPs for various reasons during the establishment period.

205. The effect of clause 27 is that any council that wants to amend its current LTP will need to remove three water content from the proposal. This creates a practical issue, particularly for councils that have valid reasons for amending their LTP in relation to water services issues. The practical issue is that an LTP amendment is required to include a revised set of forecast financial statements, which would be a flawed exercise for the financial year without including funding matters related to three waters services and assets. If councils are required to exclude any three waters content from such documents, they will be required to make assumptions about what three waters assets transfer or not, which is speculative at best.

206. We note that clause 30 of Subpart 4 to Schedule 1 of the WSEA provides for Department oversight in any event of proposals to amend an LTP, and so it is not the case that councils will have an unconstrained ability to make amendments to their LTPs.

Future LTPs

207. We also recommend that the Bill make it clear that clause 27 is repealed from the establishment date.

11 15 December 2022 to 1 July 2024 (or earlier).

208. This is necessary to allow councils to include relevant water services functions retained by Councils in future LTPs and LTP amendments. It is also necessary to allow councils to rate for stormwater charges that the WSE may bill for under clause 63, up until 1 July 2027.

More Detailed Recommendations

Clause	Recommendation	Reason
27(2), Schedule 1AA, LGA	Add to the end of clause 27(2): "… unless prior approval is obtained from the Department".	Recognises ongoing responsibility by territorial authorities and reduces legal compliance risk.
New provision	Provision required to repeal clause 27 from the establishment date.	Coherence.

Topic 13: Subsidiaries of a WSE (Schedule 5 of WSEA)

Summary of Key Points

- The lack of direct oversight of subsidiaries by councils or a RRG is concerning
- There are already provisions in the WSEA that allow for joint arrangements between WSEs, if this is one of the underlying policy reasons for allowing subsidiaries (akin to the model of joint CCOs)
- If provision for subsidiaries is to remain, there should be greater oversight / control
- There are incompatibilities between some functions and powers given to subsidiaries that also need to be addressed.

Discussion

209. The Bill provides for WSEs to establish subsidiaries, and the provisions appear to be loosely based on the council-controlled organisation (CCO) provisions of the LGA.

210. It is concerning however that the detailed requirements that apply to the WSE board (in particular its relationship to the RRG) do not cascade down to subsidiaries. This creates the potential for important WSE accountabilities to be circumvented, through the use of subsidiaries. In addition, it may be possible for subsidiaries to operate for a profit, which conflicts with the original policy proposals sitting behind these reforms.

Are subsidiaries needed?

211. We query the need for subsidiaries. The explanatory note to the Bill (and background documentation) does not clearly state the rationale for introducing subsidiaries.

212. Although the ability to establish subsidiaries may allow for existing water services CCOs to be replicated under the WSE model with less disruption, it may also give rise to a corporate model that is at odds with the accountability of a WSE to an RRG.

213. Sections 119 and 120 of the WSEA provide for the WSEs to enter into contractual relationships for delivery of services, including joint arrangements. To the extent that subsidiaries are provided for in the Bill to facilitate co-operative undertakings between one or more WSEs, the Act already makes adequate provision for joint arrangements between WSEs.

Greater control and oversight required if subsidiaries remain

214. If the inclusion of subsidiaries is to remain in the Bill there needs to improved accountability to, and involvement by, councils and the RRG, and the wider community. If not adequately controlled, the introduction of this subsidiary model could see significant impacts on more financially vulnerable communities and households (by virtue of their being profit generating).

215. The Bill ought to be amended to ensure that any proposal to establish a subsidiary (whether by the WSE, or a subsidiary establishing another subsidiary) should involve a comprehensive process requiring engagement that provides transparency around the establishment of that structure. An alternative option would be to provide that the establishment of subsidiaries is treated as a major transaction under section 169 of the WSEA, requiring a special resolution of the RRG.

216. In addition, the process to establish a subsidiary should take into account the rationale for and purpose of the subsidiary (and risks), as well as measures to ensure accountability to or control by the WSE. The Bill contemplates that a subsidiary may be formed by more than one WSE and that it can undertake borrowing or manage financial risks that involve a risk of loss, for which the WSE may guarantee, indemnify, or grant security (proposed clause 10 of Schedule 2).

217. While the shareholders of a subsidiary issue statements of expectation, and direct other matters relating to the subsidiary, the shareholders can be other investors separate from the WSE. Such investors may have different expectations about the performance of the subsidiary. Although the constitution of the subsidiary must not be inconsistent with the WSE constitution, this may not provide a sufficient safeguard where other investors have a shareholding.

Incompatibility with functions

218. Although a subsidiary may only carry out functions that are "incidental and related to, or consequential on" the WSE's functions (proposed clause 2(b) of Schedule 5 of the WSEA), there are provisions in the Bill that appear to be inconsistent with such an 'incidental' function (including the transfer of assets to a subsidiary in clause 42, addressed above under Topic 12). The Bill should clearly delimit the activities which may (or may not) be carried out by a WSE through a subsidiary.

219. While Council agrees that significant water infrastructure (as defined) should not be able to transfer to a subsidiary (see clause 11, which amends section 118 of the WSEA), the power in clause 42 for assets to be transferred / vested to a subsidiary through the allocation schedule process and an OiC has the potential to give a subsidiary greater control than would appear appropriate in light of clause 2(b) of Schedule 5.

220. As set out above, we recommend that the reference to subsidiary in clause 42 be deleted, so that assets can only transfer to the WSE in the first instance. Any subsequent transfer should properly engage the accountability provisions in the WSEA applying to the WSE Board / RRG.

221. We also recommend amending clause 9 of Schedule 5 to make it clear which 'activities' from sections 118 and 119 are relevant. It appears the activities in section 118 ae those set out in section 118(2), but section 119 does not refer to activities at all. Section 119 concerns contracts for the operation of all or part of a water service and sets out matters for which the WSE remains responsible.

Recommendations

Clause / Section	Recommendation	Reason
New	Reconsider the rationale for subsidiaries, and whether they are needed at all. If they are to remain, include a new clause to provide that any proposal to establish a subsidiary (whether by the WSE, or a subsidiary establishing another subsidiary) requires an engagement process similar to the establishment of a council CCO.	Ensure councils / the RRG have the same level of control over subsidiaries as it does over the WSE, and they are established using a clear and transparent process.
Amend section 169 WSEA	Alternatively, amend section 169 so the establishment of subsidiaries is treated as a major transaction.	Subsidiaries are established using a clear and transparent process.
New	Add a provision stating which activities may (or may not) be carried out by a subsidiary on behalf of the WSE.	To ensure that subsidiary functions are "incidental

		and related to, or consequential on" the WSE's functions.
Clause 9 of Schedule 5 of the Bill	Amend to state the 'activities' from sections 118 and 119 that apply, rather than just refer to these sections.	Clarify.

Topic 14: Powers to Carry Out Works on Māori Land

(Part 6, sections 200, 207 - 209,224, 239 and 240)

Note that the submission points of TCC and Te Rangapū Mana Whenua o Tauranga Moana for this topic differ. Both sets of submission points on this topic are included, separately, for consideration.

TCC Submission Points

Summary of Key Points

- The Māori land provisions are complex and an introductory section to Part 6 could assist in clarifying the relationship of the provisions relating to Māori land to the other provisions in Part 6·
- Multiple Māori landowners should be given the same opportunity to impose reasonable conditions on a WSE carrying works on their land that the Bill gives owners of general land (assuming that power to impose conditions is retained)
- The requirement for the WSE to obtain landowner consent under section 209 – as opposed to merely giving notice – before undertaking s200(1)(b) or (c) activities such as removing vegetation or blockages, or maintaining or renewing infrastructure, would be extremely burdensome for the WSE
- It is appropriate that a WSE must appeal to the Māori Land Court (rather than the District Court) where landowners of certain Māori land do not consent; however, the Māori Land Court should be the final decision-maker, with no further right of appeal
- It should be made clear in section 229 that the Māori Land Court deals with disputes on all Māori land.

Discussion

222. The relationship between the provisions in sections 207 and 209 and the other provisions in Part 6 (particularly sections 200 – 203) is not entirely clear. The Bill would benefit from an introductory section which provides an outline of Part 6 (such as is found in section 131 of the WSEA, and in a number of Parts of the Local Government Act 2002 (LGA02)).

223. There does not appear to be a clear rationale why 'general' Māori landowners have the ability to impose reasonable conditions in relation to obstructions and maintenance works under section 200(3); but owners of Māori land with more than 10 owners do not have a similar power to impose reasonable conditions. While it may not be easy for multiple landowners to agree on reasonable conditions, they should be given the opportunity to do so.

224. Whilst we have submitted that the reasonable conditions power be removed altogether (with section 200 refocused to align with the current powers in section 181 and Schedule 12 of the LGA02), if the reasonable conditions power remains for all landowners, then we recommend that section 200(3) also apply to Māori land with more than 10 owners, but with a timeframe in which they must provide the conditions (and the works can continue if there are no conditions imposed).

225. As submitted, we have recommended that: "the subpart 5 appeal rights from the District Court or Māori land Court (proposed sections 227, 228 and 230) are too extensive. The matters being referred to those Courts, either be application or appeal, are essentially factual in nature, involving an assessment of the necessity of the works in that location, the impact on the landowner and the reasonableness of conditions. This is suitable subject matter for the District Court or Māori Land Court, as the case may be, and the Bill should provide that the decision of those courts is final. At present, under Schedule 12 of the

LGA, the District Court's decision is final." There is no need to involve the Māori Appellate Court (s230); the decision of the Māori Land Court should be final.

226. If the WSE powers remain the same as proposed in the Bill, TCC would recommend an amendment to section 229, for the 'general' category of Māori land covered by section 200, to give the same powers as the District Court in proposed section 203 to the Māori Land Court. This would mean that where a Māori landowner does not grant consent within 15 working days, or they grant consent with conditions the WSE considers are unreasonable, the WSE would apply to the Māori Land Court instead of the District Court.

227. Further clarifications for definitions are required. 'Marae' is defined very broadly, however 'urupā' is not defined.

Te Rangapū Mana Whenua o Tauranga Moana Submission Points

Works on Māori Land

228. Subpart 1 of new Part 6 sets out a water service entity's power to carry out work in relation to water services infrastructure on or under land and includes specific requirements for carrying out work on or under limited categories of Māori land.[12]

229. Notice is required in all instances, although the need to seek landowner consent to undertake works is not a blanket requirement. This is a concern to Te Rangapū. In respect of these specific issues, we offer comments, and propose amendments, below.

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230. As an overarching comment in respect of all sections relating to water service entity works on Māori land, we consider that the approach of clause 298 of the Natural and Built Environment Bill (**NBE Bill**) is required. That clause, which concerns designations, confirms that:

1. the functions, duties, and powers conferred in respect of designations must be exercised in a manner that recognises that 'protected Māori land' (as defined in the NBE Bill) is a taonga tuku iho for the owners of the land and the hapū associated with the land;

2. a person exercising a power or performing a function or duty under the subpart must consider the rights and interests of owners of protected Māori land to retain, control, utilise, and occupy the land for the benefit of present and future generations of owners, their whānau, and their hapū.

231. **Relief sought**: We request that the same approach is taken to works on Māori land by water service entities, through a new section 206A that adopts the same language in respect of Māori land under the 2022 Entities Act.

New Section 207 (Māori Reservation Land or Land on which Marae or Urupā Located)

232. Proposed section 207 applies to any work to be carried out by a water services entity. The entity may enter the land and carry out work only if:

- consent is obtained from the owners; and
- 15 working days' notice of any intention to enter the land and carry out work is given to an occupier of the land.

233. **Relief sought:** We request retention of this clause, subject to an amendment to proposed section 207(2)(b) confirming that notice must be given to the owner as well an occupier of the land. This amendment is necessary because there may be no permanent occupiers of the land, but the owners nonetheless have an interest in knowing when works are to be completed.

[12] WSL Bill clause 22.

New Sections 208, 209 and 210 (Māori Land with more than 10 Owners)

234. Proposed section 208 outlines the consent and notice requirements applying to the following water service entity activities on Māori land:

- The construction or placing of water services infrastructure on or under land or under a building on land, where proposed on Māori land with more than 10 owners
- Removing any obstruction or blockage, or clearing any flora that constitutes a risk to, water services infrastructure on or under land or under a building on land and operating, inspecting, maintaining, altering, renewing, or replacing any water services infrastructure on or under land or under a building on land (referred to in this submission as **Maintenance Activities**), where proposed on Māori land with more than 10 owners and the whenua is Māori reservation land or land on which marae or urupā are located.

235. The water services entity may enter the land and carry out the work only if:

1. it has been granted consent of the owners;[13] and
2. 30 working days' notice of any intention to enter the land and carry out work is given by:
   - serving the trustees of the principal marae of the hapū associated with the land; or
   - publishing a notice via the Māori Land Court; or
   - serving a notice on the Registrar of the Māori Land Court.

236. Proposed section 209 applies to a water services entity undertaking Maintenance Activities on multiply owned Māori land where the whenua is not Māori reservation land or land on which marae or urupā are located. The notice requirements associated with proposed section 209 are the same as section 208 above. However, there is no requirement to obtain consent from the Māori landowner.

237. Proposed section 210 applies if a water services entity wishes to carry out work on land that is in a reserve vested in a PSGE under a Treaty settlement Act and managed by a local authority. Notice in writing must be given to the PSGE and the local authority at least 15 working days before work begins. Again, there is no requirement to obtain consent from the Māori landowner.

238. **Relief sought:** Te Rangapū has the following issues with proposed sections 208 – 210:

1. In relation to works carried out under sections 208 and 209:
   (a) Notice must be given to landowners.
   (b) Indeed, landowner notification should be substituted for "serving the trustees of the principal marae of the hapū associated with the land". This is not an effective option to ensure that persons who have a relationship with that whenua are given notice of works:
      - It is unclear from the WSL Bill or its supporting material how the relevant water services entity will determine who the relevant hapū is or which is their principal marae. Determining who the relevant hapū group for land is can be difficult for some entities and, where the wrong group is contacted, the notification requirement becomes wholly ineffective.
      - Even where the relevant hapū group is known, in the case of section 209 where there is no proposed requirement to obtain landowner consent, allowing a water services entity to satisfy its notification requirements by notifying that the trustees of the relevant hapū group places the burden of actually notifying the Māori landowners on that group. That is unacceptable.

[13] Where there are more than 10 owners, consent is determined in accordance with the rules under Parts 9 and 10 of Te Ture Whenua Māori Act 1993, which provide how land owners may collectively make decisions.

(c) To ensure that landowners of multiply-owned Māori land do not bear the burden of having to communicate that works are proposed to other persons with an interest in the whenua, the notification requirement should be amended as follows:

(i) given written notice of its intention to enter the land and carry out work to the owners of the land; and

(ii) published a notice on an Internet site maintained by or behalf of the Maori Land Court or in the Maori Land Court Pānui (or both) relating to its intention to enter the land and carry out the work; or

(iii) served notice on the Registrar of the Maori Land Court in accordance with section 181 of Te Ture Whenua Maori Act 1993 of its intention to enter the land and carry out the work.

2. We do not support the lack of obligation to obtain landowner consent in proposed sections 209 and 210. This seemingly arises because the Maintenance Activities the subject of these sections are considered less likely to adversely affect the whenua concerned, and the whenua to which these sections apply are considered less special. If that is the case, we strongly refute such suggestions:

(a) As identified in Te Ture Whenua Māori Act 1993, and recently acknowledged in the NBA Bill, all Māori land is a taonga tuku iho.

(b) Iwi and hapū are aware of other instances where utility operator or other public entity works properly categorised as construction or placing of infrastructure are characterised as Maintenance Activities so as to avoid additional obligations, such as landowner consent.

3. The reference to "Māori land with more than 10 owners" limits the land to which the relevant landowner consent and notification requirements apply. This is because it:

(a) excludes application of the requirements where Māori land has less than 10 beneficial owners;

(b) makes uncertain whether the provisions apply to multiply-owned Māori land where administration structures, such as a trust or incorporation,[14] are in place. This cannot be right.

4. Finally, we do not support the very limited application of section 210 to land vested in a PSGE under a Treaty settlement Act and managed by an administering body that is a local authority. That suggests that other Treaty settlement lands are not lands for which protection should be afforded as taonga tuku iho.

5. We request that:

(a) section 210 is deleted.

(b) the reference to "Māori land with more than 10 owners" in sections 208 and 209 is amended to "other Māori land", which is defined as:

(i) Māori customary land;

(ii) Māori freehold land;

(iii) land held by or on behalf of an iwi or a hapū if the land was transferred from the Crown, a Crown body, or a local authority.

(iv) land received through Treaty of Waitangi settlement.

(c) Landowner consent is a condition of all proposed water services entity works on Māori land. This should be the default position in any event, given proposed new section 229 allows a water services entity to appeal to the Māori Land Court against a refusal to grant consent.

[14] Proposed s322(7) states that "trustee includes a body corporate constituted under Part 13 of Te Ture Whenua Māori Act 1993", so covers incorporations.

(d) Proposed sections 208(3) and 209(2)(c), which refer to processes specific to "Māori land with more than 10 owners", are qualified as applying where the "other Māori land" is not vested in a trust or incorporation.

Requirements for Easements over Certain Land

239. Proposed section 224 states that if a water services entity needs to create an easement over land that is a Māori reservation or is marae or urupā land, it must follow the Māori Land Court process for creation of easements in Te Ture Whenua Māori Act 1993.

240. We support maintaining the jurisdiction of the Māori Land Court in relation to the creation of easements on Māori land, rather than a bespoke legislative solution subverting existing process.

Appeals to the Māori Land and Māori Appellate Courts

241. Proposed section 229 allows a water services entity to appeal to the Māori Land Court where the Māori landowners refuse to grant access for works. The Māori Land Court has the power to either confirm the decision to refuse access or to set it aside. Proposed section 230 confirms that a decision of the Māori Land Court about access may be appealed to the Māori Appellate Court in the usual way.

242. The process is in contrast with the approach to general land under the WSL Bill, where a water services entity can apply to the District Court for an order authorising it to carry out any work where access is refused to general land.

243. We support proposed section 229. It adopts the starting point that the decision to refuse access sits with the landowners, and not with the Court. The Court may then consider whether that decision was properly made and reasoned, rather than usurp the mana of Māori landowners to decide in the first instance.

244. We consider that the Māori Land Court is best placed to understand the concerns Māori landowners may have about granting access to their whenua, including recognising the impact on Māori land is a taonga tuku iho.

Board may Designate Controlled Drinking Water Catchment Areas

245. Proposed section 231 authorises a water services entity board to designate controlled drinking water catchment areas for which a controlled drinking water catchment management plan may be issued for the purposes of (among other things) managing and controlling a source of a drinking water supply in the area.

246. Under section 231(2), a designation may be made only if:[15]

- the water services entity owns or has long-term control of the land to which the designation relates; or
- the owner of the land to which the designation relates agrees to the designation.

247. **Relief sought:** This is an important qualification that must be retained, to ensure that iwi and hapū puna are not captured where they do not agree.

Topic 15: Te Mana o Te Wai

The introduction of Te Mana o te Wai, putting the well-being and health of our rivers, lakes, aquifers, and estuaries at the centre of how we manage our freshwater, is fundamental to achieving 3 Waters Reform outcomes. These reforms provide the opportunity for an integrated approach to the management of our waters, and TCC alongside Te Rangapū Mana Whenua o Tauranga Moana, support the opportunity to put the health and well-being of water and our community at the centre of how we deliver three waters services now and for future generations.

[15] This is re-enforced by new section 232(3).

Discussion

248. The definition of Te Mana o te Wai in the 2022 Entities Act is unworkable in its current form. Section 6 of the 2022 Entities Act states that Te Mana o Te Wai "applies, for the purposes of this Act, to water (as that term is defined in section 2(1) of the Resource Management Act 1991)." The cross-reference has inadvertently adopted RMA section 2(c) of the definition of water, which "does not include water in any form while in any pipe, tank, or cistern". This is clearly an unintended error as it makes a nonsense of Te Mana o te Wai for the purposes of this Act.

249. Te Rangapū understands that the adoption of the section 2 RMA definition of water was directed toward the matters in section 2(a) and (b), consistent with submissions made, including by iwi and hapū, that the definition of Te Mana o Te Wai be extended to include not only freshwater, but also marine and estuarine waters, lagoons, and puna. This was to recognise the fact that three waters infrastructure is not constrained to freshwater bodies but impacts on our all our waterways and receiving environments.

250. Under section 2(a) and (b) of the RMA water:

(a) means water in all its physical forms whether flowing or not and whether over or under the ground

(b) includes fresh water, coastal water, and geothermal water.

251. **Relief sought:** Amend the section 6 definition of Te Mana o te Wai as follows:

Te Mana o te Wai—

(a) has the meaning set out in the National Policy Statement for Freshwater Management issued in 2020 under section 52 of the Resource Management Act 1991 and any statement issued under that section that amends or replaces the 2020 statement (and *see also* sections 4, 5, and 14 of this Act); and

(b) applies, for the purposes of this Act, to:

(i) <u>water in all its physical forms whether flowing or not and whether over or under the ground; and</u>

(ii) <u>fresh water, coastal water, and geothermal water.</u>

Application

252. Further, while a range of provisions in the 2022 Entities Act refer to Te Mana o te Wai, including that all persons performing or exercising duties, functions, or powers under the 2022 Entities Act must give effect to Te Mana o te Wai, Te Rangapū considers that the WSL Bill can strengthen the water service entity framework by ensuring that Te Mana o te Wai is appropriately reflected throughout the framework and to provide more clarity on its application and effect:[16]

253. Further, while a range of provisions in the 2022 Entities Act refer to Te Mana o te Wai, including that all persons performing or exercising duties, functions, or powers under the 2022 Entities Act must give effect to Te Mana o te Wai, Te Rangapū considers that the WSL Bill can strengthen the water service entity framework by ensuring that Te Mana o te Wai is appropriately reflected throughout the framework and to provide more clarity on its application and effect:

1. The WSL Bill must include Te Mana o te Wai as an overarching purpose, or foundational and interpretive concept, guiding decision making, planning, governance, accountability, and service delivery.

[16] This was also a specific recommendation of the Governance Working Group on Representation, Governance and Accountability of New Water Services Entities, page 51.

2. Te Mana o te Wai is reflected at all levels of the water service entity framework, including as a core competency of the boards, and embedded throughout all operational documents.

254. **Relief sought:** Reaching this point requires:

1. Overarching objective – An amendment is required consistent with examples in Treaty settlement legislation, including the Waikato River and Waipā River legislation, where Te Mana o te Wai is included as the overarching purpose of the Act alongside the existing purpose clause. Alternatively, Te Mana o te Wai could be elevated to a foundational and interpretive concept.

2. Board competency – An amendment to section 76 of the 2022 Entities Act (regarding the collective duties of a water services entity board relating to Te Tiriti o Waitangi) is required to also include reference to Te Mana o Te Wai (mirroring the dual recognition in section 4).

3. Operational documents – Amendment to all provisions concerning the content of the water services entities' operational documents to ensure appropriate reference to Te Mana o te Wai. While some operational documents already include reference to Te Mana o te Wai, in others the reference is insufficient.[17] For example, section 149(2)(d) of the 2022 Entities Act requires a statement of intent for a water services entity to set out any actions the entity intends to take relating to water services as part of its response to a Te Mana o te Wai statement for water services. It does not require a water services entity to set out any actions the entity intends to take to give effect to Te Mana o te Wai separate to receipt of any Te Mana o te Wai statement. This means that the obligation is only triggered by a Te Mana o te Wai statement. That is not acceptable. Section 149(2)(d) requires amendment as follows: For example, section 149(2)(d) of the 2022 Entities Act requires a statement of intent for a water services entity to set out any actions the entity intends to take relating to water services as part of its response to a Te Mana o te Wai statement for water services. It does not require a water services entity to set out any actions the entity intends to take to give effect to Te Mana o te Wai separate to receipt of any Te Mana o te Wai statement. This means that the obligation is only triggered by a Te Mana o te Wai statement. That is not acceptable. Section 149(2)(d) requires amendment as follows:

   (d) any actions the entity intends to take relating to water services to give effect to Te Mana o te Wai, including (consistent with its plan under section 144(2)) as part of its response to a Te Mana o te Wai statement for water services.

Topic 16: Miscellaneous Amendments

Recommendations

Provision	Recommendation	Reason
Clause 5 / section 6 - definitions	Amended definition of "water services". The new paragraph (c) should replace, rather than supplement, the existing paragraph (c).	Amended definition is to include "water supplied by a water services entity for agricultural or horticultural purposes" – but this seems unnecessary as the existing definition is similarly worded in paragraph (c) and would

[17] For example:
- section 133(2)(d) of the 2022 Entities Act, the Government Policy Statement must include the Government's expectations in relation to Māori interests, partnering with mana whenua, and giving effect to Te Mana o te Wai
- section 139(2)(a)(v) of 2022 Entities Act a statement of strategic and performance expectations for a Water Services Entity must include how the water services entity is expected to give effect to Te Mana o te Wai.
- proposed section 256(1)(f) under the WSL Bill, a stormwater management plan must state how the stormwater management plan is to give effect to Te Mana o te Wai, including any actions the water services entity is to take as part of a response to a Te Mana o te Wai statement under section 144.

		already capture the same situation.
	"Green water services infrastructure??	
Clause 7 / section 13	Paragraphs (d) and (e) should be amended to recognise that in some circumstances WSEs will need to engage with mana whenua and communities outside their service area, i.e.: (d) to partner and engage with mana whenua in, and where appropriate outside, its service area. (e) to engage with consumers and communities in, and where appropriate outside, its service area.	One of the WSE's functions in paragraph (d) is to "partner and engage with mana whenua in its service area". "Service area" is defined in s6 of the WSEA as "the area identified in Schedule 2 as the service area of the entity". In the case of the Northern WSE, its service area does not include the current Waikato region despite critical water services infrastructure for Auckland (e.g., the Mangatangi and Mangatawhiri Dams, Waikato Water Treatment Plant, and Pukekohe Wastewater Treatment Plant) being in the Waikato region and the five "River iwi" including Waikato-Tainui being the relevant manawhenua. It is not sufficient to be engaging with other WSEs where the provision of water services crosses service area boundaries, as per the function in (f), as the engagement needs to be directly between the WSE and affected mana whenua or other part of the community.
Section 35A	This section provides that notice can be given by Medical Officer of Health or Taumata Arowai to a WSE or regional council to carry out an assessment of potential contamination and take reasonable steps to warn users. The word "supply" in section 35A(2) appears to be incorrect. The word "source".	Section 35A(2) refers to a WSE "responsible for the supply", but the section itself relates to warning users of a domestic self-supply. The WSE is not responsible for a domestic self-supply and does not have to include these in the WSE's assessment under section 245.

		WSEs and regional councils are responsible for a “source”.
Section 233 (and offence provisions in subpart 4)	Under this section the chief executive may give a direction to comply with a controlled drinking water catchment management plan. However, there is no offence for failure to comply with a direction by the chief executive.	There should be an offence linked to a direction by the chief executive under section 233, similar to section 412 (a person commits an offence if they fail to comply with a direction issued by a compliance officer under sections 364 or 365(2)(b)).
Section 258	Amend clause 258(1)(b), replacing it with "develop a stormwater management plan that has regard to any comments made by Taumata Arowai on the draft plan relating to the water services entity's obligations under the Water Services Act".	The requirement for entities to "give effect to" Taumata Arowai comments on draft stormwater management plans seems to give Taumata Arowai a broader role than intended. Taumata Arowai will have the expertise to provide comments in relation to, for example, performance standards, but the WSE should not be required to give effect to all comments (e.g., those relating to resource management matters, which are matters for local authorities) relating to the plan. The WSEs will already have the incentive to give effect to comments where it assists the entities to comply with their obligations under the Water Services Act, which is enforced by Taumata Arowai.
Section 420	Consider including a greater number of offences within the definition of “infringement offence”.	The cost of prosecuting for, say, the relatively low-level offence of carrying out work in immediate proximity to the network without notifying WSE (section 407) is likely to be prohibitive. Application of the infringement regime would more effectively deter such conduct.
Clause 129; sections 471 and 472 of the WSEA	WSE should be subject to timing obligations for provision of information to council, especially where that is necessary for council to respond to a particular LIM or PIM request. If necessary, deadline for providing	LGOIMA is amended to provide that a LIM must contain information on private and public stormwater drainage as shown in TA’s and WSE’s records. In order to be

	LIM or PIM should be extended, to cater for this extra step. Bill should also say that responsibility for accuracy and completeness of information sourced from WSE rests with WSE not the council.	able to respond to LIM requests, WSE must provide to TA all information it holds on private and public stormwater and sewerage drains. In order to ensure the information is up to date, this will presumably have to happen in response to each request. Similar requirement in order to respond to PIMs under Building Act. But Bill does not expressly address timing requirements for provision of this information (given that council is under statutory deadlines) or question of responsibility if information originating from WSE is inaccurate or incomplete.
	Add a requirement that the DCE and Taumata Arowai liaise, where both organisations are investigating or taking compliance and enforcement steps in relation to the same matter or property, which appears to be a possibility.	If both organisations are investigating compliance issues at the same time a property owner could end up with multiple visits over the same matter and it would be preferable if this was avoided.
Clauses 130, 131 and 140	These clauses are not required.	Schedules 1 and 2 of LGOIMA are already amended by sections 225 and 226 WSEA. Schedule 1 of the Ombudsman Act is already amended by section 228 of the WSEA.
Clause 52 of Schedule 1 to the WSEA	Clause 52 could be amended to allow for a Council CCO to be treated as a 'third party' in this clause (even though they are treated as a 'local government organisation' in the rest of the transfer related provisions).	Under the WSEA, contracts held by a Council CCO that relate to the provision of water services are included within the definition of 'assets, liabilities and other matters'. The Minister can give directions under clause 52 about how a CCO contract should be dealt with. The Bill does not clearly address the situation where the contract is between two 'local government organisations', (e.g., the council and a CCO), and how

		the Minister can give directions regarding these.

Section 3

Further Submission Points of Te Rangapū Mana Whenua o Tauranga Moana

Key Concerns

Undermining of Iwi and Hapū Rights and Interests in Water

255. The Government has failed to deal with the issue of iwi and hapū rights and interests in water in developing successive Bills to reform delivery of water services in Aotearoa. While section 10 of the 2022 Entities Act ostensibly preserves right and interests in water, the proposals in this Bill prejudices those rights and interests in so far as they manifest in the ownership of water assets, liabilities, and other matters.

256. In particular, new Part 2 of Schedule 1 of the WSL Bill provides for the transfer of local government organisation assets, liabilities and other matters to water services entities, voiding application of provisions of the Public Works Act 1981 that relate to disposal to former owners of land (including Māori land) not required for a public work.

257. Further, there is no role for iwi and hapū in respect of preparation of the allocation schedules for each water service entities, the primary mechanism used to transfer assets from local authorities to water service entities. The proposed WSL Bill amendments applying to the allocation schedules include new consultation requirements (though with local government organisations only, not iwi and hapū), and the requirement for Ministerial approval.

258. Land that is surplus to requirements must be properly available for transfer to iwi and hapū.

259. **Relief sought:** New provisions are required in the WSL Bill that provide for iwi and hapū to be involved at the earliest stage in the assessment of which assets, including land, may or may not be considered a water infrastructure asset and whether they should be transferred to a water services entity. The provisions need to apply to ongoing water entity decisions in respect the retention or disposal of assets.

260. In similar vein, local government-owned mixed-use rural water supplies that provide drinking water in addition to water for farming-related purposes will transfer to water services entities. The Bill also contains provisions (proposed sections 234 – 244) that enable those supplies to be subsequently transferred to an alternative operator (for example, the farming or community served by the supply). The alternative operator must prepare a business plan for the proposal that is independently assessed for its viability. Transfer may occur if supported by a referendum. The transfer of the service cannot occur if it breaches any Treaty settlement obligation.

261. Te Rangapū is not opposed to water supplies being managed locally, including potentially by mana whenua. However, a similar process needs to be built in, involving iwi and hapū at the earliest stage, where the assets to be transferred are first assessed for continued need and opportunities for transfer of surplus assets are identified. As above, the provisions need to apply to ongoing water entity decisions in respect the retention or disposal of assets. Further, a clause such as that proposed in respect of water service entity subsidiaries is required, where alternative operators must give effect to Treaty settlement obligations.

262. Practically, we also note that there appears to be no clarity about what happens if the alternative operator no longer wishes to supply water services. The most relevant provision appears to be proposed section 250, but that provision is drafted with problems with drinking water supply in mind rather than a decision to discontinue a well-functioning supply system. We would assume that responsibility for supply including any assets reverts back to the relevant water services entity, but we suggest that is clarified in the WSL Bill provisions, and where that transfer occurs iwi and hapū participation is similarly engaged.

Upholding Tiriti o Waitangi Settlements

263. Te Rangapū supports the transitional provisions in the WSL Bill affirming that, during the establishment period for water services entities, all persons exercising duties, functions, or powers must uphold the integrity, intent and effect of Tiriti settlements.[18] We also support that direction that subsidiaries of water services entities must give effect to relevant Treaty settlement obligations that apply to its parent entity.[19] These proposals reinforce the general proposition in section 9 of the 2022 Entities Act that Tiriti settlement obligations prevail.

264. Proposed section 225 also states that whenever a water services entity is looking to purchase land for water services infrastructure, it must consult the Minister for Treaty of Waitangi Negotiations for the purpose of considering the Crown's obligation to provide redress for future Treaty of Waitangi claims. We support the intent of this provision to ensure that the pool of land available for Treaty Settlements is not reduced by the operation of this legislation.

265. The Explanatory Note to the WSL Bill explains that engagement is underway with iwi who have Tiriti water service-related settlement arrangements. It contemplates changes to Tiriti settlement legislation to ensure that settlement obligations are carried forward from territorial authorities to the new water services entities. However, the Bill does not address the potential need to modify Water Services legislation to accommodate settlement arrangements.

266. **Relief sought:** We request that the WSL Bill set out a process, as with the Natural and Built Environment Bill, for such modification to occur.

Upholding Other Arrangements

267. It is equally critical that negotiated arrangements such as JMAs entered into under the RMA that do not arise from Treaty settlements[20], Mana Whakahono ā Rohe,[21] section 33 RMA transfers[22] and other non-RMA arrangements relating to water services delivery or infrastructure are upheld.

268. **Relief sought:** We support retention of clause 78 of Schedule 1 and proposed section 474(1)(c) establishing that contracts, arrangements, or understandings that local authorities have entered with mana whenua relating to water services transfer to water services entities.

Partnering and Engaging with Mana Whenua

269. Section 5 of the 2022 Entities Act refers to a list of provisions in that Act that are intended to recognise and respect the Crown's responsibility to give effect to the principles of te Tiriti o Waitangi,[23] and the WSL Bill proposes a range of additions to the list.

270. Proposed section 5(ba) introduces a new function of a water services entity is to "partner and engage" with mana whenua in its service area.[24] This is a general function, with not specific examples given. We consider this new section appropriate, as it mirrors section 14(g) of the 2022 Entities Act stating that an operating principle of a water services entity is "partnering and engaging early and meaningfully with Māori".

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18 The section currently exists in Schedule 1, clause 37 of the 2022 Entities Act.
19 Amendment to 2022 Entities Act, Schedule 5 clause 8 of the WSL Bill.
20 There are currently JMAs under the RMA between Ngāti Tūwharetoa and Taupō District Council (2009) regarding consenting on Māori land and between Ngāti Porou and Gisborne District Council (2015) regarding decision-making in the Waiapu catchment. Māngai Māori arrangements on critical decision-making committees between Waikato-Tainui and both Hamilton City Council and Waikato District Council.
21 Being an iwi participation arrangement entered into under Part 5 Subpart 2 of the RMA (noting the recent mana whakahono ā rohe signing between Ngāti Tūrangitukua and Taupō District Council).
22 There is currently one transfer that has been made under section 33 of the RMA (being between Ngāti Tūwharetoa and Waikato Regional Council).
23 Critically, this list does not limit 2022 Entities Act section 4(1)(a) (all persons performing or exercising duties, functions, or powers under this Act must give effect to the principles of te Tiriti o Waitangi / the Treaty of Waitangi), as per 2022 Entities section 4(2); and Treaty settlement obligations prevail, as per 2022 Entities Act section 4(3).
24 WSL Bill clause 4(1) (inserting 2022 Entities Act, section 5(ba)).

271. Proposed section 5(h) then cross-references a range of provisions that relate to duties, functions or powers of water service entities and the Minister, for which "there must be engagement with mana whenua". No reference to partnership is made. Those provisions concern:

The board of a water services entity must engage with mana whenua when:

1. developing a controlled drinking water catchment plan;[25]
2. assessing access to drinking water supply and other water services;[26]
3. developing a stormwater management plan or stormwater network rules;[27]
4. developing or amending its trade waste plan;[28]
5. making rules that would limit certain work being undertaken near a water supply system or other water network;[29]
6. adopting a policy for charging for contributions to water infrastructure;[30]
7. developing or amending its compliance and enforcement plan;[31]
8. developing or amending rules for reporting and record keeping to assist with monitoring compliance;[32]
9. the Minister must engage with mana whenua:
    - about the making of a model constitution for water services entities before making it;[33]
    - about the transfer of any agreements, contracts, or understandings they may have with local authorities to the water services entity.[34]

272. Nowhere else in the 2022 Entities Act are matters on which the water services entities must partner with mana whenua listed. This makes existing section 14 (regarding operating principles) and proposed section 5(b)(a) both misleading and an empty promise.

273. Engagement is defined under the WSL Bill.[35] A water services entity or the Minister must, before deciding on a matter, consult on a proposal and / or seek input, on an iterative basis, during the formulation of a proposal, or feedback on a proposal.[36] To "partner and engage" clearly requires a higher standard.

274. **Relief sought:**

1. Proposed section 5(h) requires amendment to provide that there must be "partnership and engagement with mana whenua", to ensure consistency with proposed section 5(ba).
2. Consequential amendments will be necessary to the individual provisions to which proposed section 5(h) relates, to confirm the partnership relationship.
3. Finally, reference to two further provisions should be added to proposed section 5(h), to ensure a role for mana whenua is accommodated in respect of those matters:
    - Proposed section 277 (Engagement requirements for water usage restrictions and consumer behaviour rules)

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25 WSE Act, section 232(5); inserted by WSL Bill.
26 WSE Act, section 247(1)(a); inserted by WSL Bill.
27 WSE Act, section 257(1)(b) and 262 (1)(d); inserted by WSL Bill.
28 WSE Act, section 271(1)(c); inserted by WSL Bill.
29 WSE Act, section 286(1)(b); inserted by WSL Bill.
30 WSE Act, section 347(1)(a); inserted by WSL Bill.
31 WSE Act, section 355(b); inserted by WSL Bill.
32 WSE Act, section 473(3); inserted by WSL Bill.
33 WSE Act, section 474(2); inserted by WSL Bill.
34 WSE Act, section 474(6); inserted by WSL Bill.
35 At proposed section 461 of the WSL Bill, which is substantially the same as the engagement provision (section 206) in the 2022 Entities Act.
36 WSL Bill clause 22 (inserting 2022 Entities Act, section 461(2)).

- Proposed section 295 (Engagement for water services infrastructure connection requirements).

Purpose and Content of Government Policy Statement

275. Under the 2022 Entities Act the Minister may issue a Government policy statement on water services. Section 133 of the 2022 Entities Act sets out the purpose of Government policy statements and lists matters that must be included when one is created, as well as matters that are optional to include.

276. Clause 13 of the WSL Bill adds redressing historic unfairness in accessing water services as an optional matter that the Government can set expectations for water services entities on in a policy statement.

277. **Relief sought:** We support the retention of this new provision. Addressing historic unfairness in accessing water services will benefit rural Māori communities.

Duty to Ensure Communities have Access to Drinking Water if Existing Supplier Faces Significant Problems

278. Proposed section 250 states that, if a supplier (not being the water services entity) is facing a significant problem or potential problem with its drinking water supply, and a water services entity takes over the management and operations of a drinking water supplier on a permanent basis, the water services entity, Taumata Arowai, the former supplier, and (if relevant) the affected consumers must work together to determine how to deal with, among other things, any assets and liabilities of the former supplier.[37]

279. This proposed section makes no reference to mana whenua, and yet it is a prime opportunity to demonstrate the partnership commitment to mana whenua in proposed section 5.

280. **Relief sought:** Amend sections 250(2)(a) and (6) as follows:

(a) work collaboratively with the supplier, the consumers of the supply, mana whenua and Taumata Arowai to identify, as the circumstances allow and within a time frame determined by Taumata Arowai, 1 or more of the following:

(6) If a water services entity takes over the management and operations of a drinking water supplier on a permanent basis, the water services entity, Taumata Arowai, the former supplier, mana whenua and (if relevant) the affected consumers must work together to determine how to deal with

Vesting Water Services Infrastructure in Water Services Entity

281. Proposed section 317 provides for to a person (the owner of water services infrastructure) to apply to a water services entity to vest water services infrastructure in the entity.

282. We take this provision to be directed toward the vesting of private owner infrastructure in the water services entity, and request that this is made clear in the section to ensure that this provision does not contravene iwi and hapū rights and interests (i.e., by being an alternative pathway for local government asset transfers).

283. **Relief sought:** Amend section 317(4) as follows:

(4) In this section, person means the private owner of water services infrastructure.

Charging Principles

284. Proposed section 331 of the 220 Entities Act sets out the principles that must be considered by a water services entity board when setting charges.

285. We specifically support the following principles:

[37] WSL Bill clause 22, new WSE Act section 250(6).

1. charging different groups of consumers differently (only) if those groups receive different levels or types of services; and
2. the board may set lower charges (including no charges) for particular consumers to remedy inequities in the provision of services.

286. **Relief sought:** We support the retention of this provision. Many isolated or rural Māori communities receive sub-standard water infrastructure. They should not be expected to pay charges commensurate with city or town supply consumers.

Tauranga moana mana whenua continues to be impacted by the historical effects of raupatu. The city infrastructure is built on mana whenua land assets taken e.g., Oropi water catchments, Te Maunga Wastewater system including title areas to Rangataua. Many of these systems have adversely impacted on Maori communities in yet they don't have access to services e.g., Matapihi with the Southern Pipeline and Romai Marae.

Obligation to Review and Publish Charges

287. Under proposed section 332 the board of a water services entity must publish the charges that apply to its annual billing period and any changes to them.

288. However, the board is not required to do so in respect of charges that the board considers to be customised or otherwise unusual.

289. **Relief sought:** We do not support this provision. It is important that transparency is retained with respect to customised or unusual charges, which should be able to be justified, to maintain fairness.

Chief Executive of Water Services Entity may Discount Charges

290. Proposed section 333 permits the chief executive of a water services entity may discount any charges that the entity's board has set, a power which overrides the board's authority to set charges and the charging principles.

291. **Relief sought:** We support the retention of this provision. It allows flexibility for discounts to be made on a case-by-case basis.

Charges for Water Services may be Averaged Geographically

292. Proposed section 334 authorises a board of a water services entity to charge geographically averaged prices for the water services, or charge geographically average prices at different scales for different service types and different classes of consumers.

293. It also permits a board not to charge a geographically averaged price for certain reasons, including that communities receive a higher or lower level of service than is generally provided elsewhere within those boundaries, or a water services entity has taken over a failed drinking water supplier.

294. **Relief sought:** We support the retention of this provision. Again, it allows flexibility to meet the needs of isolated or rural Māori communities where there is limited service provision available to them.

Liability for Water Services Charges in Respect of Māori Land

295. Proposed section 322 of the 2022 Entities Act sets out how charges are to be applied to Māori land in the service area of water services entity:

1. Where the land has only one or two owners, the owners will be required to pay for the water services.
2. If the Māori land is owned by multiple people and is also leased, the lessee will be required to pay for the water services, unless the lease states that the owners will be liable to pay the water services charges.

3. If Māori land in multiple ownership is subject to an occupation order, the holder of the occupation order must pay for the water services, unless the occupation order states that the owners will pay the water services charges.
4. If Māori land is owned by more than 2 people, the owners collectively are responsible for the water services charges.
5. If the Māori land is in a trust, the trustees are responsible for paying the water services charges.

296. **Relief sought:** This provision requires amendment to ensure adverse consequences do not befall Māori landowners:

1. It is not necessary for persons occupying Māori land to hold an occupation order. Occupation arrangements may be formalised in a range of ways – by an occupation order, a license to occupy or a lease – but they may also remain informal where there is agreement between the owners. However, such a situation either falls outside of new section 322, or arguably renders owners liable. An amendment is required to remove reference to an occupation order and instead focus on the "occupier of the land"[38]. This captures informal arrangements, occupation orders and licenses to occupy, and importantly, sets a default position that does not place liability on owners or trustees.
2. Proposed section 322(6) is unclear and requires clarity. Until we are certain as to its meaning, we can offer no suggested amendment.
3. We suggest the following amendments to proposed section 322:

322 Liability for water services charges in respect of Māori land

297. <u>If Māori land in multiple ownership is occupied through an arrangement other than a lease, the occupier of the land</u> is liable to pay water service charges (other than trade waste charges) for the Māori land unless the <u>arrangement</u> provides for the owners or trustees to pay the water services charges.

Māori Reservation Land or Land on which Marae or Urupā Located

298. Proposed section 322 makes no reference to Māori reservation land or land on which marae or urupā located. We do think it appropriate that a bespoke arrangement is developed for liability for water services, if any, for this special category of whenua.

299. **Relief sought:** We consider that it is appropriate for the WSL Bill to provide for regulation-making powers to accommodate bespoke arrangements for this category of whenua, and recommend an addition to proposed section 210(1) as follows:

1. <u>Providing for water services charging arrangements, which may include charging exemptions, relating to Māori reservation land or land on which marae or urupā are located.</u>

Limitation on Trustee Liability

300. The policy intent behind new section 323 of the 2022 Entities Act appears to be that:

1. trustees of a Māori land trust are not personally liable for water services charges in respect of Māori land;
2. instead, any water services charges are to be paid from any income derived from the land and received by the trustees on behalf of the beneficial owner or owners; and
3. if the land does not produce enough income to pay the charges, trustees can provide evidence to the water services entity of trust income, and they will only be required to pay the amount that the trust income can accommodate.

[38] The language used in new section 207(2)(b).

301. **Relief sought:** We support the retention of the intent of this provision. Not all Māori land trusts produce income. Further, to hold the trustees personally liable would discourage owners from acting as trustees or putting land into trust.

1. However, we do consider that amendment is required to new section 323 to make the clause clearer and to meet the policy intent. In particular:
2. Expressly stating that trustees are not personally liable is particularly important, as most Māori land trusts do not have a corporate trustee.
3. The reference to income should be amended to make clear that it is to 'net income' (i.e., income less expenses) as opposed to gross income, which does not subtract expenses. This is consistent with the policy intent that no payment is required if the trust does not have the funds.
4. The clause should be clarified to confirm that the charges do not accumulate across income years.

302. We suggest the following amended section 323:

323 Limitation on trustee liability

1. Trustees are not personally liable for water services charges.
2. Liability for charges in any given income year is limited to the amount equal to the net income derived from the land and received by the trustees on behalf of the beneficial owners of the land. For the avoidance of doubt, unpaid charges do not accumulate from income year to income year.
3. Trustees seeking to rely on subsection (2) must, on request by a water services entity, provide copies of any annual financial statements provided to the beneficial owners by the trustees.
4. This section applies to all trustees who hold or manage Māori land under section 322.

Powers of Entry and Inspection

303. Proposed section 371 gives compliance officers power to enter onto property for specified purposes related to their role:

1. Where the property is a Māori reservation, or marae or urupā land, the section requires the compliance officer to obtain the consent of the owner.
2. If the property is Māori land, the compliance officer must give reasonable written notice to the owner or owners before going onto the property.
3. If the land is Māori land owned by more than 10 people with no clear management structure or trust, the compliance officer must give the reasonable written notice to the trustees of the principal marae of the hapū associated with the land before entering onto the property.
4. If the land is a reserve vested in a PSGE and managed by another body than the PSGE, notice must be given to both the PSGE and the managing body.

304. Powers must be exercised in accordance with the Search and Surveillance Act 2012, which requires a search warrant.

305. We support the prohibition on entering into reservation, marae, or urupā land without permission of the owners. These can be wāhi tapu and have cultural protocol which must be observed by the person entering onto the land. Contacting the trustees prior to going onto the land ensures that the necessary tikanga can be communicated to the compliance officer or an appropriate person can accompany the compliance officer.

306. We are concerned about the notification requirements for Māori land set out in new section 371(7) and consider they should be amended. In particular, the provision allows the trustees of the principal marae of the hapū associated with the land to be notified before a compliance officer enters onto Māori land with more than 10 owners and no clear management structure. As stated above, we consider notification to those trustees cannot replace notification to the owners of the land.

307. Further, for the reasons identified above, we do not support the very limited reference to land vested in a PSGE under a Treaty settlement Act and managed by an administering body that is a local authority.

308. **Relief sought:**

1. Proposed sections 371(6) and (8) should be merged and amended as per our submission points above on works on Māori land (i.e., incorporating the new definition of "other Māori land". New proposed section 371(6) should read:

- A compliance officer must not enter any other Maori land unless, before entering, the compliance officer has given reasonable notice in writing to the owner (or owners) of the land.

2. Proposed section 371(7) should be amended. Given the provision concerns entry and inspection of whenua we consider that notice to the marae (not just the principal marae) of the hapū associated with the land could assist in notifying the owners. However, that should occur after reasonable efforts are made to contact some of the owners listed on the Māori Land Court Records. We suggest the following wording:

- However, if the land referred to in subsection (6) is owned by more than 10 persons with no clear management structure or is owned by more than 10 persons and not vested in a trustee, the compliance officer must not enter the land unless, before entering the compliance officer:

(a) has reasonably attempted to contact the owners listed on the Māori Land Court records; and

(b) has given reasonable notice in writing to the trustees of the marae of the hapū associated with the land; and

(c) published a notice on an Internet site maintained by or behalf of the Maori Land Court or in the Maori Land Court Pānui (or both) relating to its intention to enter and inspect the land; or

(d) served notice on the Registrar of the Maori Land Court in accordance with section 181 of Te Ture Whenua Maori Act 1993 of its intention to enter and inspect the land.

Power to Enter Place Without Search Warrant

309. Proposed section 372 gives a compliance officer a power to enter onto property without a search warrant despite new section 371, if the compliance officer reasonably believes the search is required in relation to a specified serious risk. A specified serious risk includes serious risk of illness, injury, or death, to public health, and to water services infrastructure. The same notice requirements set out in new section 371, in relation to Māori land, apply.

310. **Relief sought:** We repeat our concerns as above and oppose this section.

Protection of Māori Land Against Execution for Debt

311. Proposed section 388 maintains the rule set out in Te Ture Whenua Māori Act that Māori land or an interest in Māori land cannot be used to discharge a debt held by that person. Where remedial or other action has to be undertaken on the person's land and the Court orders the owner of the land must pay for it, or where a person is fined for an offence under the 2022 Entities Act, the person's interest in Māori land cannot be used for payment. This protection does not apply to any money made from the person's interest in Māori land and received by them.

312. **Relief sought:** We support retention of this provision. This maintains the principle, set out in Te Ture Whenua Māori Act, that Māori land cannot be used to discharge a debt to avoid further land loss.

Tauranga City Council

Water Services Economic Efficiency and Consumer Protection Bill

24 February 2023

Section 1:

1. Introduction

Tauranga City Council (TCC) forms part of Entity B Water Services Entity (WSE) that will 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.

TCC 3 water assets, as of 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.

Subject to the comments below, TCC supports the Bill.

2. Water Reform Reset

We note that Cabinet has asked the new minister of Local Government to report back on how to refine the reforms. The Prime Minister has signalled that any change to the structure would likely include a change to the governance structure and that the Government will work with authorities on this. https://www.nzherald.co.nz/nz/politics/pm-chris-hipkins-to-announce-bonfire-of-the-policies-today-rnztvnz-merger-gone-income-insurance-scheme-changing/E4RYAKQ27JD53B7LHUCTOXUQYY/.

In respect of Māori representation, DIA have confirmed that engagement / representation will be with iwi and post settlement groups. This is unlikely to accurately represent the kaitiaki of particular whenua or taonga. The legislative description implies a national 'one size fits all' and does not allow for local representation on 'local' whenua or taonga. TCC / Te Rangapū position is for a partnership 'place based' approach with the primary focus being the appropriate utilisation and care of the local assets and kaitiakitanga over the natural resource, not necessarily ownership.

We recommend that:

2.1 Local Government Ownership and Shareholding

that the Bill amend the governance arrangements set out in the Act to establish the new entities as statutory bodies in the ownership of local authorities with the initial shareholding based on the value of the net assets transferred (water asset values less associated debt). The shareholding would then be adjusted over time by increasing by area for each 10,000 additional population. This would ensure that the initial asset value and future growth are reflected in the shareholding of each area, whilst allowing for the scale of consolidation and efficiency for the Water Services Entity to provide for water services.

2.2 Place Based kaitiakitanga for Māori

that Māori representation and participation is based on a partnership "place based" approach with the primary focus being the appropriate utilisation and care of the local assets and kaitiakitanga over the natural resource, not necessarily ownership.

The suggested "place based" approach is:

- Determine the area or "place" under consideration

- Undertake an analysis to determine kaitiaki - likely to be iwi and / or Hapū, possibly marae groups, or adjacent landowner. Every situation could potentially be different
- Engage directly with those kaitiaki in the management of water services at "place" or over a particular water resource
- Ensure kaitiaki views are contingent to any decision making.

2.3 Stormwater Timeline

TCC support the transfer of all three waters to WSEs to align with Te Mana o te Wai obligations and also deliver the expected Three Water reform outcomes. The Bill provides clarity in some areas regarding the transfer of stormwater services, whilst raising issues and questions in others, which are noted in Section 2 below.

In order to ensure an effective and efficient stormwater service for our communities, TCC's position is that the timeline for transferring stormwater assets, debt and services should be extended. The complexities of transferring stormwater assets and services, as well as understanding WSE and Council's ongoing obligations in delivering a cohesive stormwater service for customers requires further consultation and time.

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Anne Tolley
Commission Chair
Tauranga City Council

Section 2:

TCC now addresses matters specific to the WSEECP Bill. We have provided some drafting recommendations and examples which may assist the Committee but are not necessarily complete solutions to the issues discussed below.

Submission of Tauranga City Council - Water Services Legislation Bill

Topic 1: Purpose of Parts 2 and 3

1. The purpose of Part 2 of the Bill (clause 12) does not adequately acknowledge the nature of water infrastructure services, the water services entities who provide them, or the wider water services regulatory landscape. In particular:
    - "Consumer demands" are not the only driver of quality for water infrastructure services. There are also health, environmental (including climate change) and broader societal drivers, the latter in particular being set by the WSE's Regional Representative Group (**RRG**)
    - The reference to extracting "excessive profits" fails to recognise that most (if not all) water services entities will not have a profit motive. For example, most / all will not have shareholders interested in maximising dividends
    - As there is no ability to extract excess profits the purpose should focus on providing a level of service (effectiveness) the needs of consumers at the minimum cost (efficiency).

2. Health, environmental and societal requirements also impact on the provision of water infrastructure services, not just the need for efficiency and responsiveness to consumer demands. The Commerce Commission (**Commission**) will need to take into account, amongst other things, the costs that environmental and public health regulation by regional councils and Taumata Arowai respectively impose on WSEs.

3. The purpose of Part 3 (clause 60) should refer to consumer demands, as the purpose of Part 2 does. "Improvements" should not mean continuous improvements in service quality beyond what consumers are happy with, as consumers would ultimately bear the cost of that.

Recommended / Example Amendments

Provision	Recommendation / Example	Reason
Clause 12	**12. Purpose of this Part** The purpose of this Part is to promote the long-term benefit of consumers in markets referred to in section 11 by promoting outcomes that are consistent with outcomes produced in competitive markets so that regulated water services providers— (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and (b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands <u>and meets applicable health, environmental and societal requirements in the provision of water infrastructure services</u>; and (c) share with consumers the benefits of efficiency gains in the supply of water infrastructure services, including through lower prices; and (d) are limited in their ability to extract excessive profits<u>, to the extent they may operate on a for-profit basis</u>.	Reflect wider set of considerations that bear on provision of regulated water services, not just efficiency and meeting consumer demands. Recognise that WSEs are not profit-making entities.

	(e) focus on providing an effective level of service that meets the demands of the consumers at an efficient price.	
Clause 60	**60. Purpose of this Part** The purpose of this Part is to provide for consumer protection and improvements in the quality of service provided to consumers by regulated water services providers and drinking water suppliers, reflecting consumer demands.	Continuous improvements in quality come at a cost and should not exceed what consumers demand.

Topic 2: Interaction with Other Regulatory Regimes

4. Related to topic 1, the Bill does not expressly require the Commission to take account of the requirements water services entities face under other regulatory and pseudo-regulatory regimes when the Commission exercises its functions under the Bill. These requirements may come from Taumata Arowai (as to drinking water safety), from regional councils and local authorities (as to environmental outcomes) or through governance structures, e.g., the RRG for WSEs. At present, clause 4(2) simply says that the Commission may consider, analyse, and use information provided by statutory WSEs or Taumata Arowai, which does not sufficiently recognise the relevance of Taumata Arowai's regulatory role.

5. Clause 4 should be amended to rectify this. Although not exactly appropriate, a starting point for new drafting could be section 54V of the Commerce Act 1986, which relates to the interaction between the Electricity Authority and Commission in relation to the Commission's price-quality regulation of Transpower and electricity distributors. An alternative, more straight-forward, approach is suggested below.

Recommended / Example Amendments

Provision	Recommendation / Example	Reason
Clause 4	Insert a new clause 4(2A) as follows: The Commission must take into account, before exercising its powers or performing its functions under this Act, decisions or recommendations made by: (a) Taumata Arowai under the Taumata Arowai – the Water Services Regulator Act 2020; and (b) a regional council or consent authority under the Resource Management Act 1991 in relation to any water infrastructure service or water services entity; and (c) the regional representative group for a statutory water services entity.	Commission should take account of the requirements WSEs face under other regulatory and pseudo-regulatory regimes.

Topic 3: Scope of Regulated Water Services Providers

6. There is a contradiction between clauses 13 and 54 (as to regulated water services providers under Part 2) and clauses 61 and 62 (as to regulated water services providers under Part 3). Clauses 13 and 61 say subsidiaries and other related entities of the statutory and designated WSEs are automatically regulated whereas clauses 54 and 62 say (or at least strongly imply) the Minister has to designate them as regulated. We think it would be appropriate for subsidiaries and successors to be automatically regulated and interconnected bodies corporate other than subsidiaries to be regulated only if designated.

7. Drinking water suppliers are regulated under Part 3 even if not a regulated water services provider for the purposes of Part 3. This is potentially confusing, and the confusion could be avoided by incorporating drinking water suppliers in the definition of regulated water services provider in clause 61.

8. Clause Section 66(c) suggests a designation for Part 3 could make a water services entity subject to other legislation ("prescribed consumer protection legislation") the entity would not otherwise be subject to. The designation should only apply Part 3, not other legislation (compare clause 59(a)).

9. When the Commission is considering recommending a water services entity be regulated or deregulated under Part 2 (clauses 47 and 48), or the timing of price-quality regulation (clause 49), the Commission should be expressly required to consider the likely costs of regulation versus the likely benefits of it (along with the other matters to be considered, which should be mandatory considerations). There is no minimum size for regulated water services providers under Part 2, and it is possible the case for regulating or continuing to regulate a smaller provider would not stack up under a cost-benefit analysis.

10. The same applies to regulation under Part 3 (clause 64). We note there is no deregulation process for Part 3. There should be, as there is for Part 2.

Recommended / Example Amendments

Provision	Recommendation / Example	Reason
Clause 48(5)	Amend as follows: (5) In carrying out a review, the Commission must~~may~~ consider— (a) whether the purpose of this Part would be better met if 1 or more unregulated water services entities were subject to 1 or more forms of regulation under this Part in respect of 1 or more water infrastructure services; and (b) whether the likely benefits of that regulation for that unregulated water services entity outweigh the likely costs of it; and (c) any other information that the Commission believes to be relevant.	Commission should be required to take into account both costs and benefits of regulation.

Topic 4: Timing of Information Disclosure, Quality, and Price-Quality Regulation

11. Information disclosure regulation may prove to be sufficient to incentivise and promote the efficient provision of water infrastructure services by regulated water services providers. The Bill should not assume quality or price-quality regulation is necessary, or that it will be necessary by particular deadline dates, as it does now. There should be a Ministerial gateway - quality and price-quality regulation should only happen if the Minister, on advice from the Commission taking into account the likely costs and benefits, decides it should. Only if the Minister decides there needs to be quality or price-quality regulation should a deadline be set for it.

12. Input methodologies for each type of regulation (information disclosure, quality, and price-quality) should be consulted on and finalised before that type of regulation starts. While clause 28(2) of the Bill requires the Commission to give public notice of a draft input methodology, and consult interested parties before finalising the input methodology, there is no guarantee any of that will happen before the corresponding regulation applies. In fact, the Bill does not require input

methodologies for quality regulation at all (see clause 25(1)(b) which says the Commission "may" determine input methodologies in respect of quality regulation) and clause 26(2) expressly states that information disclosure regulation can start before there are information disclosure input methodologies. If this approach is a reflection of the Commission's limited capacity to get through the work necessary to implement Part 2 in time to meet the deadlines in the Bill, then that strongly suggests the deadlines are too tight.

13. It is unclear what extent of regulation would meet the deadlines in the Bill, given that a clause 15 determination may only apply to a subset of regulated water services providers and / or a subset of water infrastructure services (clause 15(2)). For example, would information disclosure regulation for one of the statutory water services entities for stormwater infrastructure services only be sufficient to meet the 1 July 2027 deadline for information disclosure regulation? There is a related question around what it means to "make" a clause 15 determination (or the services quality code under Part 3). Would a determination be considered made for the purposes of the relevant deadline if it does not come into effect until after the deadline?

14. Clause 20(2) should be amended to introduce a minimum duration for the second and subsequent regulatory periods. Four years would be appropriate, and consistent with the minimum duration of price-quality paths under section 53M of the Commerce Act 1986.

15. To avoid potential regulatory duplication, quality regulation should not be allowed to exist at the same time as price-quality regulation for the same regulated water services provider and water infrastructure service.

Recommended / Example Amendments

Provision	Recommendation / Example	Reason
Clause 19	Amend as follows: **19 When initial section 15 determinations must be made** (1) The Commission must make initial determinations under section 15,— (a) in relation to information disclosure regulation, no later than 1 July 2027; and (b) in relation to quality regulation, only if directed by the Minister to do so and by no later than the start of a~~the first~~ regulatory period directed by the Minister; and (c) in relation to price-quality regulation, only if directed by the Minister to do so and by no later than the start of a ~~the second~~ regulatory period directed by the Minister. ~~(2) The Commission may make the initial section 15 determination relating to information disclosure regulation in accordance with subsection (1)(a) even if the initial input methodologies for information disclosure regulation have not yet been made (see section 18(1)).~~ (3) The Commission must consult interested parties before making an initial section 15 determination.	Bill should not assume regulation is required by a particular date, and Minister should be required to be satisfied benefits of regulation outweigh costs. Input methodologies should be required before the corresponding type of regulation starts.
Clause 20	Amend subclause (2) as follows: (2) The duration of subsequent periods must be determined by the Commission and must be no shorter than 4 years and no longer than 6 years.	Minimum period required in order for regulation to be effective.

Clause 25(1)	Amend as follows: (1) The Commission- ~~(a)~~ must determine at least 1 input methodology in respect of each information disclosure regulation under subpart 4, quality regulation under subpart 5, and price-quality regulation under subpart 6. ~~And~~ ~~(b) may determine input methodologies in respect of quality regulation under subpart 5.~~	Input methodologies for quality regulation should be required, not optional.
Clause 26(2)	Delete	Inappropriate for information disclosure regulation to start before there are information disclosure input methodologies that have been consulted on.

Topic 5: Directive Performance Requirements

16. The role of an economic regulator should be to incentivise and make recommendations to the regulated entity, not to directly control the regulated entity's business. Some of what is anticipated for performance requirements in quality and price-quality regulation (clauses 39(3)(b) and 42(3)(b)) crosses inappropriately into directive control. Of particular concern is the potential for the Commission to direct regulated water services providers as to:

- their approach to risk management
- their approach to asset condition and remaining life
- making particular investments
- asset management policies and practices
- ring-fencing revenue for Commission-approved investments only.

17. The Bill should not provide for this type of directive control. The Commission is not an expert in the delivery of water infrastructure services or any of the other utilities it regulates.

18. By way of example, Transpower may apply to the Commission for approval of a major capex project under the Transpower Capital Expenditure Input Methodology Determination 2012 made by the Commission under Part 4 of the Commerce Act. Transpower's application must include a proposed investment and compare the costs and benefits of it to the costs and benefits of other investment options that would meet the investment need. The Commission must either approve or not the proposed investment (clauses 3.3.4 and 3.3.5). The Commission is conspicuously not empowered to approve any of the other investment options or direct Transpower to carry out any particular investment (even the proposed investment if approved).

Recommended / Example Amendments

Provision	Recommendation / Example	Reason
Clause 39(3)(b)(i)–(iii), (vi) and (vii)	Delete	Bill should not allow Commission to direct regulated water services providers in the performance of their operations.

Clause 42(3)(b)(i)–(iii), (vi) and (vii)	Delete	Bill should not allow Commission to direct regulated water services providers in the performance of their operations.

Topic 6: Pricing Principles and Methodologies

19. The Bill should be clear whether or not it is within the ambit of the Commission's powers to determine pricing principles or pricing methodologies for regulated water services providers. Although the Bill does not expressly allow for this, it is arguably within the general functions of the Commission in clause 4.

20. We do not consider the Commission should be empowered to determine pricing principles or pricing methodologies because this would confuse the regulatory landscape for regulated water services providers and reach too far into their operations. A provision similar to clause 4(3) should expressly carve this out of the Commission's functions. That would be consistent with Subpart 8 of Part 2 which leaves funding and pricing plans up to the providers (subject to Commission input) and contemplates there will be "charging principles" coming from somewhere else.

Recommended / Example Amendments

Provision	Recommendation / Example	Reason
Clause 4	Insert new clause (3A) as follows: (3A) To avoid doubt, the Commission's functions under this Act do not extend to determining pricing principles or pricing methodologies applicable to, or used by, regulated water services providers.	Commission should not be empowered to determine a regulated water service provider's pricing principles or pricing methodologies.

Topic 7: Service Quality Code

21. The full scope of what may be in the service quality code should be specified in clause 70. At the moment the only specific content is the penalty rate for unpaid debt. Merely saying that the rest must "promote the purpose of this Part" is too vague.

22. The Bill assumes a regulated service quality code is necessary, and thus requires the Commission to make one by 1 July 2027 (clause 69). However, consistent with Part 7 of the Telecommunications Act 2001 relating to retail quality codes for telecommunications providers (section 236(1) in particular), the Commission should only be empowered to make a regulated code if the water services industry has failed to regulate, or adequately regulate, itself.

Topic 8: Consumer Complaints Process

23. In clause 59(c) it is unclear what the "consumer quality complaints service" is, as distinct from the consumer disputes resolution service. As this is the only place in the Bill where the consumer quality complaints service is mentioned, we expect this is a mistake.

24. Detailed regulation of water services providers' internal consumer complaints processes and information disclosure / reporting about consumer complaints (as contemplated in clause 73(1)) is unnecessary as these matters are more appropriately dealt with in the rules of the approved consumer disputes resolution service. For example, the rules of the Energy Complaints Scheme run by Utilities Disputes Limited (the approved dispute resolution scheme for electricity and gas under

the Electricity Industry Act 2010 and Gas Act 1992 respectively) contains detailed rules covering these matters. These types of rules should be included in the list in clause 3(1) of Schedule 2 of the Bill.

25. The rules of the consumer disputes resolution service are likely to contain jurisdictional limits and exclusions (as the rules of the Energy Complaints Scheme do, and as contemplated in clause 3(1)(c) of Schedule 2 of the Bill). Clause 74 should acknowledge those jurisdictional limits and exclusions, so as not to suggest there are no limits on the kind of complaint the consumer disputes resolution service can deal with.

26. Only the consumer who made the relevant complaint should have standing to appeal a determination of the consumer disputes resolution service, not any consumer (clause 78(1)).

Recommended / Example Amendments

Provision	Recommendation / Example	Reason
Clause 59(c)	Amend as follows: (c) ~~a consumer quality complaints service and~~ a consumer disputes resolution service:	Apparent drafting mistake.
Clause 74(2)	Add paragraph (f) as follows: (f) the complaint is outside the jurisdiction of the consumer disputes resolution service as provided for in the rules of the service.	The likely jurisdictional exclusions and limits of the service should be acknowledged.
Clause 78(1)	Amend as follows: (1) A consumer referred to in section 77 may, within the time allowed under section 79(1), appeal to the court against any determination referred to in section 77.	Only the affected consumer should have right of appeal.
Clause 3(1) of Schedule 2	Add paragraphs (o) and (p) as follows: (o) requirements for the internal complaints handling processes of regulated water services provider sand drinking water suppliers: (p) requirements for reporting by regulated water services providers and drinking water suppliers about consumer complaints.	Rules for internal complaints handling and reporting should be in the rules of the consumer disputes resolution service.

Topic 9: Enforcement and Appeals

27. While the enforcement provisions in the Bill are broadly in line with those under similar regulatory regimes, we make the following observations:

- Clause 89(2) contradicts clause 88(1) by allowing compensation orders against a relevant person who has not been ordered to pay a pecuniary penalty
- Clause 98 (order requiring information disclosure requirement to be complied with) duplicates the earlier provisions about injunctions (clauses 90 in particular), as do aspects of the rectification provisions in clause 105
- There should be a limitation period for the Commission issuing an infringement notice (clause 111). Compare the 12-month limitation period under section 156D(1) of the Telecommunications Act
- It is unclear why some determinations, notably determinations as to information disclosure and quality regulation, are excluded from merits appeals (clause 118(1)). All determinations should be subject to merits appeals

- There is some duplication and inconsistency between clause 136 and Subpart 4 of Part 4 in terms of the Commerce Act provisions relating to enforcement, remedies and appeals that apply under the Bill.

Topic 10: Miscellaneous

28. The definition of "water services entity" in clause 7 is circular. It should presumably be "an entity that provides one or more water services (whether or not the entity is a regulated water services provider)".

29. There is some inconsistency in the type of assurance required to support disclosure. Sometimes a statutory declaration is referred to instead of, or as well as, the more typical Management or Board certification in a prescribed form. Compare clauses 34(3)(a), 38(2)(d) and 39(3)(b)(ix).

30. Clause 42 should state that a price path can only apply to the price of water infrastructure service(s) (i.e., not unregulated goods or services a regulated water services provider may also provide). Clause 42(4) does not deal with this as it only covers quality standards, incentives, and performance requirements.

31. The provisions in Subpart 8 of Part 2 about the scope and timing of regulation are, unhelpfully, separated from related provisions in clauses 21 to 23 and Subpart 9, which makes the Bill difficult to follow and understand.

11.4 Lime e-scooter trial completion

File Number: **A14360410**

Author: **Andy Vuong, Programme Manager - Cycle Plan Implementation**

Authoriser: **Nic Johansson, General Manager: Infrastructure**

PURPOSE OF THE REPORT

1. Conclude the Lime e-scooter trial and determine next steps for shared e-scooters

RECOMMENDATIONS

That the Council:

(a) Receives the report "Lime e-scooter trial completion".

(b) Concludes the Lime e-scooter trial.

(c) Permits shared e-scooters to operate as an on-going activity in Tauranga.

(d) Commences process to select post-trial vendor and endorse single operator limit.

EXECUTIVE SUMMARY

2. Testing new modes of sustainable transportation is essential to providing alternative transport choices that reduce private car usage and the level of transport investment required to manage future growth.

   (a) Even if financial considerations were not a concern, Tauranga lacks the space to expand and build new roads without significant impacts to private landowners and the environment.

   (b) We will not be able to build our way out of our congestion issues but need to change our behaviours to travel more efficient and sustainably.

3. E-micromobility, which emerged in 2018, is one such mode that has grown exponentially in use globally and could improve the number of transport choices for people in Tauranga.

4. Council started a trial of shared e-scooters in November 2020 and has completed its evaluation.

   (a) The recommendation is that shared e-scooters be allowed to operate as an on-going activity consistent with the current trial operating framework.

5. Key insights and feedback observed from the trial include:

   (a) Demand for scooters was stronger than expected and has remained steady year over year

      (i) 104,000 people have taken at least one ride

      (ii) 429,000 trips totalling 710,000 kms travelled

      (iii) 11% growth in trips from 2021 to 2022

      (iv) Ridership is highest in the Mount Maunganui beach and business precinct followed by the Tauranga CBD

   (b) Accidents or injuries reported to Council were considered low – with less than 10 reported over the duration of the trial.

(i) An analysis of ACC data for the first 14 months of the trial showed an initial spike in reported claims but a gradual decline after the initial 4 months. This trend was consistent with observations from other NZ cities launching e-scooter trials.

(c) Opposition to e-scooters was immediate and passionate at the beginning of the trial but complaints quickly waned and has remained low during year 2

(i) 10-20 complaints per week during the first 2 months

(ii) 1-2 complaints per week by 6 months and remaining at that level over 2022

(d) Formal consultation was conducted in late 2021 after scooters had been operating for 12 months. The main highlights of the results were:

(i) 779 people responding to the online survey

(ii) 56% of respondents agreed vs 34% disagreed that shared e-scooters have improved transport choices and made it easier to travel around Tauranga

(iii) 55% of respondents agreed vs 42% disagreed that a shared e-scooter scheme should be allowed to continue to operate in Tauranga

(iv) Scooters parked inappropriately or blocking footpaths was the most frequent issue/concern, with 50% being moderately or very concerned

BACKGROUND

6. In November 2020, Council began a shared e-scooter trial with Lime NZ. The goals of the trial were to understand the demand and impacts of this emerging transport mode, and how it can contribute to providing more sustainable transport choices besides cars.

7. The trial included a set of operating restrictions designed to reduce potential impacts to the community:

(a) Hours of operations

(i) 5AM – 10PM

(b) Slower speed zones

(i) A maximum speed of 15 km/h in high pedestrian zones

(ii) Mount Maunganui recreation/business precinct, Tauranga CBD, Greerton business precinct

(c) No parking/deployment zones

(i) Areas where e-scooters could not be deployed, or users were not allowed to end trips.

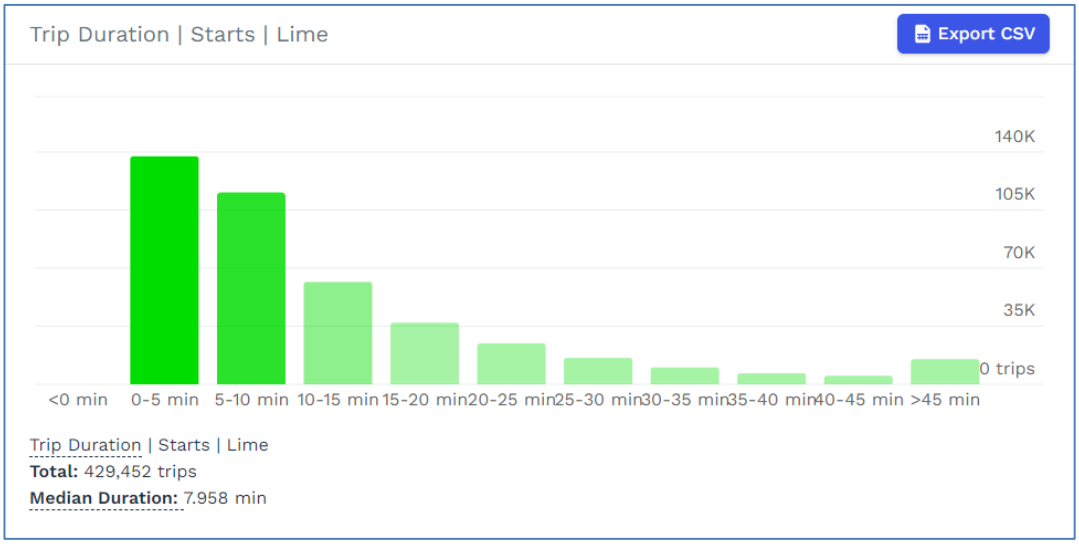
8. After the initial planned 12-month duration, the trial was extended to collect more data, allow the roll out of an updated e-scooter model, and observe more typical BAU operations for both Council and the operator.

TRIAL OBSERVATIONS - RIDERSHIP

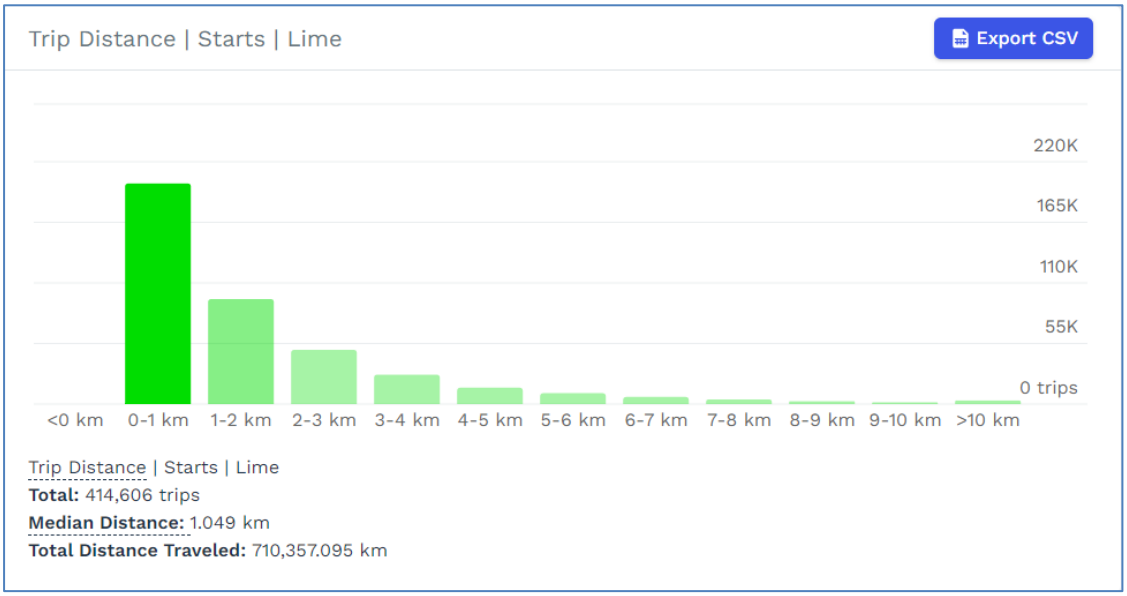
9. Council has been utilising an online software platform from Ride Report to collect and visualise trip data to analyse ridership information. A sample of the types of insights observed include:

(a) How long do people typically rent an e-scooter for?

(i) 32% are 5 minutes or less, 27% are between 5–10 minutes, 23% between 10–20 minutes, and 18% are over 20 minutes.



(b) How far do people typically ride per trip/rental?48% are less than 1km, 35% are between 1-3 km, 10% are between 3-5 km, and 7% are over 5km



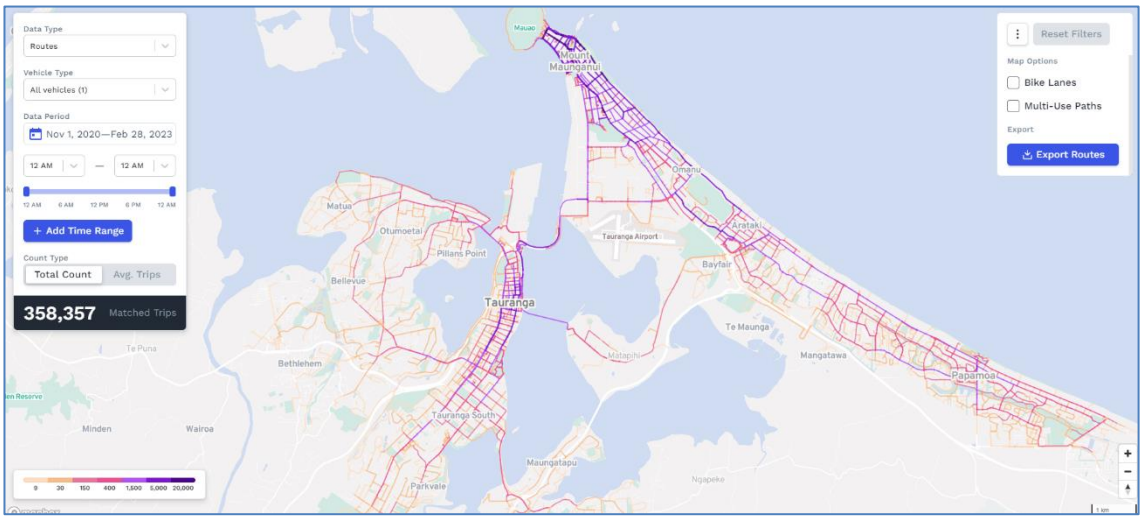
(c) What days of the week and time of day are scooters used the most?

(i) Trips are more common on weekends then weekdays, with Saturdays the most popular day. Trips are most common between the 12pm – 8pm

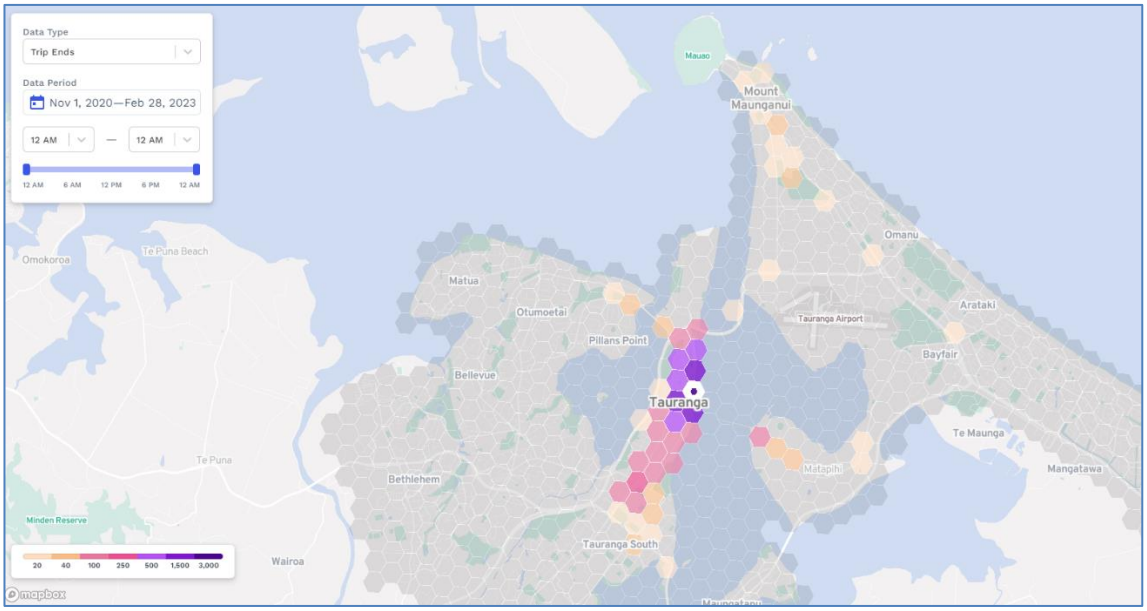
(d) Where do people ride shared e-scooters the most?

(i) Scooters are ridden the most within the Mount Maunganui waterfront and business areas followed by the Tauranga waterfront and city centre.

(ii) Scooters are most likely to be ridden on footpaths or shared paths as opposed to the on the road.



(e) Where do most trips that end in the vicinity of Wharf St in the Tauranga CBD start their trip?



TRIAL OBSERVATIONS - INJURY / ACCIDENT ANALYSIS

10. Reports of injuries or accidents were generally uncommon, with Council directly receiving less than 10 reports of incidents over the duration of the trial.

11. An analysis of ACC “e-scooter” claims was also conducted to identify potential “hidden” accidents not reported to Council.

    (a) The dataset was 2 years in duration which provided monthly claim data for the 10 months leading up to the start of the trial and the 14 months after.

    (b) The data presented was for “all e-scooter ACC claims” per month and did not break out new vs active claims or specify whether the claim was attributed to a privately owned or shared e-scooter. Per ACC’s website on how use their claims data:

        (i) New claims are based on the date the claim was lodged with ACC. The claim has one lodgement date, irrespective of outcomes, decisions, or severity, and is counted as ‘new’ once.

        (ii) Active claims are identified each time a claim has received a payment. For example, a payment to a client for weekly compensation or a health practitioner for a service provided to a client.

        (iii) Active claims are normally higher than new claims. This is because one claim may receive several payments over time and could be active over several years.

    (c) The data also did not specify severity of claim or indicative pay out amounts.

    (d) The key insights from the analysis of the e-scooter ACC data were:

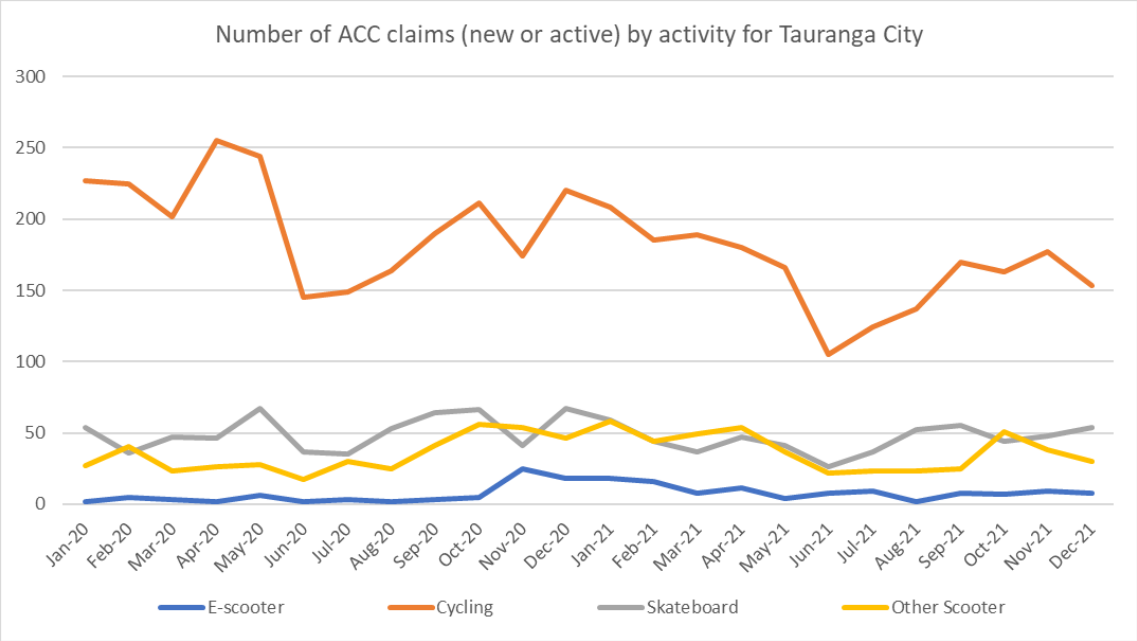
        (i) Prior to the introduction of shared e-scooters, there was an average of 3.3 active “e-scooter” claims per month in 2020.

        (ii) Active “e-scooter” claims per month rose to 19.25 in the first four months of the trial but dropped to an average of 7.4 over the next 8 months.

        (iii) Assuming the rate of privately-owned e-scooter claims remained steady (pre-trial average), and all claims were attributed as new ones, the average number of trips per ACC claim would be approximately 2600.

            (1) Based on the definition of new vs active claims, it is more likely that the number of trips per new ACC claim is much higher

        (iv) In relation to similar modes of travel/recreation, e-scooter claims are still relatively low



TRIAL OBSERVATIONS - COMMUNITY FEEDBACK

12. In October 2021, Council conducted a survey to obtain feedback from the community on concerns they may have with shared e-scooters, and if they wanted to have shared e-scooters continue to operate in Tauranga.

13. There was a strong response from all parts of the city and age demographics with 779 providing a response/submission. A detailed breakout of the survey responses is provided in Appendix A. The key highlights were:

    (a) 56% of respondents agreed vs 34% disagreed that shared e-scooters have improved transport choices and made it easier to travel around Tauranga

    (b) 55% of respondents agreed vs 42% disagreed that a shared e-scooter scheme should be allowed to continue to operate in Tauranga

    (c) Scooters parked inappropriately or blocking footpaths was the most frequent issue/concern, with 50% being moderately or very concerned

14. Additional community feedback was received throughout the trial via traditional channels such as Council's call centre or via email through Council's homepage.

    (a) About 250 comments/complaints were received over the two-year period with a large spike immediately following the start of the trial.

        (i) 10-20 complaints per week during the first 2 months

        (ii) 1-2 complaints per week by 6 months

        (iii) 0-1 complaints per week during 2022

    (b) The overwhelming majority of these comments were related to scooters parked inappropriately or too close to private property boundaries.

    (c) The next most common concerns were related to potential risk to riders or those members of the community who used mobility devices or were disabled.

TRIAL CONCLUSIONS AND RECOMMENDATION

15. Based on the trial outcomes, Council is recommending that shared e-scooters be allowed to continue to operate in a manner consistent with the restrictions set forth in the operating framework – including limiting the number of operators to one.

(a) There is clear demand for this type of transport device/service. Like public transport and bikes, e-scooters provides an additional transport choice besides cars – helping take pressure off our roads and reducing demand for car parking

(b) Limiting the number of operators provides three main benefits:

(i) Reduces the overhead for Council in managing multiple vendors

(ii) Provides a single and consistent point of contact for the community when renting scooters or dealing with issues and complaints

(iii) Produces a financially viable environment for an operator, leading to more opportunities to invest in initiatives that support Council's wider goals

16. Council recognises that while there is strong demand and support for shared e-scooters, many in the community are concerned about their impacts, most notably when they are parked in a manner that blocks a footpath or could cause a tripping hazard.

(a) This is the most common concern/issue facing cities with shared e-scooter programmes around NZ and the World, and this will continue to be an issue for Tauranga should e-scooters continue to operate.

17. There is not a single intervention or playbook that will solve this issue. Like all transport modes, there will always be some level of non-compliance (i.e. vehicles speeding or illegally parked cars) even with strong policies and enforcement.

18. However, there are several things Council can look to implement with e-scooters (and future shared micro-mobility) that can help address this issue:

(a) Making operators better explain how their scooter design and technology can limit poor parking behaviour, and prioritising selection of operating partners based on it

(b) Designating frequent spaces off the footpath (i.e. road corridor) for deployment/parking zones.

(c) Create a fee structure that allows operators to incentivise riders to park devices in approved parking zones or provide for more dedicated staff to more quickly resolve issues.

FINANCIAL CONSIDERATIONS

19. Revenue and expenses from the trial were tied to the total number of trips taken, with a per trip fee $0.15 operator fee levied on Lime NZ and a $0.025 usage fee payable to Ride Report.

20. If this type of fee structure were to continue and rides remain like existing levels, Council should expect the following per annum:

(a) $25,000 in operator fees

(b) $3,750 in usage fees

SIGNIFICANCE

21. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy. Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.

22. In making this assessment, consideration has been given to the likely impact, and likely consequences for:

(a) the current and future social, economic, environmental, or cultural well-being of the district or region

(b) any persons who are likely to be particularly affected by, or interested in, the decision.

(c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.

23. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the decision is of medium significance.

ENGAGEMENT

24. Taking into consideration the above assessment, that the decision is of medium significance, officers are of the opinion that no further engagement is required prior to Council making a decision.

Click here to view the TCC Significance and Engagement Policy

NEXT STEPS

25. Should the recommendations in the report be adopted, Council's would begin a process to select an operator for post-trial operations.

    (a) Primary to the selection process will be how the scooters, technology, or procedures of potential operators can help reduce scooters being parked inappropriately

    (b) It is anticipated this would take about 6 weeks and pending which company was selected, a transition period may be required to swap devices and setup restriction zones.

26. Should the recommendations in the report be rejected and shared e-scooters not be allowed to continue, Council would inform Lime NZ to shut down operations and remove scooters from the streets in a timely manner (in accordance with health and safety protocols).

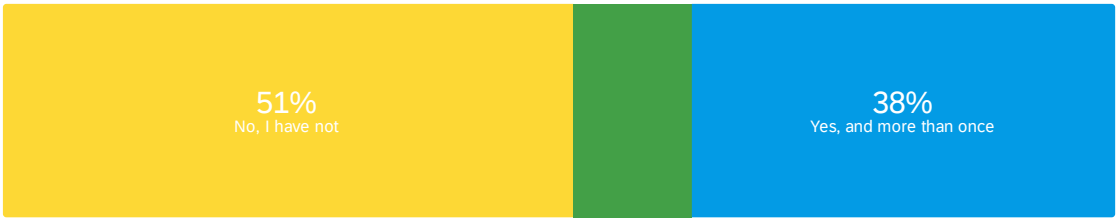
ATTACHMENTS

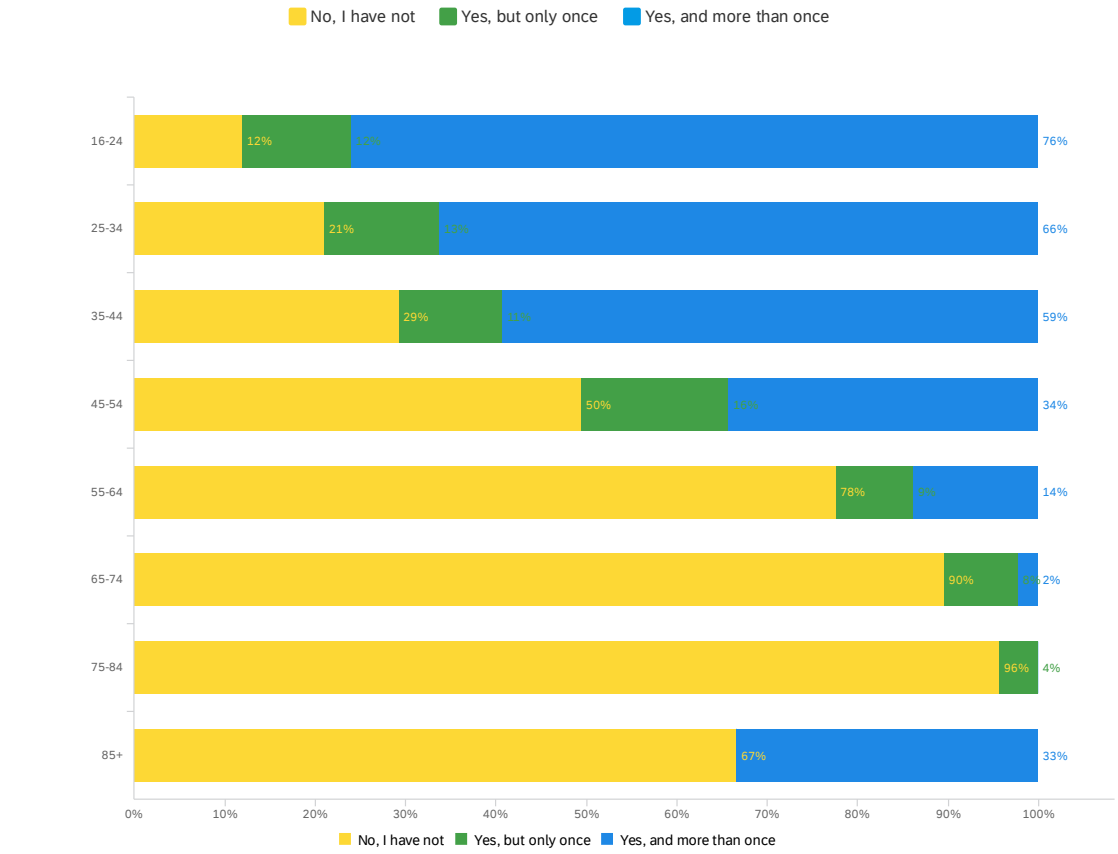
1. Lime scooter survey - summary analysis - A14478214

Default Report

[LIVE] - Lime e-scooter survey
August 22, 2022 9:28 PM MDT

Have you ridden or rented a shared e-scooter in the Tauranga region during the trial?





#	Field	Choice Count	
1	No, I have not	51.19%	370.67
2	Yes, but only once	10.66%	77.19

#	Field	Choice Count	
3	Yes, and more than once	38.15%	276.20
			724.06

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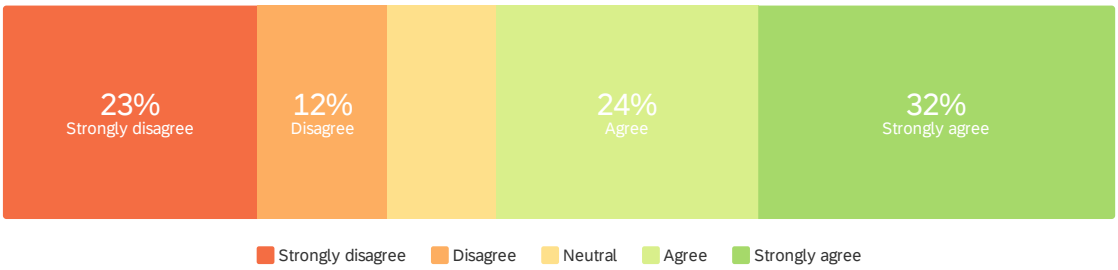
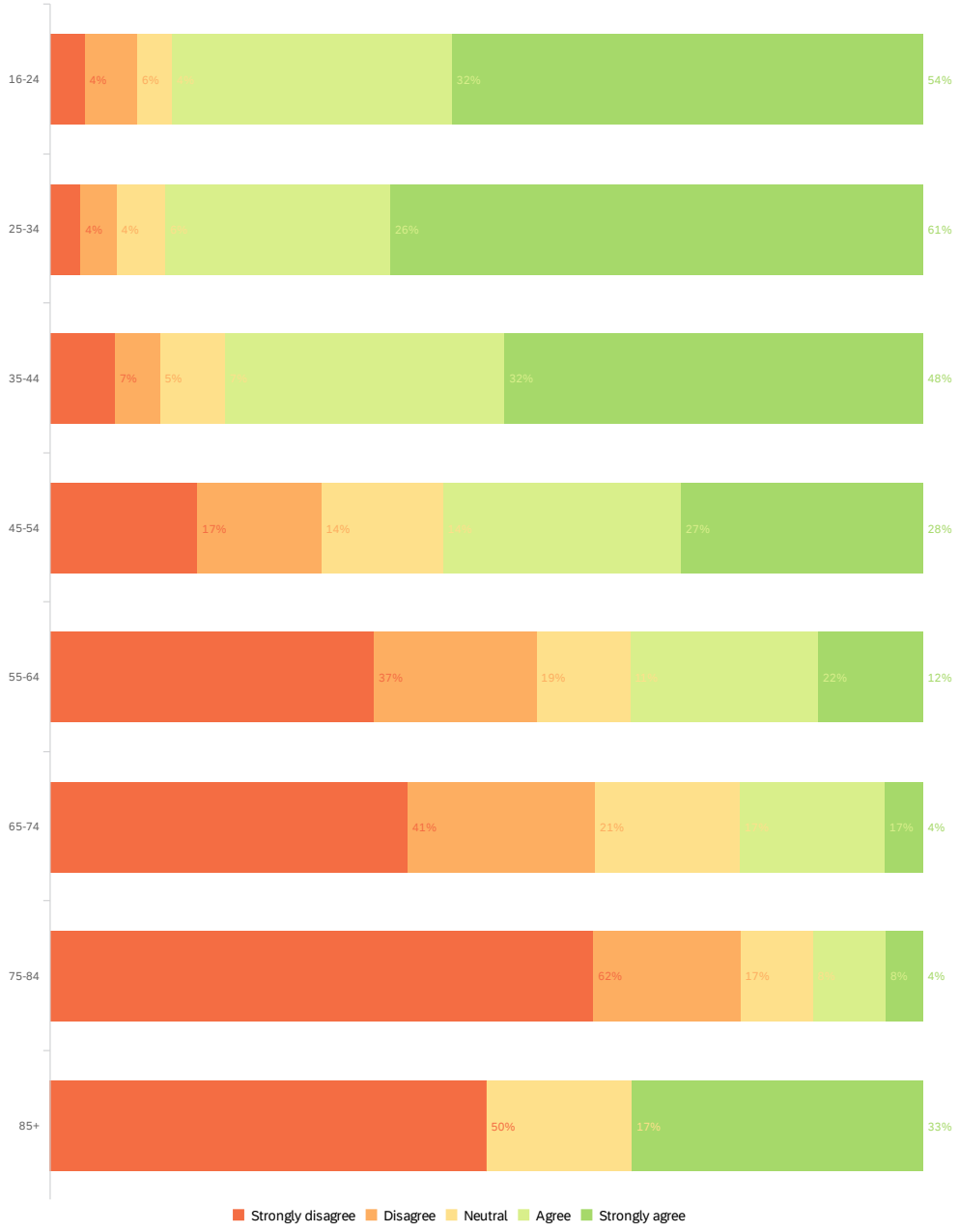
Thinking about just those people living in Tauranga, how strongly do you agree or disagree that shared e-scooters have improved the transport choices available to the residents of Tauranga?





#	Field	Choice Count	
1	Strongly disagree	22.90%	166.02
2	Disagree	11.59%	84.04
3	Neutral	9.77%	70.85

#	Field	Choice Count	
4	Agree	23.57%	170.91
5	Strongly agree	32.16%	233.18
			725.00

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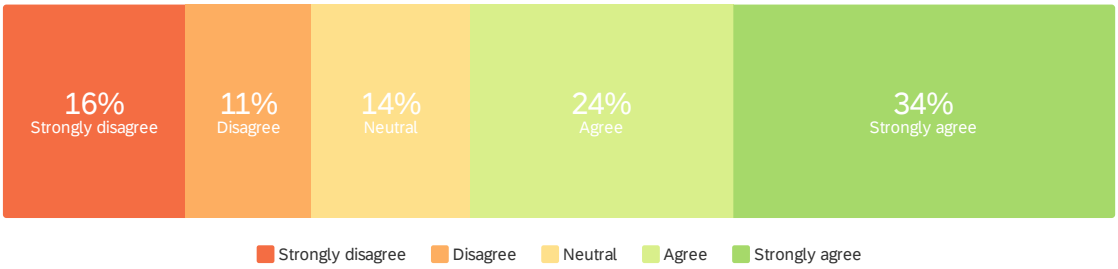
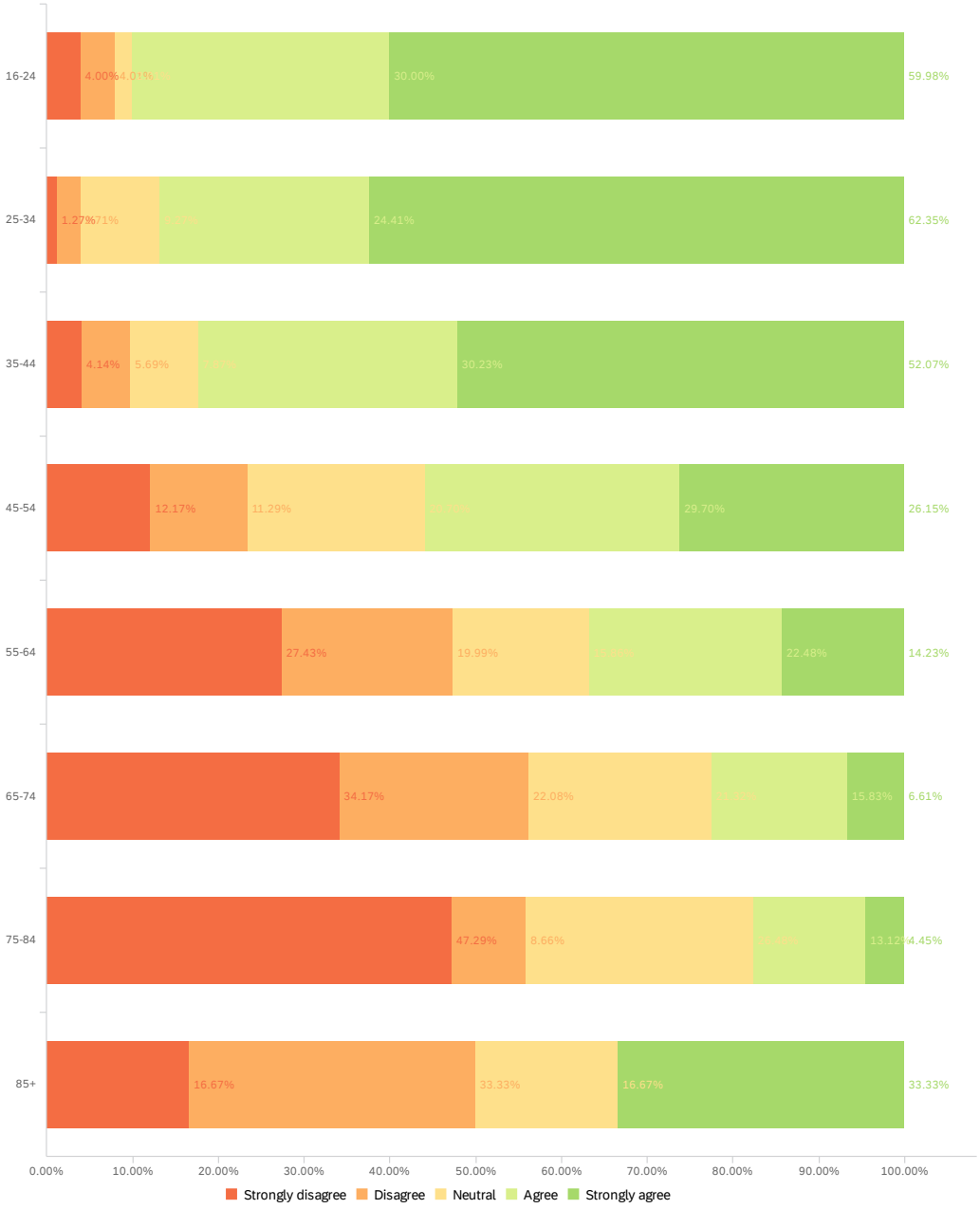
Q5 - Thinking about just those people visiting Tauranga, how strongly do you agree or disagree that shared e-scooters have improved the transport choices available to visitors to Tauranga?



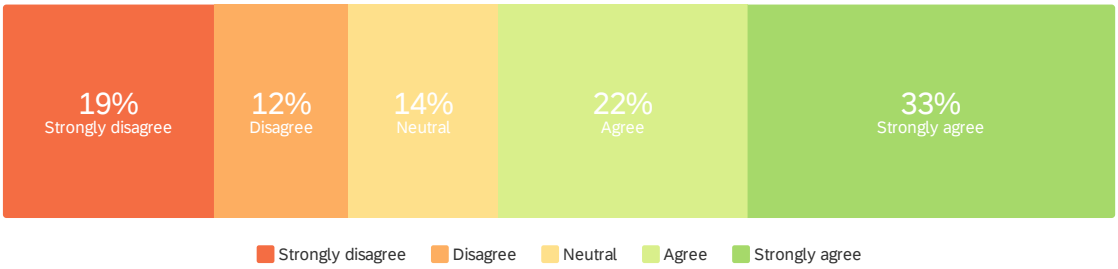


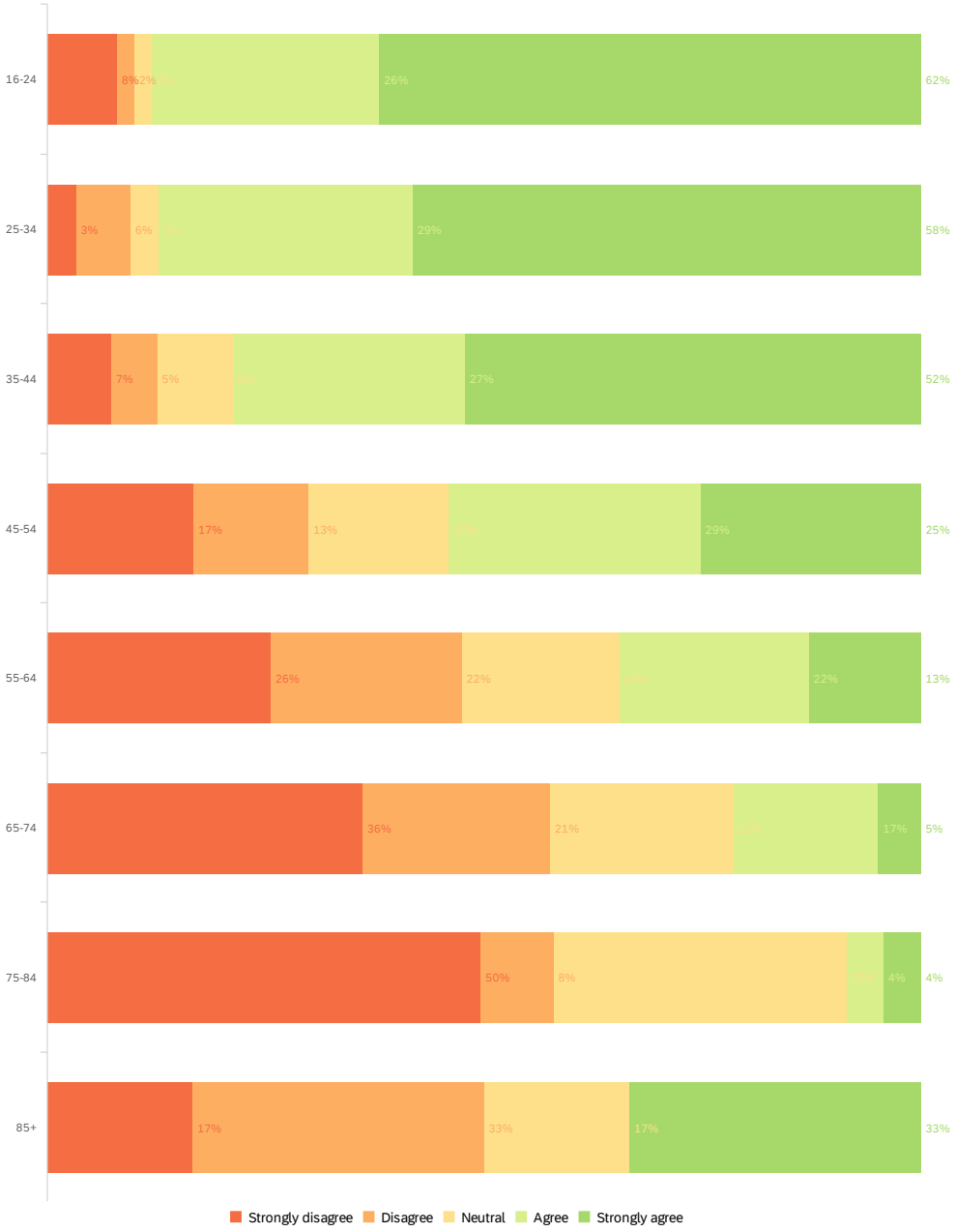
#	Field	Choice Count	
1	Strongly disagree	16.41%	117.75
2	Disagree	11.22%	80.47
3	Neutral	14.19%	101.84

#	Field	Choice Count	
4	Agree	23.76%	170.50
5	Strongly agree	34.42%	246.95
			717.52

Showing rows 1 - 6 of 6

How strongly do you agree or disagree that shared e-scooters have made it easier to get around in Tauranga?



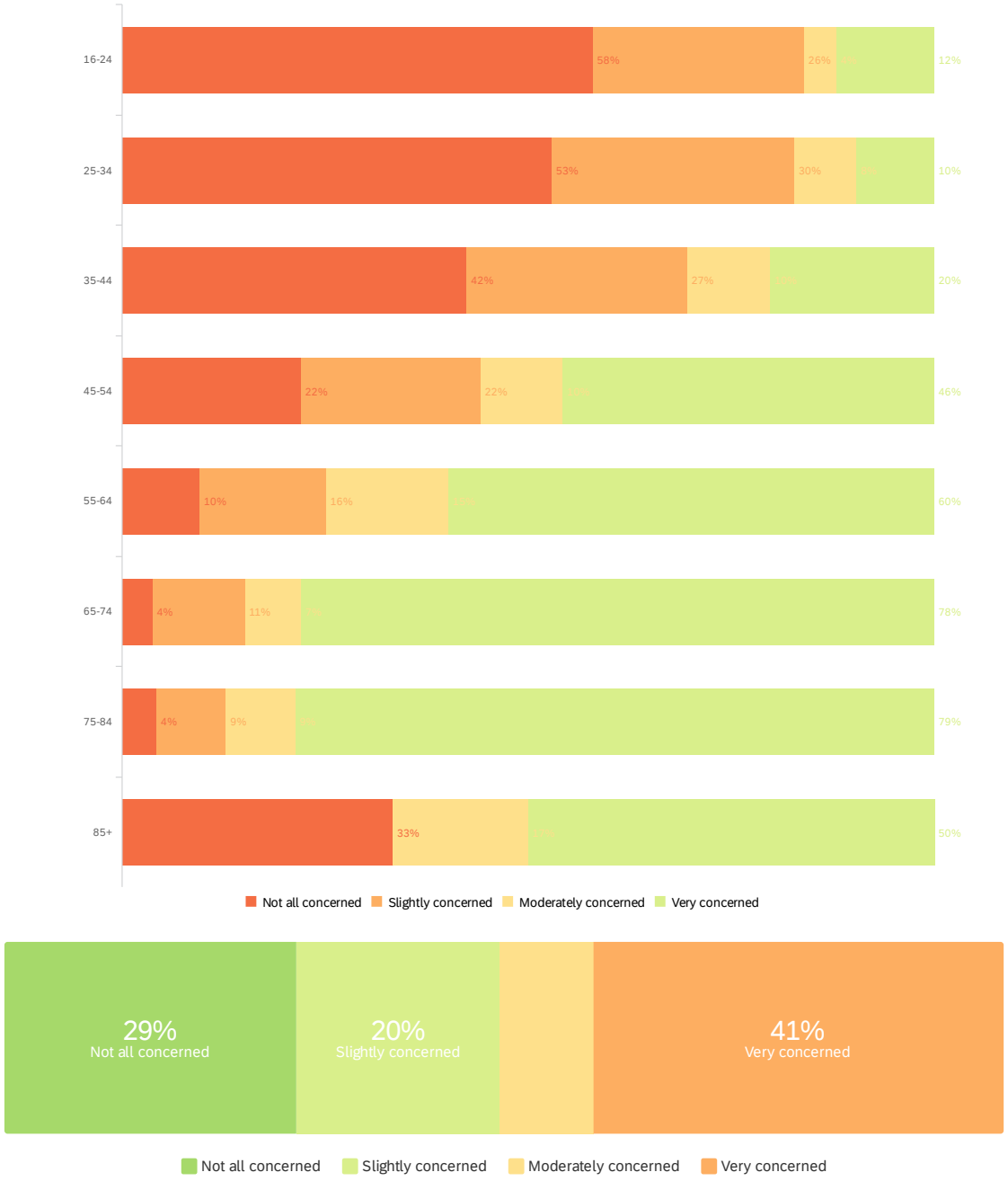


#	Field	Choice Count	
1	Strongly disagree	18.86%	136.75
2	Disagree	11.97%	86.81
3	Neutral	13.56%	98.34

#	Field	Choice Count	
4	Agree	22.44%	162.70
5	Strongly agree	33.16%	240.41
			725.00

Showing rows 1 - 6 of 6

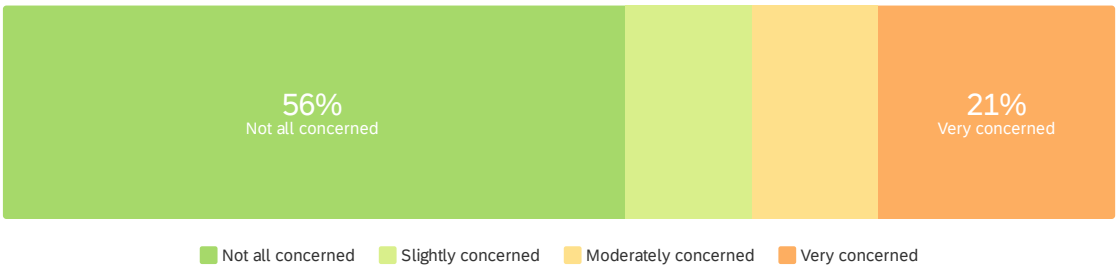
Scooters parked inappropriately or blocking footpaths



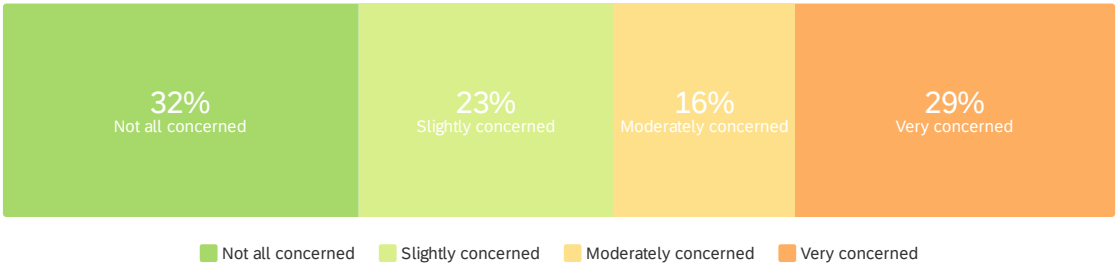
#	Field	Choice Count	
1	Not all concerned	29.21%	211.74
2	Slightly concerned	20.35%	147.51
3	Moderately concerned	9.34%	67.74
4	Very concerned	41.10%	298.01
			725.00

Showing rows 1 - 5 of 5

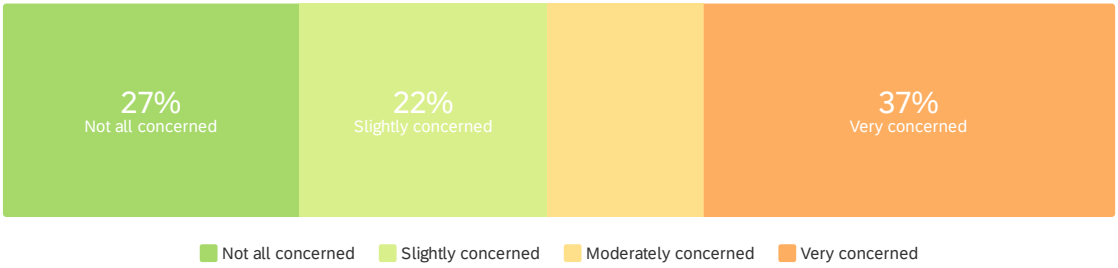
Q9 - Scooters being “ugly” or not wanting to see them in public



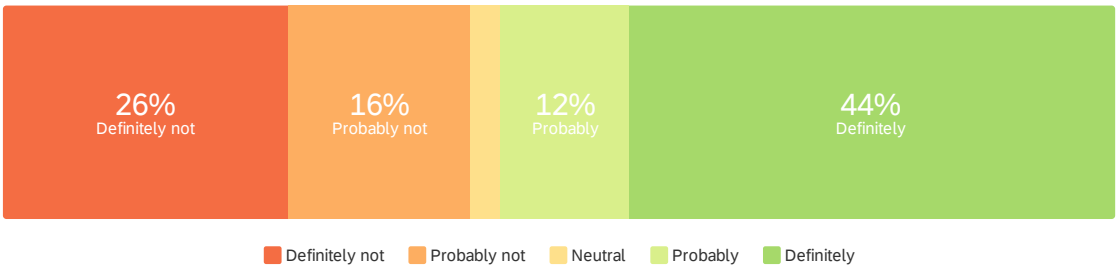
Q10 - Rider behaviour posing a risk to their own safety



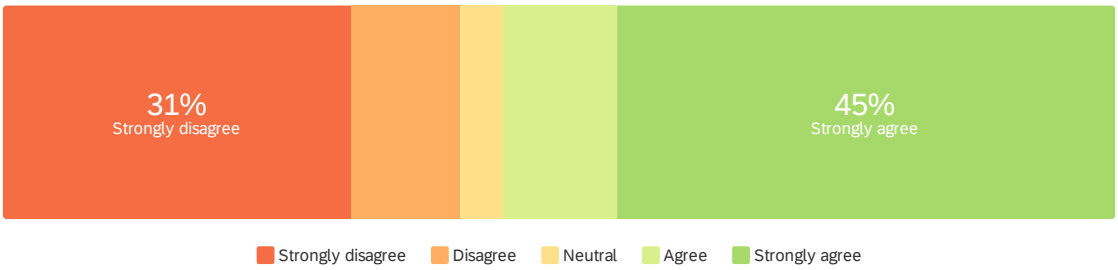
Q11 - Rider behaviour posing a risk to others

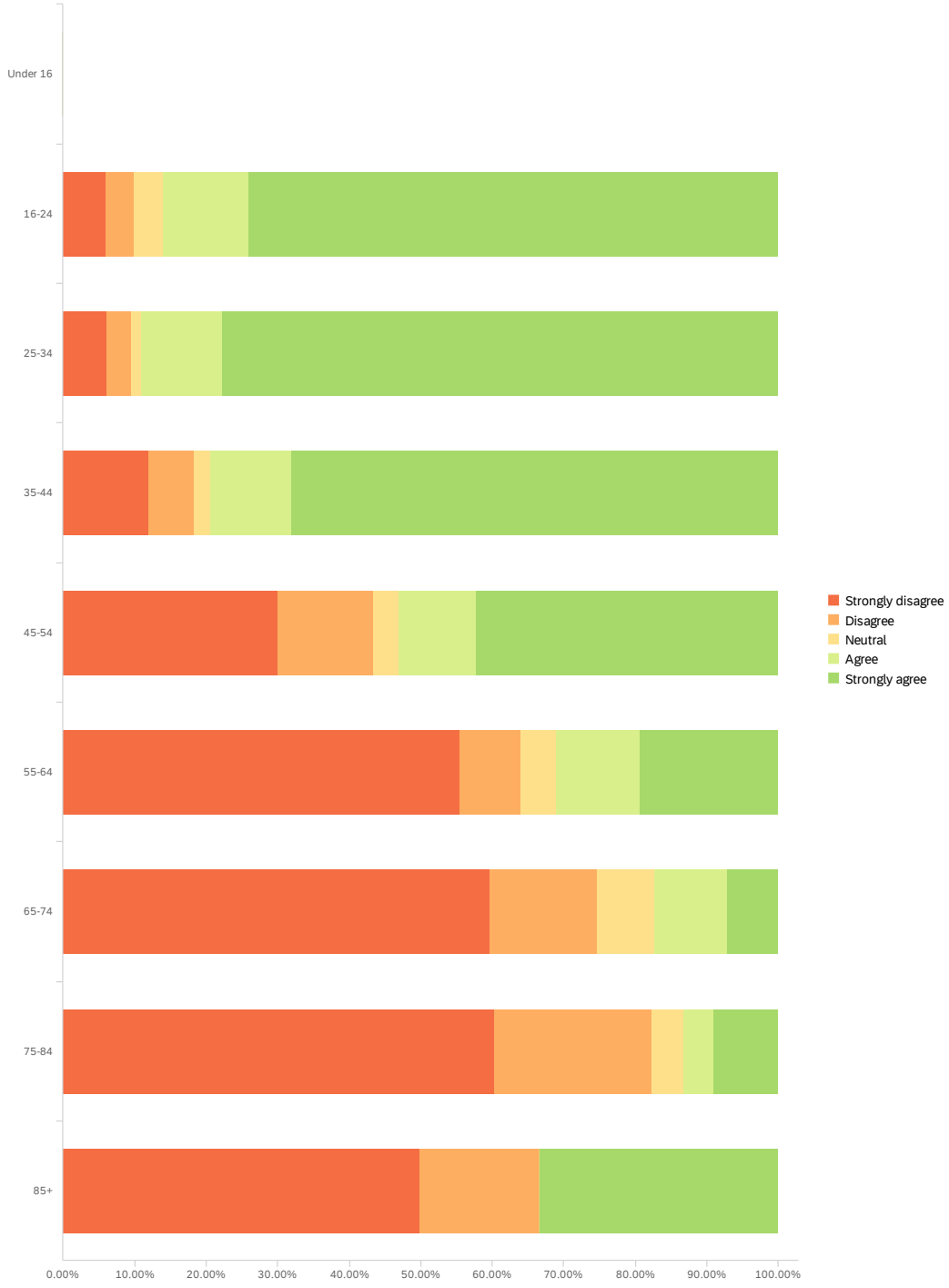


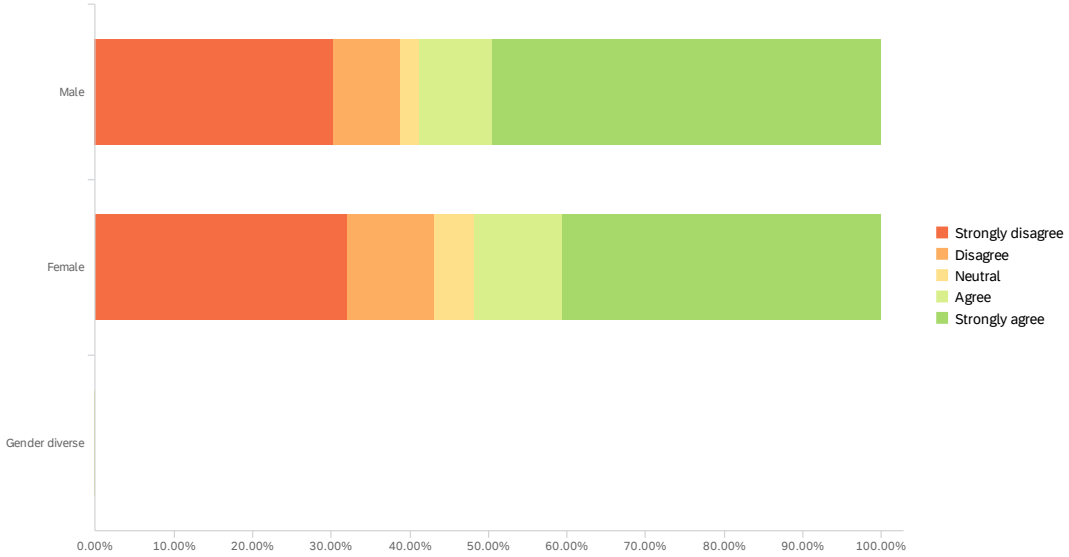
Q12 - Overall, do you think that that the continuation of a shared e-scooter scheme will provide an overall positive benefit to those who people living in Tauranga?



Q13 - How strongly do you agree or disagree that a shared e-scooter scheme should continue to operate in Tauranga?

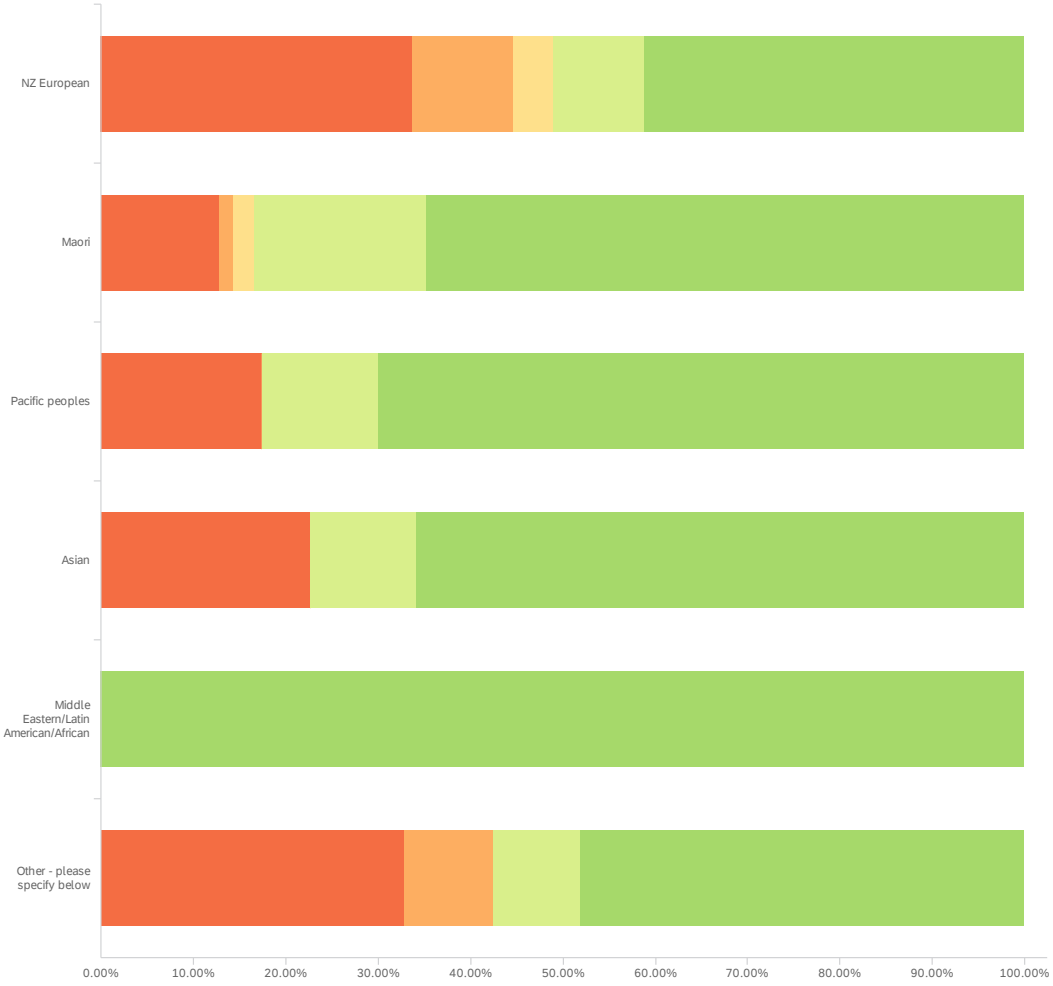



Under 16
16-24
25-34
35-44
45-54
55-64
65-74
75-84
85+
0.00%
10.00%
20.00%
30.00%
40.00%
50.00%
60.00%
70.00%
80.00%
90.00%
100.00%
Strongly disagree
Disagree
Neutral
Agree
Strongly agree



#	Field	Choice Count	
1	Strongly disagree	31.29%	225.68
2	Disagree	9.79%	70.59
3	Neutral	3.90%	28.11
4	Agree	10.25%	73.90
6	Strongly agree	44.78%	323.03
			721.31

Showing rows 1 - 6 of 6


NZ European
Maori
Pacific peoples
Asian
Middle Eastern/Latin American/African
Other - please specify below
0.00%
10.00%
20.00%
30.00%
40.00%
50.00%
60.00%
70.00%
80.00%
90.00%
100.00%

11.5 2023/2024 - Draft User Fees and Charges

File Number: **A14343332**

Author: **Josh Logan, Team Leader: Corporate Planning**

Authoriser: **Paul Davidson, Chief Financial Officer**

PURPOSE OF THE REPORT

1. The purpose of this report is to present the proposed draft user fees and charges schedule for Council to adopt as a draft for public consultation.

RECOMMENDATIONS

That the Council:

(a) Receives the report: 2023/2024 - Draft User Fees and Charges.

(b) Adopts the draft user fees and charges and statement of proposal as set out in **Attachments 1 and 2**, as a draft for public consultation, incorporating any amendments as directed by Council at this meeting.

(c) Delegates the Chief Financial Officer to approve the final wording of amendments (as per Council direction) prior to public consultation.

BACKGROUND

2. User fees and charges are updated by staff on an annual basis. Changes to pricing may be necessitated by one or more of the following influences: changing costs of providing the product or service, inflationary adjustments, new or removed fee requirements, statutory requirements, or alignment with market prices.

3. Significant or material changes are usually consulted on annually alongside the Long-term Plan (LTP) or annual plan (as applicable in any given year). The financial implications of proposed fee changes have been included in the draft annual plan revenue figures reported to Council in December 2022.

4. **Attachment 1** to this report sets out the current fees and the proposed fees going forward. The proposed changes for the most part, are minor and are increasing at least in line with what the LTP estimated for inflation.

5. Please note that a separate report Recommendation for Adoption of Dog Registration Fees and Charges (Dog Control Act 1996) 2023-24, will be presented to Council for adoption at its meeting in April 2023.

DISCUSSION

6. Tauranga City Council's user fees and charges enable the actual and reasonable costs of council's services to be suitably contributed to by those who directly benefit from the service.

7. The current revenue and financing policy guides the determination of funding sources for council activities. That policy includes five key principles:

- Accessibility – that Council facilities and services should be accessible to as many people as possible.
- Affordability – both that Council facilities and services should, wherever possible, be affordable to users and that rates should, to the extent possible, be affordable to ratepayers.

- Benefit – that those who benefit from a Council facility or service should contribute to the costs of that facility or service, during the period in which the benefits are expected to occur.
- Exacerbators – that those who contribute to the need for a Council facility or service should contribute to the costs of that facility or service.
- Practicalities – the funding of operating and capital expenditure should take account of the practicalities and efficiencies of the available funding methods.

8. Council must apply judgement in assessing many options to determine the appropriateness in its development of budgets.
9. Council's general approach is to reduce the burden on the ratepayer by utilising a 'user pays' approach. Therefore, where a service user can be identified, and efficiently charged, they will pay for that service through a user fee or charge. This approach requires a greater percentage of the costs of an activity to be recovered from service users.
10. Fees and charges forecast revenue for 2023/24 totals $61 million, (this total excludes water by meter and Bay Venues fees revenue) which is 15% of the total operating revenue budget for 2023/24.
11. Of the $61m of projected user fee revenue mentioned above, more than half (59%) of the fees and charges revenue is attributed to the following four activities:
    - Building services ($13m)
    - Airport ($13m)
    - Parking ($6m)
    - Property Management (leases) ($5m)
12. Detailed below is a summary of the key user fee movements from current 2022/23 to those proposed for 2023/24.
13. Most of the fees set are comparable to those charged by other, similar, organisations.
14. Only those fees that contribute over 5% of the activity revenue are included.
15. Most fees have increased around 6%, being a forecast for the 2023/24 financial year of 4% and a catch up from the prior year of 2%. Actual inflation to December 2022 was 7.2%, not all of which was anticipated in the setting of 2022/23 User Fees & Charges. The forecast for 2023/24 inflation is an average of the most recent forecasts from our major trading banks + RBNZ + NZIER.
16. Also, in some cases, the impact of COVID-19 on Council's revenues has caused deficits in the previous and current year due to reduced volumes. Several activities are expecting a significant improvement in operating revenues as volumes return.

Building Services

- Building services allows rates funding which recognises the public good element of this activity. The remainder of activity funding comes from user fees. The user fee revenue is modelled to recover costs over time based on estimated application volumes, the amount and complexity of work associated with applications and budgeted costs.
- Building Services have reviewed their fees and benchmarked these against proposed Building Consent fees for this coming financial year across the other Metro Councils and the other BOP Councils. In some cases, we have reduced these where we had previously been higher.
- Online system fees have been increased to reflect the actual charges that Council pays for these applications.

- There has also been a correction and simplification of the notice to fix fee. It has been split into two categories being residential and commercial. This is to correct the double up that was in another section and again bring us into line with other metro councils and local territorial authorities.
- This activity is currently running a deficit while staff work through the appropriate funding sources and internal allocation charges and costs relative to expected volumes. The activity remains within the allowable range for rate funding as per the 2021-2031 Long-term Plan.

Airport

- Airport parking was reviewed within the last year, and changes were implemented in August 2022. This increase exceeded inflation forecasts to bring prices more in line with comparable airports. Therefore, no increases are proposed for 2023/24 and will be increased in future years to ensure it remains consistent with inflationary increases.
- The review undertaken last year showed that Airport parking fees are comparable with the average fees of five other regional airports.
- Charges for regular passenger transport aircraft are agreed upon with operators based on an industry recognised pricing model based on individual airport costs. This is currently under review and any changes will be reflected in the upcoming Long-term Plan.
- It should be noted that the airport generates significant revenue from the leasing of land. These leases incorporate escalations which are included in budgets.

Property Management (leases) - Marine Facilities/Occupation of Council Land/ Temporary Leasing of Road Space

- The user fees and charges for these three activities, which are managed by the Property Team within Spaces and Places, are proposed to be increased by 9%.
- The fees for these leases are low and were initially based on a percentage of market value. Market value for lease area in Tauranga has increased substantially over the past year and the original 3% increase on these initially low values does not increase rental charges appropriately to the market rate percentage anticipated.
- As an example, a Council building lease for $545 increased by 4% would only increase the price by $16.35 per annum which does not sufficiently cover the increased staff, building maintenance, rates/operational expenditure increase within the 4%. The work involved in updating systems and advising the tenants of increases is not even covered by the 4% rise.
- There are further plans in place to review these fees and charges as part of the upcoming Long-term Plan.

Parking Management

- Parking activity has no rates included so that the costs of the activity, including provision of new parking facilities and upgrades, must be funded through user fee revenue. The last increase in parking pricing was done via the report “Parking Management Plan” from the Council meeting 3 October 2022.
- The On Street Parking area changes reflect the adopted recommendations from that report. Recommendations came into effect on 1 December 2022.
- Other increases are to amend pricing structure to prioritise short-stay parking, reflect the cost of providing the parking and to recover a greater proportion of parking costs.

Water Supply and wastewater

- Volumetric water charges are charged under the Rating Act so are a rate rather than a user fee and are presented in the Statement of Comprehensive Revenue and Expense as a rate. A much smaller share of water funding comes from user fees. This year to help minimise the increase the decision has been made to reduce the water supply fixed charge to $0 and remove the debt retirement element from the volumetric charge. The result is a 2.2% increase in the volumetric charge per m3. This will increase it from the current charge of $3.33 per m2 to $3.40 per m3.
- Similarly, most wastewater funding comes through a targeted rate with a small portion from user fees, primarily trade waste charges. Most trade waste increases for 2023/24 have used an inflation rate of 7% to more accurately reflect the actual increase in costs of pumping and treatment.

Bay Venues

- **Attachment 1** contains proposed fees and charges for 2023/24 from Bay Venues. There is a paper that is also on the agenda for this meeting titled “Bay Venues’ Proposed Draft User Fees and Charges” that contains options for fees for 2023/24. The fees displayed in Attachment 1 are those proposed as the recommended option one in that report. Should a different option be chosen by Council then Attachment 1 will be amended to reflect this prior to consultation.

STRATEGIC / STATUTORY CONTEXT

17. Setting fees and charges at the correct level enables the funding of council’s activities. These activities help deliver out community outcomes and facilitate improved quality of life, quality of economy and sound city foundations.
18. The recommendation meets the requirements of the Local Government Act 2002.
19. Council is authorised to set fees and charges under specific legislation, including:
    - Local Government Act 2002
    - Resource Management Act 1991
    - Dog Control Act 1996
    - Building Act 2004
    - Reserves Act 1977
    - Waste Minimisation Act 2008
    - Local Government Official Information and Meetings Act 1987
    - Food Act 2014
    - Food Hygiene Regulations 2015
    - Impounding Act 1955
    - Health Act 1956
    - Sale of Alcohol Act 2012

OPTIONS ANALYSIS

Option 1: Council approves the draft user fees and charges schedule and statement of proposal.

20. The Council approves the draft fees and charges as proposed in **Appendix 1**.

Advantages	Disadvantages
• Managers have reviewed the fees and charges and have made recommendations based on actual and reasonable costs • Proposed fees and charges align with the current draft annual plan budgets • Engagement and communications planning can be finalised.	• Potential opportunities for other fees and charges may not have been considered.

Key risks	Further opportunities for fees and charges may have to wait until the 2024-2034 Long-term Plan.
Recommended?	Yes

Option 2: Council requests further changes to the draft user fees and charges schedule.

21. The Council does not approve the draft fees and charges and either rejects suggested changes or requests further analysis be undertaken.

Advantages	Disadvantages
• Potential opportunities for fees and charges may be raised and considered.	• Delays in finalising the draft annual plan budgets.

Key risks	Potential delays in finalising the draft annual plan financial forecasts.
Recommended?	This option allows flexibility to consider variations to the fees noting that significant changes and the introduction of new fees may delay adoption of a draft fee schedule.

FINANCIAL CONSIDERATIONS

22. The financial implications of the proposed fees and charges are included in the initial drafting of the 2023/24 Annual Plan.

CONSULTATION / ENGAGEMENT

23. The user fees and charges schedule represent fees proposed to be charged to the community.

24. After adoption today, the draft user fees and charges will be consulted on with the community for four weeks in accordance with sections 83 and 150 of the Local Government Act.

SIGNIFICANCE

25. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy. Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.

26. In making this assessment, consideration has been given to the likely impact, and likely consequences for:

    (a) the current and future social, economic, environmental, or cultural well-being of the district or region

(b) any persons who are likely to be particularly affected by, or interested in, the issue, proposal, decision, or matter

(c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.

27. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the decision is of medium significance.

ENGAGEMENT

28. Taking into consideration the above assessment, that the decision is of medium significance, and the legal requirements for some of the user fees and charges, officers are of the opinion that one-month consultation is required under the section 83 of the Local Government Act.

NEXT STEPS

29. Pending decisions from this Council meeting, key steps are:

(a) **24 March to 24 April:** Community feedback sought on the draft user fees and charges.

(b) **Mid-April to May:** Staff will analyse feedback and make recommendations on changes.

(c) **Council 29 May:** Hearings will be held along with the regular Council meeting.

(d) **Council 19 June:** Deliberate and then adopt a final version of the user fees and charges.

30. Once finalised, updated fees will come into effect on 1 July 2023.

ATTACHMENTS

1. Draft User Fees and Charges Schedule 23_24 - A14412797 (Separate Attachments 1)

2. Statement of Proposal - Draft 2023-24 User Fees and Charges - A14412220 (Separate Attachments 1)

11.6 Omanawa Falls Safe Access Project - Consideration of Options to finalise Physical Works

File Number: **A14342858**

Author: **Amanda Davies, Manager: Spaces and Places Project Outcomes**

Authoriser: **Barbara Dempsey, General Manager: Community Services**

PURPOSE OF THE REPORT

1. The purpose of this report is to seek additional funding for the Omanawa Falls Safe Access project.

RECOMMENDATIONS

That the Council:

(a) Receives the report "Omanawa Falls Safe Access – Consideration of Options to finalise Physical Works".

(b) Supports Option 2 which would approve an additional $1.333 million towards the project budget. This would see an additional budget of $1,053,000 in FY23 and $280,000 in FY24.

EXECUTIVE SUMMARY

2. Areas of cliff surrounding the Omanawa Falls have deteriorated considerably since they were first investigated in 2020. To complete the planned scope of the project, additional cliff stabilisation works will be required so that the remainder of the track can be constructed and made safe for the public to visit.

3. There is insufficient budget to cover the costs of additional stabilisation, and a few other items, which is estimated to be in the order of $2.646 million.

4. This report presents three options for consideration, each of which incur additional cost to the project.

- Option 1 is to reduce scope/stop works and complete the project with minimal additional spend. Under this option the carpark will be completed, however the track will end at viewing platform 2. This option is estimated to cost an additional $740,000.
- Option 2 is to make use of all completed structures and stop the track just after the glulam bridge. This would require the addition of a modest viewing platform at the end of the bridge so that there would be an end point to the track. There are two variations of this option which are described in Attachment 3, both of which are estimated to cost the council an additional $1.333 million.
- Option 3 is to complete for all works, including cliff stabilisation, which will require an increase to the project budget by $2.646 million.

5. The Omanawa Falls Governance Group supports Option 3, because it is the only option that fulfils the project objective to create physically safe access to the bottom of Omanawa Falls. However, the Group understands the financial impact of Option 3 has to the ratepayers of Tauranga.

6. This report recommends option 2 because it costs less than option 3, it makes use of structures already completed, and is safer than option 1.

7. A summary of option benefits and challenges for consideration can be found in attachment 3.

BACKGROUND

8. The Omanawa Falls are located on land owned by Tauranga City Council within the Western Bay of Plenty district, and within the rohe of Ngāti Hangarau. There is currently no safe formed access to the Falls and as such, the site is currently closed to public access. Rockfall is a common occurrence due to the high levels of instability in the cliffs surrounding the falls. Despite this, members of the public continue to attempt to access the site to visit the spectacular falls and in recent years, this has resulted in a number of serious injuries and two fatalities.
9. The Omanawa Falls Safe Access project is being led in partnership by Ngāti Hangarau, Tourism Bay of Plenty and Tauranga City Council (TCC). The first phase of the project is to provide physically and culturally safe access down to the bottom of the falls.
10. The instability of the cliffs has been suspected or known for a number of years, however the Health and Safety focus at the site has centred on uncontrolled access by the public, the risk of falls, and dangerous parking. TCC has commissioned a range of assessments on geotechnical stability and safety over the years from 2015 - 2020 in order to be able to select and design a route down to the bottom of the Omanawa Falls.

STATUS UPDATE

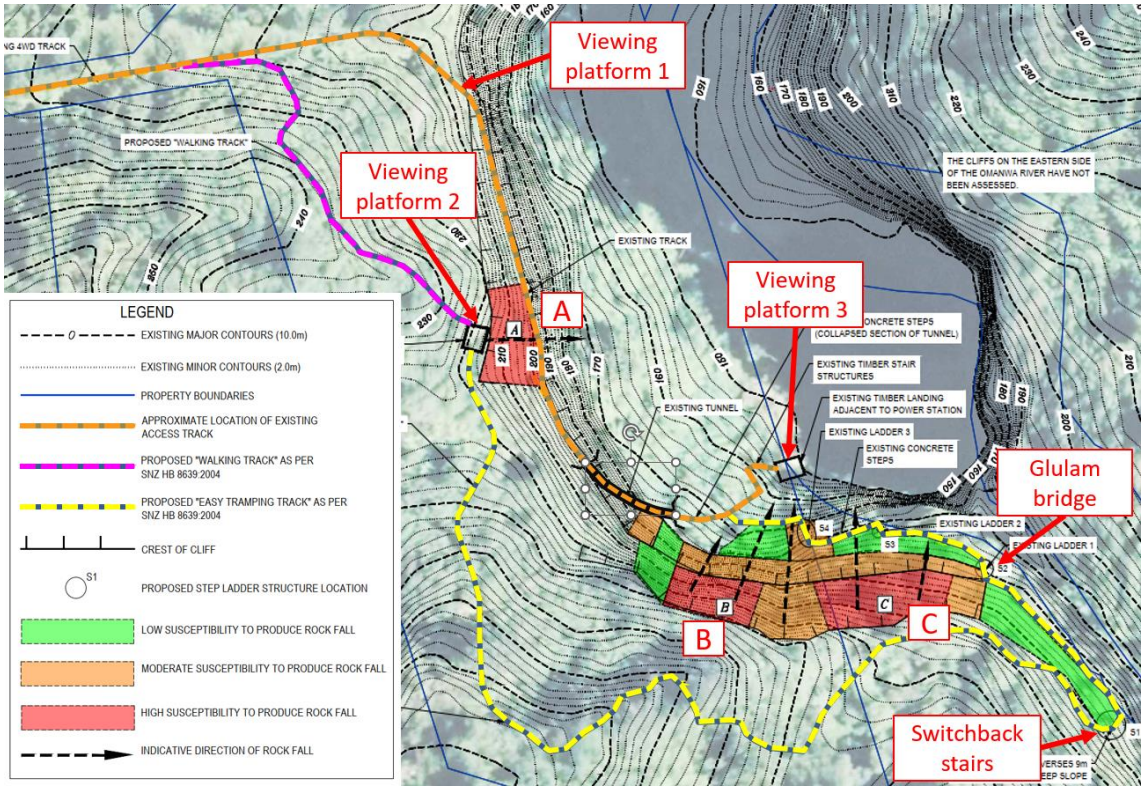
11. Consent for the publicly notified resource consent application was granted in May 2022 and was then appealed. Court facilitated mediation was successful and the Environment Court approved the changes to the conditions of consent in late November 2022.
12. A contract for cliff stabilisation and track construction was awarded to Avalon with works commencing in August 2022.
13. GT Civil started clearing the site for construction of a carpark in early March 2023.
14. Carving of Mahi Toi is underway by Ngāti Hangarau artist Pete Smith.
15. Cultural ranger is in place and kaitiaki from Ngāti Hangarau are actively monitoring the site in evenings and weekends. The number of visitors has dropped from 70 cars per day to 20-30 cars per day.
16. Stabilisation of cliff area A was completed in December 2022 (see Figure 1 on p. 5).
17. Construction of the new track from the existing 4WD track is well underway. Sub-contractor Walkway Solutions (Walkways) have completed the track as far as the glulam bridge. Construction of viewing Platforms 1 and 2 are underway and will be completed in March 2023. The contractors can't progress due to the stability issues of cliff areas B & C (see detail further below).
18. An application for funding was made to the Lottery Environment and Heritage Fund at the beginning of March 2023.

CLIFF STABILISATION

19. In 2020 Tonkin+Taylor (T+T) undertook a third geotechnical assessment in support of the final selected route. Cliffs along the route were assessed for susceptibility for producing rockfall as low, medium or high. Three sections of cliff were identified as having a high susceptibility to produce rockfall. These are shown in red in Figure 1 as areas A, B & C.
20. To manage the risk of rockfall T+T recommended mitigation for cliff areas with a high susceptibility for rockfall and frequent monitoring for areas with a moderate to low susceptibility for rockfall.
21. Due to the characteristics of the site, our main mitigation option is to reduce the risk of rockfall as much as is reasonably practical through a range of methodologies such as rock

bolting, soil nails, mesh, and cable tie backs. This will be supported by regular monitoring of the cliff face, and signage

Figure 1: Plan showing features of track and stabilisation areas



ISSUES

ONGOING RISK ALL OPTIONS

22. It needs to be noted that all options/cost estimates are based on geotechnical knowledge and conditions at this point in time. T+T together with Avalon have identified blocks that they consider to be at imminent risk with a high susceptibility to rock fall. The rock bolting philosophy for Areas B and C addresses blocks with open defects and/or areas with evidence of recent rock fall. Adjacent areas also have blocks with open defects but due to the presence of vegetation cover, which helps lock the blocks in, these areas are not considered as being at imminent risk and have been classified as having a moderate risk of rock fall. Rock fall in areas classified as having moderate susceptibility are still possible but are likely to be infrequent.

23. The remediated areas shall be subject to routine inspection and maintenance as recommended in the maintenance monitoring schedule. Areas with low to medium rock fall risk with also be monitored regularly. It is not envisaged that further rock stabilisation works will be required in the short to medium term. However, it must be noted that the condition of the cliff face may be subject to change due to ongoing erosion. It is noted that cliff stabilisation works completed since August 2022 have held.

24. Considering the recent frequency of unpredictable natural events (Cyclone Gabrielle in February, significant rainfall and landslips in December, earthquakes in January etc.), there is a risk that future events could have additional impacts on the project's requirements / scope in terms of cliff stabilisation, unstable ground conditions etc.

Current Situation

25. Recent surveying of cliff areas B & C, has found that there has been significant deterioration since the 2020 geotech investigation. It has been concluded that the area considered to be at imminent risk of failure is significantly larger than first anticipated. In short, areas identified as moderate risk in the T+T Geotech report completed in 2020 (orange in the Figure 1 above) have now been determined as high risk of imminent failure (now red in Figure 1). The unusually high level of rainfall in the last six months is considered to have contributed to the deterioration of the cliffs, and this is evidenced by four instances of observed rockfall since June 2022.

26. The original strategy for stabilising these cliff areas combined scaling loose blocks and spot bolting high risk rocks over an area of approximately 500m^2. It was estimated that 100 rockbolts would be required. Further investigation indicates that approximately 1500m^2 of the cliff face of areas B & C needs to be stabilised, with an additional 1200m^2 that hasn't been observed in detail that may also require stabilisation. Due to the size of the individual blocks and the stacked nature of the columns (where scaling one block is likely to take others with it) scaling will be relatively minimal. Therefore T+T are conservatively estimating 800 rockbolts, with 600m of cable to tie back large blocks and 520m^2 of mesh.

27. The contractor's variation for the above came in much higher than expected at a total of $1.423 million. The costs are for the additional materials, additional helicopter movements, and an extended programme of five months.

28. Avalon are currently installing the 100 rock bolts already procured and assembled for cliff areas B & C. This work is due to be generally complete in March.

29. The additional stabilisation work required for cliff areas B & C has a knock on effect on the completion of the track and structures being completed by Walkways beneath areas B & C. Due to the risk of imminent rockfall from areas B & C, Walkways will not be able to commence work on the track and structures below these cliffs (beyond the glulam bridge) until Avalon have completed the cliff stabilisation works.

30. In addition to the submitted variation for $1.423 million there are a number of other related costs for the stabilisation work.

Option 1 considerations

31. If all structures already built were retained, and we proceeded with completion of the carpark, then the track could be opened to the public as far as the glulam bridge. The risk of falls from height would remain beyond the glulam bridge, as well as the significant risk of rock fall. However, people would be less likely to get lost in the bush and cause a nuisance for neighbouring properties.

32. However, with nowhere to walk to from the glulam bridge, we anticipate that most people would want to continue to try to get to the falls and make use of the existing dilapidated ladders below the glulam bridge. These ladders are in very poor condition and are very tall, with the tallest being 10m long. We could potentially look into upgrading the ladders to reduce the risk of the ladders failing, however this wouldn't go far enough to provide safe access to the public.

33. As an alternative, we could remove the extensive infrastructure already built and paid for beyond Platform 2. This would require the assets to be written off which would have an immediate rates impact because the structures couldn't be capitalised. Without a formed track beyond Platform 2, people will continue to get lost in the bush and cause nuisance for neighbouring properties when they trespass over their land.

34. Option1 means TCC would be failing in its obligations under the Health and Safety at Work Act 2015. The existing structures including the historic tunnel, staircase and dilapidated ladders are currently in an unsafe and unsound condition. If we don't provide a safe alternative, as a PCBU we remain responsible for the health and safety of anyone onsite, including workers of Omanawa Hydro and TCC rangers.

35. Option 1 would not solve the issues that the project set out to achieve as motivated visitors will continue to make every effort to get down the falls, while risking their health and safety, and causing nuisance for neighbours.

36. Option 1 could negatively impact on Ngāti Hangarau's ability to provide kaitiakitanga and manaakitanga to the land and the water at Omanawa, and to provide cultural safety for visitors. This is because either stopping or reducing the investment on site is likely to adversely affect the ability of Ngāti Hangarau and their business partner to run a viable cultural tourism venture. This could prevent Ngāti Hangarau from being able to maintain their presence onsite.

Option 2 – Construct an additional viewing platform at the end of the Glulam Bridge (Platform 4) and stop the track at that point.

37. The viewing platform would be of modest size, and if possible – subject to further investigation - may be cantilevered over the edge of the cliff. The ground below the proposed platform has been inspected and is found to be sound. The cliff below the proposed viewing platform has been surveyed and is moderately unstable and would require a limited amount of stabilisation. Construction of an additional platform is estimated to cost $300k.

38. The Omanawa Falls Governance Group recommends Option 2 as the best alternative option to completing the full scope of the project (Option 3), on the basis that the project team continue to seek funding from external funding partners to complete the full scope of the project.

39. Option 2 TCC would need to review in its obligations under the Health and Safety at Work Act 2015. With potential risk to users determined to access the bottom of the falls. TCC also as a PCBU remain responsible for the health and safety of anyone onsite, including workers of Omanawa Hydro and TCC rangers. Improvements would also need to be made to the existing ladders onsite to provide access for Omanawa Hydro. TCC would need to continue to work with Omanawa Hydro to ensure appropriate health safety obligations are being met.

40. Option 2 Neither option would solve the issues that the project set out to achieve as motivated visitors will continue to make every effort to get down the falls, while risking their health and safety, and causing nuisance for neighbours.

41. Option2 both options could negatively impact on Ngāti Hangarau's ability to provide kaitiakitanga and manaakitanga to the land and the water at Omanawa, and to provide cultural safety for visitors. This is because either stopping or reducing the investment on site is likely to adversely affect the ability of Ngāti Hangarau and their business partner to run a viable cultural tourism venture. This could prevent Ngāti Hangarau from being able to maintain their presence onsite.

RECOMMENDED OPTION

42. Option 2 is recommended for the following reasons:

- It makes use of all structures built onsite
- It costs less than option 3
- It is safer for the public than option 1
- There will be a pleasant view from viewing platform 4 down the valley
- The project will have a defined completion date

FINANCIAL CONSIDERATIONS

43. The project budget has grown considerably over the last five years. The key reasons for this are:

    - Publicly notified consent which was then appealed. This added over a year to the programme and significant legal, planning fees and specialist consultants' fees as part

of this process. This also meant an increased project programme and subsequent increase in professional services fees.

- The project site environment is complex and sensitive, with specialist and bespoke solutions required to minimise environmental impact and address the risks on site.
- Complex stabilisation work required to address the geotechnical risk, which has increased over time
- Cost escalation in materials and for contractors.

44. As discussed earlier, we are requesting an additional $1.333 million. This is proposed to be phased over FY 23 and FY 24 as follows:

Table 5: Phasing of budget over FY 23 and FY 24

	2023 FY	**2024 FY**
Current budget	**$4,713,227**	**$1,000,000**
Required	**$5,766,227**	**$1,280,000**
Increase to budget	**$1,053,000**	**$ 280,000**

FUNDING OPPORTUNITIES

45. Funding of $1 million from the Tourism Infrastructure Fund is still secured. Now that resource consent is granted and the appeal is resolved, we can invoice for the first instalment of $250,000.

46. In additional to the grant from the Tourism Infrastructure Fund, TCC has been active in applying for grants from other potential funding partners. Delays with getting the resource consent approved prevented us from being successful with applications to the Lottery Environment and Heritage Fund in 2020 and the Lottery Significant Projects Fund in 2022. Now that consent has been resolved, we have reapplied to the Lottery Environment and Heritage Fund for partnership funding of around $500k. Unfortunately, the Significant Projects Fund has been put on hold for 12 months while the settings are reviewed. The Board will make a decision in June 2023 about whether the fund will be opened again. The City Partnerships team also put the Omanawa Project forward to the Lion Foundation for a grant in December 2022 however the funding was awarded to another TCC project. Attachment 1 provides a high level summary of potential funding partnerships that the City Partnerships team are investigating.

NEXT STEPS

47. Design an additional platform at the end of the Glulam bridge.

48. Continue with construction at the site until September 2023.

49. Work with the city partnerships team and continue investigating other options for funding.

50. Work with Ngati Hangarau and their business partner Kaitiaki Adventures to develop the commercial tourism product so that it is in place when the project is complete, and the site is open to the public.

ATTACHMENTS

1. Omanawa Falls - Options Analysis - A14492454

OPTIONS ANALYSIS

OPTIONS	ESTIMATED ADDITIONAL COST	BENEFITS	CHALLENGES
OPTION 1 – Stop works Stop track construction now and only complete Platforms 1 and 2. **FULL COUNCIL FUNDING**	**$ 738,000 estimated**	• Lowest additional cost to project.	• This option would mean we are not completing the project objective of creating physically safe access to bottom of Omanawa Falls and we would still have the risk of people getting seriously injured or dying in attempting to gain access to the bottom of the falls. • TCC (as a PCBU) would be failing their duty of care under the Health and Safety Act in regard to people working on the site. Not completing the stabilisation and track will put Kaitiaki, Omanawa Hydro employees, TCC rangers and the public at risk if they have to rely on the existing structures including the historic tunnel and dilapidated ladders which are currently in an unsafe and unsound condition. • Could create strained relationships with project partners as full tourism/experience objectives will not be achieved. • Would need to consider whether we close the track to the public after platform 2 or maintain public access to the glulam bridge which is completed. Both of which have negative consequences. • The switchback stairs would not be stabilised.
OPTION 2A – Stop after Glulam Bridge 2A - As per Option 1, complete stabilisation of cliffs above glulam bridge, full anchoring of	**$ 1,333,000 estimated**	• There is a view up the valley from the end of glulam bridge so track will have	• Same challenges as Option 1 points 1 - 3 plus; • This option would require design and geotechnically, the track is quite narrow in this location so a cantilevered platform similar to Platform 2 would need to be investigated, as well as further cliff stabilisation. The existing ladder

switchback staircase *and* create a cantilevered viewing platform (3.5m wide x 3m long) at end of glulam bridge **FULL COUNCIL FUNDING**		an end point rather than a bridge to nowhere. • Infrastructure already built beyond Platform 2 can be utilised. • May have a view of the top and side of the waterfall form the additional platform	structures would also need to be upgraded to improve access to Omanawa Hydro employees. • There would be ongoing geotechnical risk that would need to be managed for Omanawa Hydro.
OPTION 3 Approve additional spend of $2,646,000 in order to complete project and realise all project objectives **FULL COUNCIL FUNDING**	**$ 2,646,000 to be funded by Council**	• This option allows for the fulfilment of our project objective to create physically safe access to the bottom of Omanawa Falls. • Reduces current H&S risk exposure to TCC due to current unsafe access. • We would comply with the conditions of our resource consent and avoid relitigating consent conditions with Western Bay of Plenty and the neighbours. • Allows for an alternative / safer access for Omanawa Hydro / TCC staff if access issues via the tunnel ever eventuated. • Allows for an alternative / safer option for Search & Rescue operations. • Reduce the prevalence of trespass through neighbouring properties.	• Highest additional cost to project if fully funded by Council

12 DISCUSSION OF LATE ITEMS

13 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
13.1 - Public Excluded Minutes of the Council meeting held on 27 February 2023	s7(2)(c)(i) - The withholding of the information is necessary to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied s7(2)(g) - The withholding of the information is necessary to maintain legal professional privilege 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
13.2 - Water reform debt settlement update	s7(2)(b)(ii) - The withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information 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

13.3 - Te Maunga Redevelopment and Contracts	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
13.4 - Additional funding for Transport Network operations to maintain road assets	s7(2)(h) - The withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities	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
13.5 - Exemption from Open Competition - Eco-system Programme Data Migration	s7(2)(h) - The withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities	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

14 CLOSING KARAKIA