Updated:16 December 2025

ATTACHMENT 1: Material provided to the Joint Working Group (22 December 2025 meeting)

Issues & Options Paper: Stormwater

Background

1. Tauranga City Council ("**TCC**") and Western Bay of Plenty District Council ("**WBOPDC**") are undertaking due diligence and establishment planning for a proposed joint Water Organisation ("**WO**") under the Local Government (Water Services) Act 2025 (the "**Act**") to deliver water services.

2. Both TCC and WBOPDC have submitted a Water Services Delivery Plan ("**WSDP**") to the Department of Internal Affairs ("**DIA**") for approval, and the DIA has approved both WSDPs which contemplate transferring responsibility for all 3 waters (water supply, wastewater, stormwater) to the proposed WO.

3. In August 2025, TCC's Elected Members resolved:

> *"Notes that the WSDP includes stormwater, and that due to a combination of practical constraints and the statutory deadline for submission of the WSDP that*
>
> a. *further work will be done to consider other aspects of stormwater management including assets, ownership, charging and following further information Council may, at a later date, decide to retain stormwater in-house."*

4. The further work directed above has now largely been competed[1], and in this paper, we present the outcome of that work and the reasonable options that are available to TCC for stormwater.

5. It is important to note that WBOPDC did not pass a similar resolution to TCC's mentioned above. Accordingly, there are some decisions[2] relating to stormwater that are relevant to TCC only due to the above resolution. Other decisions will be relevant to both TCC and WBOPDC as shareholders of the WO. For those decisions that sit with TCC only, the other Joint Working Group (**JWG**) members can nonetheless share any relevant views for TCC's Elected Members to consider in their decision making.

---

[1] Although staff have undertaken preliminary financial modelling on stormwater, further work is required before this can be finalised.

[2] We reiterate that the JWG is not a decision-making forum.

6. The information is presented to the JWG so that the JWG has an understanding of the topics that TCC is considering. Once TCC has made its decisions, there will be direct implications for the WO and potentially also WBOPDC. There will be flow on direction sought from the JWG once TCC decisions have been made.
7. This paper has been prepared on the basis:
    a. That WBOPDC is not seeking to reconsider its decision to transfer responsibility for stormwater to the WO;
    b. That both TCC and WBOPDC decide to proceed with the establishment of the WO following the due diligence process (and we acknowledge that elected members are yet to make that decision); and,
    c. That preliminary financial modelling for stormwater has been undertaken and when the financial modelling on stormwater is finalised this paper will be updated accordingly.
8. This paper will outline the following:
    a. A summary of the previous report provided to TCC on stormwater.
    b. Introductory principles.
    c. Best practice recommendations that inform the issues and options
    d. Introduce the key items that staff will be asking for direction from TCC or the JWG as appropriate in early 2026:
        i. Should TCC or the WO be responsible for stormwater services within the TCC region? (This topic will be a **TCC decision**)
        ii. In the event TCC retains responsibility for stormwater services, does TCC wish to deliver stormwater services in-house or does it wish to outsource the delivery of stormwater services to the WO? (This topic will be a **TCC decision**)
        iii. In the event the WO assumes responsibility for stormwater services (either for WBOPDC only, or both TCC and WBOPDC), do the shareholders want stormwater charging to be set by the WO's Board with or without the shareholders have some operational direction. (This topic will be for **JWG direction**)
    e. Next steps.

Previous Reports on Stormwater

9. Staff have provided advice to TCC on stormwater on a number of occasions already, including on:

    a. 9 December 2024, which outlined the business case for future water service delivery in the Tauranga region.

    b. 24 March 2025, which included a discussion on "three waters versus a two waters approach and new financial modelling." The paper noted five primary reasons for proceeding with three waters versus two waters:

        i. *"The changes to stormwater delivery would be largely operational and internally facing, i.e. they will impact on how Council staff do things internally, and how they liaise with the stormwater function. However, the opportunity cost of remaining with two-waters will hinder any new CCO from being an attractive partner to other CCOs or councils wishing to amalgamate three-waters activities with the Tauranga CCO. The minor operational challenges may be managed via service level agreements and relationship agreements, internally facing documentation. There will be no change to the level of customer service provided by the stormwater activity, regardless of whether it is delivered by Council or by a CCO."*

        ii. *"A CCO has the ability to borrow up to 500% of revenue and this opens up investment opportunity for stormwater and flood management improvement works."*

        iii. *A three-waters model has potential to deliver greater capex and opex efficiencies. The modelling completed by MartinJenkins, and presented as part of this report, provides financial forecasting for the potential CCO options (a CCO only servicing Tauranga, versus a CCO servicing two or more local government areas). It is based on a three-waters scenario. The operational and financial efficiencies identified in this modelling would not be fully realised if a two-waters approach was adopted. In addition, existing waters staff have significant experience in stormwater planning, management, operations, renewals and consenting. This makes an attractive partner for future growth prospects for the CCO. If a two-waters approach was adopted, this existing knowledge of stormwater systems would be lost to Council and need to be replaced.*

        iv. *Avoids duplication of knowledge and compliance in the new regulatory environment.*

v. *A three-waters approach is better able to deliver a co-ordinated response in the event of an emergency*.

c. 26 May 2025, which provided the findings and analysis from community consultation on the future delivery model for Tauranga's waters services.

d. 14 July 2025, 5 August 2025, 15 August 2025 which provided advice on the WSDP and related matters.

In December 2024, March 2025 and May 2025, TCC noted its intent to proceed with the transfer of three waters to the proposed WO. In15 August 2025, TCC confirmed its earlier intent to transfer three waters to the proposed WO but also resolved the following:

"Notes that the WSDP includes stormwater, and that due to a combination of practical constraints and the statutory deadline for submission of the WSDP that:

further work will be done to consider other aspects of stormwater management including assets, ownership, charging and following further information Council may, at a later date, decide to retain stormwater in-house."

10. It is assumed that the matters covered in previous papers are already understood and do not need to be revisited. This paper focuses on the further work directed in the August 2025 resolution above[3] and matters not previously covered in earlier papers, including reporting on responsibility, contracting and charging mechanisms.

"Introductory principles" regarding stormwater

11. We have provided detailed background information regarding stormwater services at **Appendix 1** (Fact Sheet: An overview of Stormwater under the Local Government (Water Services) Act 2025). We have also provided at **Appendix 2** a Stormwater Options Table as a snapshot of options that are available for stormwater. [4]

[3] Although we note the financial modelling on stormwater is still to be finalised.

[4] The "Options for Stormwater" set out in Appendix 2 contains 5 different "scenarios", but not every one of those scenarios is captured in this paper (Scenarios 1, 2 and 4 within Appendix 2 are what we consider to be reasonable options available based on best practice. We consider that scenarios 3 and 5 within Appendix 2 are theoretical options that would not reflect best practice). If every theoretically available scenario was to be captured in this paper, it would need to be much longer in duration. Accordingly, we have focussed on what we consider to be the reasonable options which have been informed by the Act, other relevant legislation and the views of industry experts.

12. We recommend the JWG familiarise themselves with f these documents. However, we wish to highlight the following key principles which are likely to be of particular relevance to TCC's decision making:

    a. The Act is very accommodating as to how Councils choose to structure stormwater services. Legally, most configurations can be made to work. The Act can also accommodate any configuration for transferring stormwater assets to the WO[5]

    b. There is an important distinction to be made between owning assets for a particular water service and holding responsibility for providing a particular water service. Ownership does not automatically equate to service responsibility, and the individual transfer agreements that the TCC and WBOPDC will enter with the WO can split up responsibility and asset ownership.

    c. A party that holds responsibility (even some responsibility) for providing one or more water services will be a Water Services Provider ("**WSP**") under the Act, regardless of who owns the assets.

    d. WSP status carries significant statutory obligations (e.g. preparing a Water Services Strategy, annual stormwater budgets, auditing requirements and reports, achieving regulatory standards, and requirements etc).

    e. TCC's WSDP anticipates 3 waters (water supply, wastewater, and stormwater) will transfer to the WO. In the event TCC elects to retain responsibility for stormwater, this will constitute a structural change under the Act, which will require a fresh round of public consultation before submitting an amended WSDP to DIA by no later than 3 September 2026.

    f. In any scenario where stormwater responsibilities or assets are split between Council and the WO, some form of "contracting back" agreement between the two will be necessary to manage interfaces and avoid confusion, including with respect to liability.

    g. Although permissible, there are a number of downsides to TCC and WBOPDC approaching responsibility for stormwater differently (including competing interests between shareholders and an inability to achieve "economies of scale" efficiencies).

[5] Although it will be a very difficult process to transfer land that is subject to the Reserves Act 1977 out of Council ownership.

h. Following establishment, the WO can continue to use a property's "rateable value" as the basis for stormwater charging. However, the Act requires the WO to move away using a property's "ratable value" over a 5 year period. By year 5 most of the charge (more than 50%) must be comprised of something other than a property's "ratable value". By year 6 the WO must use methods other than a property's "ratable value" for the whole charge.

i. All properties within a service area, regardless of whether they fall inside or outside of the WSP's stormwater service zone(s), can be charged for stormwater services. However, the WO's charging structure must differentiate between properties that fall inside or outside of the zone. This is likely to result in a scenario where properties that fall within the stormwater service zone would likely be subject to a higher charge compared to properties that fall outside the zone. The legal definition of the stormwater service zone, and some practical examples, is set out in the Stormwater Fact Sheet at **Appendix 1**.

j. Aside from complying with the above, the Act is very flexible in how the WO can set stormwater charges. For clarity, the WO can set charges taking into account matters that may have some correlation to a property's ratable value, which may include NZ Deprivation Index, property land size etc, so long as these are not a direct proxy for property's ratable value based charging, and the choice is reasonable. An example of how the WO could charge for stormwater could be to apply a fixed charge to all properties in the WO's service area, with an additional variable charge over and above the fixed charge based on whether the property is located within or outside a stormwater service zone, with further adjustments based on a NZ Deprivation index, property land size, a property's permeable area or similar.

k. While the Councils cannot dictate the WO's approach to stormwater charging, the WO's foundation documents can be drafted in a way to give the Councils a certain amount of influence over the WO's approach to charging. However, future requirements or direction set by the Commerce Commission (or other regulators) will prevail over any inconsistent direction from the shareholders[6].

l. As matters stand following the review and approval of WSDP's across New Zealand, a total of 12 multi-Council WOs are proposed to be

[6] See Section 229(2) of the Act.

established. The majority of these (9) will be established under the Act to hold responsibility for stormwater infrastructure and service delivery.

m. Section 15 of the Act enables a territorial authority to return the provision of water services, any water services infrastructure and any other matters transferred to WO back to the territorial authority. In other words, any decision, including the transfer of responsibility for stormwater, has the potential to be reversed.

Best practice recommendations that inform the issues and options

13. The scope of the WO's business (2 waters for TCC or 3 waters for TCC) has been identified as a political decision in the Commercial Term Sheet requiring an issues and options paper for consideration. In the following section, for the first and second issues we have identified the reasonable options for the JWG members to share their views for TCC to consider in the TCC decision-making process. For the third issue, we have identified reasonable options for the JWG to consider purpose of attempting to reach a consensus view that can proceed as a recommendation to the respective Councils.

14. We have framed the reasonable options based on the following, which we consider to be best practice based on our interpretation of the Act, other relevant legislation and the view of industry experts:

    a. Land used for stormwater purposes can broadly be divided into two categories:

        i. Stormwater land that is subject to the Reserves Act 1977 ("**Reserves Act**"). It will not be viable to transfer ownership of this land from the Councils to the WO.[7]

        ii. Stormwater land that is not subject to the Reserves Act. It may be viable to transfer this land outside of Council ownership into the WO. However, for the purposes of this paper we have assumed that such land will remain in Council ownership.[8]

    b. Regardless of the entity that is the WSP for stormwater services (TCC or WO), the entity that is the WSP should own the stormwater "hard"

[7] It is not legally possible for a Council to transfer land classified as reserve (and therefore subject to the Reserves Act 1977) to the WO. Instead, the status of "reserve" would need to be removed, and this process would be expensive, would require public consultation and would likely take years to achieve (i.e. unlikely to be a viable option). Similarly for local roads owned by Councils as Road Control Authority – it will not be viable to transfer this land to the WO.

[8] This is an assumption that can be revisited during the "transfer agreement" phase of this project (i.e. after the WO is incorporated, but before it becomes operational) where the Councils can consider whether or not they would prefer to transfer any specific parcels of land to the WO.

stormwater infrastructure assets, such as all pumps, pipes, dams, inlets, outlets, scruffy domes, etc.

c. Due to the obligations imposed on WSPs, there is an argument that customers (i.e. ratepayers) would see better value for money and greater efficiencies if there is only one WSP, as opposed to two or three WSPs. This is highlighted by the preliminary financial modelling but will be confirmed once the financial modelling is finalised.

d. In the event TCC retains responsibility for stormwater services, TCC should also retain ownership of all stormwater assets (even if delivery obligations are outsourced to the WO).

e. Regardless of the entity that is responsible for stormwater services (TCC or WO), there will need to be some form of contracting arrangement between the Councils and the WO to deal with the interface of responsibilities, assets and liabilities.

f. In the event TCC elects to transfer responsibility for stormwater services to the WO, from an efficiency and value for money perspective, it doesn't make a lot of sense for the WO to enter into a comprehensive contracting back arrangement with TCC and/or WBOPDC for the delivery of stormwater services.[9]

g. Although it is technically legally permissible for a WO to issue a single charge to Council for stormwater, and for the Council to issue a stormwater rate to property owners, we advise against such an approach as it separates funding for stormwater services from responsibility for governance and delivery of stormwater services which would likely confuse accountability. This is further addressed in the Stormwater Factsheet at **Appendix 1**.

Three stormwater issues

15. As mentioned above, the Act is very flexible. So, there are numerous possibilities that are theoretically possible for the delivery of stormwater services. However, in this paper we focus the decision-making to three core issues:

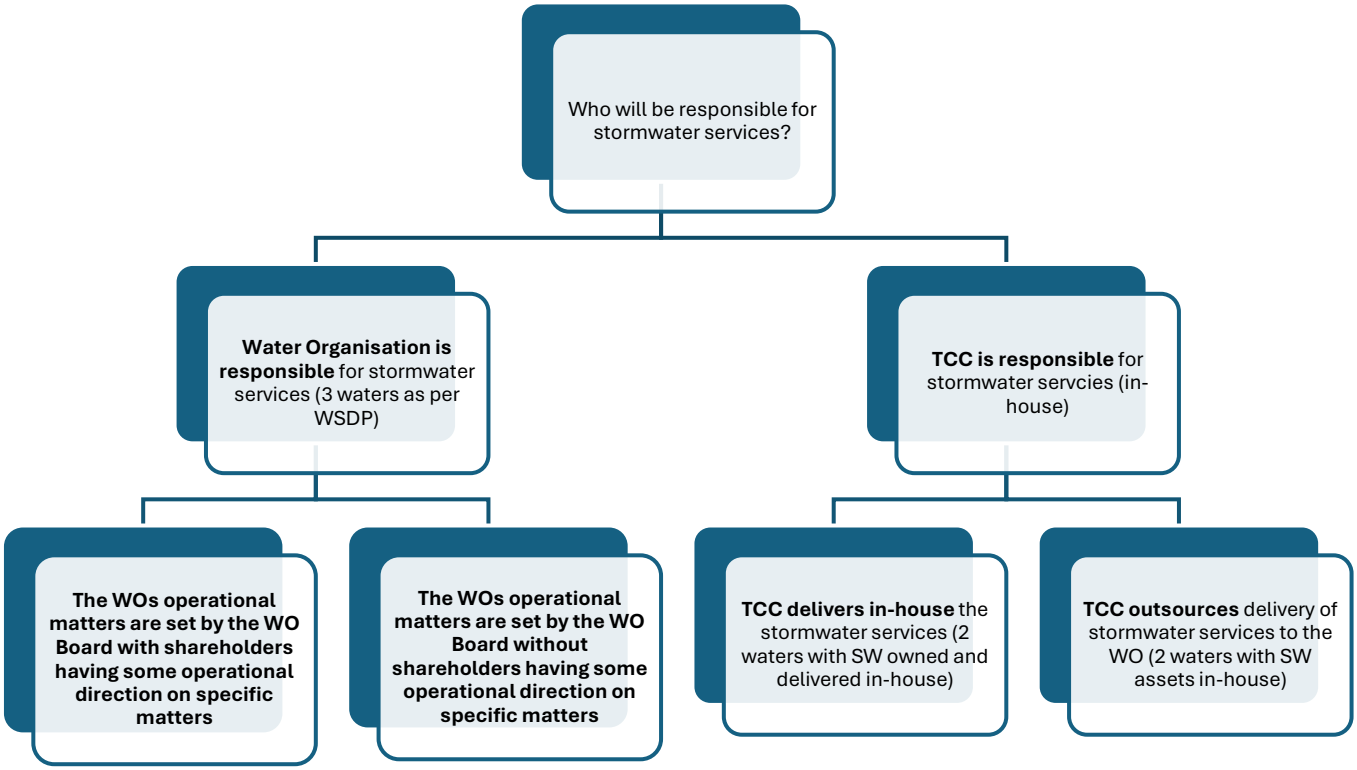
[9] So that theoretical option (i.e. a scenario where TCC transfers responsibility to the WO, but then the WO transfers delivery obligations back to TCC) is not discussed further within this paper.

a. Should TCC or the WO be responsible for stormwater services within the TCC region? *(**TCC decision**)*

b. In the event TCC retains responsibility for stormwater services, does TCC wish to deliver stormwater services in-house or does it wish to outsource the delivery of stormwater services to the WO? *(**TCC decision**)*

c. In the event the WO assumes responsibility for stormwater services (either for WBOPDC only, or both TCC and WBOPDC), do the shareholders want stormwater charging to be set by the WO Board with or without the shareholders having some operational direction? *(**JWG direction sought**)*

16. These decisions are set out below in diagrammatic form:



First issue: Should TCC or the WO be responsible for stormwater services within the TCC region? (TCC Decision)

17. The first issue for Tauranga City Council is whether or not to transfer responsibility for stormwater services to the WO. As noted above, each Council's WSDP[10] anticipates that responsibility for stormwater will transfer to the WO. However, in

[10] Submitted to and approved by the DIA.

the light of TCC's resolution outlined above we set out the two options available, along with some of the key advantages / disadvantages for each option.

Advantages	Disadvantages
Option 1 – Council transfers responsibility for stormwater services to the WO	
• No requirement to amend WSDP (or re-consult). • Only one WSP (being the WO).[11] • Scope for the WO to achieve economies of scale efficiencies. • If both Councils transfer responsibility to the WO, then the WO will be able to take a consistent approach to stormwater across all of the cross-boundary catchments between TCC land and WBOPDC land. • The WO will be responsible for delivering 3 waters for both Councils, and the Board will not face any competing interests that may arise if the WO is responsible for delivering 2 waters for one Council and 3 waters for the other Council.	• The Council will not be directly responsible for setting stormwater charges, and after 5 years the WO will have to base the majority of the charge on something other than a property's ratable value[12]. There may be a perception that the charging methodology may not recognise some underlying economic constraints for some property owners.
Option 2 - Council retains responsibility for stormwater services	
• The Council will be responsible for setting stormwater charges and will have the ability to use rateable property values.	• This will be a structural change to the WSDP that requires re-consultation with the public. This would need to occur within a very constricted timeframe, because WSDP's cannot be changed after 3 September 2026. • There will be 2 WSPs, meaning a duplication of statutory obligations. Those statutory obligations require significant investment in terms of time and resources (they will not be a mere "form-filling" exercise). • Potential that WO will provide 2 water services for one Council, and 3 water

[11] This will mean that the Council will not be subject to the various statutory obligations that come with being a WSP.

[12] We note that the Council can influence the WO's charging, providing the appropriate drafting is included in the founding documents – see section 228(3) and section 228(4) of the Act.

Advantages	Disadvantages
	services for the other. This will likely impact WO governance dynamics and also risk causing confusion within the public.

Second issue: In the event TCC retains responsibility for stormwater services, does TCC wish to deliver stormwater services in-house, or does it wish to outsource the delivery of stormwater services to the WO? (TCC Decision)

18. In the event TCC retains responsibility for stormwater services, that does not necessarily mean that TCC must deliver those services. The options available, in terms of delivery, are:

    a. TCC delivers stormwater services in-house; or

    b. TCC outsources delivery of stormwater services to the WO (via a comprehensive contracting back arrangement).[13]

19. The key advantages and disadvantages of each option are set out below:

Advantages	Disadvantages
Option 1 – TCC delivers stormwater services in-house	
• The entity responsible for stormwater services (the Council) will also be the entity undertaking those services (the Council).	• Limits opportunity to achieve economies of scale efficiencies by having one entity undertake all stormwater services across TCC and WBOPDC land. • TCC will be considered the WSP and be required to meet all legal obligations such as compliance reporting, development of a Water Services Strategy and financial reporting.
Option 2 - TCC outsources stormwater delivery to the WO	

[13] Note that outsourcing stormwater delivery to the WO would likely be captured as a "significant contract" under the Act. Section 23 and 24 set out a number of requirements for "significant contracts", including a requirement to assess options and undertake consultation.

Advantages	Disadvantages
• Scope for the WO to achieve economies of scale efficiencies. • The WO will be able to take a consistent approach to stormwater across all of the cross-boundary catchments between TCC land and WBOPDC land.	• Disconnect between the entity responsible for stormwater services (the Council) and the entity undertaking those services (the WO). • Council will bear ultimate responsibility (with the public, stakeholders and regulators) for services that Council does not provide. • Additional time, cost and resources to draft the contracting back arrangement, and undertake consultation obligations etc., on the basis this would be considered a "significant contract" under the Act. • TCC will be considered the WSP and be required to meet all legal obligations such as compliance reporting, development of a Water Services Strategy and financial reporting.

Third issue: In the event the WO assumes responsibility for stormwater services (either for WBOPDC only, or both WBOPDC and TCC), do the shareholders want stormwater charging to be set by:

(a) The WO Board <u>with</u> the shareholders having some operational direction; or,

(b) The WO Board <u>without</u> the shareholders having some operational direction

(JWG Direction Sought)

20. One purpose of the Act is to clearly set out the responsibilities, functions, duties and powers of the WO as water service provider.[14] Consistent with that particular purpose, the default position under the Act is that the statement of expectations created by the shareholders cannot set requirements relating to the WO's performance of duties, functions or powers under the Act (in other words, Councils

[14] Section 3(b) of the Act.

cannot set direct requirements for the WO's operational matters).[15] However, despite that default position, there are two ways that Councils can influence the WO's operational matters:

a. The above default position does not apply if the WO's foundation documents (constitution and shareholders agreement) provide otherwise.[16] So, including operational "carve-outs" within the foundation documents (and then expanding on those carve-outs within the statement of expectations) is one way that Councils can influence the WO's operational matters.

b. The WO's shareholders (i.e. TCC and WBOPDC) can decide what role they will have regarding the WO's water services strategy, and specifically whether they wish to either:

   i. have the right to provide comments (only) on drafts strategies; or

   ii. have the right to require amendments to draft strategies, and the final right to approve (or not approve) the strategies.[17]

   Therefore, another way to exert influence over the WO's operational matters is to reserve the right to require amendments and the right to approve the WO's water service strategies.

21. At this point it is worth reiterating that future requirements set by the Commerce Commission (or other regulators) will prevail over any inconsistent requirements set by the Council shareholders. For example, if the Councils "carve-out" an ability to set requirements for stormwater charging, and then act on that carve-out by imposing a certain calculation for the WO to adopt – if that calculation is contrary to directions set by the Commerce Commission, the WO must follow the Commerce Commission (and disregard the Council requirements). Similarly, if the responsibility is with the Council, and any action taken by Council is contrary to the directions set by the Commerce Commission – then Council will need to comply with the Commerce Commission direction.

---

[15] Section 228(3) of the Act.

[16] Section 228(4) of the Act.

[17] Section 236(2) of the Act:

(2) The shareholders of the water organisation must determine the nature of their involvement in preparing and finalising the water services strategy, including whether—
   (a) the shareholders will be able to, as necessary,—
      (i) provide comments on the draft strategy:
      (ii) require the water organisation to amend the draft strategy:
      (iii) approve the final strategy; or
   (b) the shareholders will be able to provide comments on the draft water services strategy but will not have the power to require changes or approve the final strategy.

(3) However, if a shareholder that is a territorial authority is able to approve the final strategy, it must comply with the decision-making requirements in the LGA 2002.

22. We recommend that the shareholders exercise discretion to have a greater level of operational influence and include appropriate "carve outs" in the foundation documents only where[18]:

    a. A particular operational matter is considered by shareholders to be of significant importance; or

    b. The shareholders wish to exert greater operational influence over a specific, significant strategic outcome.

23. Based on the feedback received to date, ensuring that stormwater charging takes into account affordability would meet one or both of these criteria.

24. Accordingly, we have set out below the advantages and disadvantages of stormwater charging being set by the WO's Board with or without the shareholders having some operational direction.

Advantages	**Disadvantages**
Option 1 – Stormwater charging is set by the WO's Board <u>with</u> the shareholders having some operational direction	
• Councils may be able to incorporate community feedback into operational and / or charging matters.	• May be seen as being unnecessary, as the WO must give effect to the shareholders' statement of expectations which can include direction on ensuring stormwater charging remains affordable. How the WO gives effect to this direction, i.e. the "how", will be left to the WO. • Could be perceived as inhibiting operational and financial decision-making of the WO's board and executive. • Could be perceived as a disincentive to good candidates from taking up a role on the WO's board (who may be hoping

[18] We recommend these same criteria be applied to any additional matter where the shareholders wish to exercise greater influence.

Advantages	Disadvantages
	/ anticipating that the board will operate totally autonomously). • Could be perceived as a lack of confidence in the WO's board – who will already be hand-picked by the shareholders. • May increase the risk that the WO's stormwater being inconsistent with directions from the regulator. • The shareholders will be more removed from day to day operations (and future-forecasting) of the WO, and may be in a less favourable position to provide directions on how the WO is best to give effect to the shareholders direction to reflecting affordability in the charging of stormwater. • The shareholders may set stormwater charging requirements that prevent the WO from investing in infrastructure (exasperating the long-term "infrastructure deficit" that the LWDW legislation attempts to resolve).
Option 2 - Stormwater charging is set by the WO's Board <u>without</u> the shareholders having some operational direction.	
• WO's board and executive will have autonomy to make what they consider to be the best operational and financial decisions, that will give effect to the shareholders' statement of expectations. • The best director candidates (which will give the WO the best chance of	• The community may misunderstand the role of Council (i.e. Council's role is shareholder, rather than driver of operational matters, such as how stormwater is to be charged).

Advantages	Disadvantages
being successful) are likely to be attracted to operational autonomy. • This would emphasise shareholders' confidence in the WO's board – who will already be hand-picked by the shareholders. • The shareholders will still have the opportunity to influence the WO' stormwater charging via the statement of expectations and through feedback on the Water Services Strategy. • The entity undertaking stormwater operational matters (i.e. the WO) will be responsible for how stormwater is charged. • The WO will be able to make decisions outside of "election cycles" or "political currents". They will be able to take a long-term, best practice view for infrastructure investment and operational matters.	

Next Steps

25. In the above sections we have identified the reasonable options for TCC to consider and the consequential flow on matter for the JWG to consider for direction at a further meeting in early 2026.

26. The next steps shall be:

    a. Finalise the financial modelling on stormwater;

    b. Based on the finalised financial modelling on stormwater, update this I&O Paper accordingly;

    c. Based on key input from WBOPDC and Tangata Whenua for TCC consideration, update the I&O Paper accordingly;

d. Present the updated I&O Paper on Issues 1 & 2 to a TCC Council meeting in early 2026.

e. With respect to Issue 3, in accordance with the terms of reference for the JWG, in the event there is a consensus view , that consensus view will proceed as a recommendation to the respective Councils. Where a consensus view is not reached, the matter will be escalated to the full Councils, together with a report that clearly outlines the different positions and the associated rationale.

Updated:16 December 2025

Fact Sheet: An overview of Stormwater under the Local Government (Water Services) Act 2025

Background

1. Tauranga City Council ("**TCC**") is undertaking due diligence and establishment planning for a proposed joint Water Organisation ("**WO**") with Western Bay of Plenty District Council ("**WBOPDC"**) under the Local Government (Water Services) Act 2025 (the "**Act**") to deliver water services.
2. A key due diligence question for TCC is whether and how to include stormwater services in the new WO. How TCC elects to proceed with stormwater will also have implications for WBOPDC, and the proposed WO. Accordingly, we recommend all stakeholders be briefed on the matters set out in this stormwater factsheet to ensure informed decision making and to avoid unintended consequences.
3. This paper builds on the advice from Simpson Grierson and outlines:
    a. First principles.
    b. Key points regarding stormwater charging.
    c. Key points regarding the stormwater service zone (who are the parties that the WO can charge for stormwater).
    d. Liability for stormwater management and flooding.

"First Principles" Regarding the Act and Stormwater

4. **The Act's Broad Flexibility**:
    a. The Act is very accommodating as to how a Council chooses to structure water services. Legally, most configurations can be made to work (e.g. one Council shareholder can include three waters, and another Council shareholder can include only two waters).
    b. However, some arrangements might technically comply with the law but create practical inefficiencies and "miss out" on some of the proposed benefits of a WO (such as economies of scale for operations).

5. **"Responsibility" vs. "Ownership"**:

a. There is an important distinction to be made between owning assets for a particular water service, and holding responsibility for providing a particular water service. Ownership does not automatically equal service responsibility, and the transfer agreement can split the two.

b. It is possible for one party to retain ownership of stormwater assets, and another entity to hold responsibility for providing stormwater services. So TCC could retain ownership of all or some stormwater assets, but transfer the service responsibility to the WO.

6. **Whoever Has Responsibility Is the WSP**:

a. A party that holds responsibility (even some responsibility) for providing the water service will be a Water Services Provider ("WSP") under the Act, regardless of who owns the stormwater land.

b. If TCC transfers all responsibility for stormwater to the WO (via the transfer agreement), the WO will be the WSP for stormwater (or vice versa). This is the case even if TCC retains ownership of stormwater land.[1]

c. On the other hand, if TCC retains responsibility (even for part of the network) for providing stormwater services, then TCC becomes a WSP for that part, and therefore subject to all statutory requirements of being a WSP.

d. Importantly, WSP status carries significant statutory obligations (e.g. preparing a Water Services Strategy, annual stormwater budgets, auditing requirements and
reports, achieving regulatory standards, and requirements etc).
So, retaining or handing over responsibility is a significant decision.

7. **It is Possible to Have More than One WSP for Stormwater – But Co-ordination Is Required**:

a. The Act explicitly allows split responsibilities in stormwater.[2] So it would be possible for both TCC and the WO to each be partly responsible for providing stormwater services under the Act. If this happens, the law requires those WSPs to collaborate closely – for instance, they must jointly develop stormwater risk management plans for the whole network so nothing falls through the cracks.

b. The consequence of having more than one WSP is increased complexity, risks of duplication and potential inefficiencies. Both entities would need to maintain compliance programs, asset management, and planning for their respective spheres of responsibility. Even if the Council contracted the WO to provide these services, the Council would still ultimately have the statutory responsibility. It would therefore need to take steps to ensure that the obligations are being met (this may include inquiry, audit, independent review etc), that the Council is fulfilling its governance responsibilities with respect to stormwater. This means extra work and cost to residents.

8. **Councils Have Full Discretion on Which Assets Transfer**:

   a. The Councils have complete discretion to decide which stormwater assets (if any) to transfer to the WO. The Act's Schedule 2 allows the transfer agreement to list "any assets" being transferred, meaning TCC/WBOPDC can include or exclude whatever they want.

   b. In deciding this, we note that section 46 of the Act prohibits a WO from doing anything other than providing water services or services that are related to, or necessary for, providing water services[3]. So TCC cannot handover responsibility for the running of a playground to the WO. So, if an asset has dual uses, transferring it wholly to the WO would still require TCC to handle the non-water aspects.

   c. For the purposes of our Stormwater Issues & Options paper we have assumed that all land used for stormwater purposes (whether or not such land is subject to the Reserves Act 1977) will remain in Council ownership. However, that assumption that can be revisited during the "transfer agreement" phase of this project (i.e. after the WO is incorporated, but before it becomes operational) where the Councils can consider whether or not they would prefer to transfer any specific parcels of land to the WO.

9. **TCC Can Remain the WSP Responsible For Stormwater, But Outsource All Deliver Obligations to the WO**:

   a. In the event Council retains responsibility for stormwater services, that does not necessarily mean that Council must deliver those services. Council may outsource delivery of stormwater services to the WO (via a comprehensive contracting back arrangement).

b. Note that outsourcing stormwater delivery entirely to the WO would likely be captured as a "significant contract" under the Act. Section 23 and 24 set out a number of requirements for "significant contracts", including a requirement to assess options and undertake consultation.

10. **Contracting Back Arrangements Will Be Needed for Dual-Purpose Assets (and More So if TCC Becomes the WSP)**:

    a. In any scenario where stormwater responsibilities or assets are split between TCC and the WO, some form of contracting or agreement between the two will be necessary to manage interfaces and avoid confusion, including with respect to liability.

    b. If the WO is the WSP responsible for stormwater services, but TCC retains ownership of certain land or facilities (say a park with a stormwater pond), there must be a formalised understanding about how the WO can access that land to maintain stormwater infrastructure, and how TCC will maintain the land (or vice versa if TCC is the WSP).

    c. Section 22 of the Act allows a WSP to contract another party (even another WSP) to perform aspects of service. For clarity, a WSP that enters into a contract under this section continues to the WSP for the water service to which the contract relates and retains control over policy and pricing[4].

    d. For dual-use assets, at a minimum any agreement should cover rights of access, roles and cost-sharing for maintenance. (For instance, if the WO needs to regularly clear a stormwater channel on land TCC owns, TCC can give the WO an upfront consent to access the land whenever required[5]).

    e. It is important to bear in mind that TCC cannot transfer land classified as reserve (and therefore subject to the Reserves Act 1977) to the WO. Instead, the status of "reserve" would need to be removed, and this would require public consultation and likely take years to achieve (i.e. unlikely to be a viable option).

11. **Downsides To Approaching Stormwater Differently**. TCC and WBOPDC can approach the topic of stormwater differently. However, there are some potential downsides to this approach, namely:

    a. Governance and Shareholding: The Councils' relative transfers to the WO would differ. One Council would be transferring a "full suite" of 3 waters assets, the other only 2 waters. The Council transferring a full 3 water suite

may argue that they are entitled to greater governance and shareholding. For example, should TCC as a shareholder have any say in the WO's delivery of stormwater if TCC has retained stormwater services in-house?

b. Board Dynamics: All directors of the WO must act in the interests of the entire company, but if only one Council has stormwater in the mix, the WO's board might face difficult prioritisation decisions.

c. Need for Ring-Fencing: With asymmetric water services (WBOPDC, 3 waters; TCC, 2 waters), financial separation (ring-fencing) would almost certainly be needed (which we understand is intended in any event). Essentially, the WO could become a two-speed entity: stormwater as a standalone business unit serving WBOPDC only, and water/wastewater jointly serving both. This complicates the WO's financial management but would be important for fairness.

d. Joint Decision-Making: Many of the WO's key documents (Statement of Expectations, Water Services Strategy, etc.) are intended to be shaped by both shareholder Councils. If TCC isn't involved in stormwater, how will it participate in setting expectations or reviewing plans that include stormwater? There might need to be an arrangement where TCC abstains from stormwater-related sections, which may be create complexities and inefficiencies.

e. Efficiency Losses: One major reason to create a joint WO is efficiency gains through scale and integration. If one Council's stormwater is outside the WO, neither the WO's stormwater operations nor the Council's will fully benefit from shared resources. There's also potential duplication in customer communication (ratepayers in Tauranga get stormwater info from TCC, while WBOPDC residents hear from the WO), which might cause public confusion.

f. Cross-Boundary Catchments: Stormwater doesn't follow political boundaries. There may be areas where water flows from Tauranga into WBOPDC or vice versa. If one side is WO-managed and the other side Council-managed, coordinating projects in those catchments could be harder.

12. **Public Consultation is Required for a "Structural Change" within a Water Service Delivery Plan**.

a. TCC's Water Service Delivery Plan ("**WSDP**") currently anticipates that responsibility for stormwater services will be transferred from TCC to the WO.

b. Any amendment to a WSDP must be made before 1 September 2026.[6]

c. However, section 80 of the Act provides that if TCC "proposes making a structural change to the provision of water services in its district" then public consultation will be required. We consider that a decision by TCC to change its WSDP to retain responsibility for stormwater would meet this threshold, and therefore require public consultation.

d. In order to inform the balance of commercial terms, and to allow time to implement any amendment to the WSDP by 3 September 2026, and undertake public consultation (if that is required), TCC will need to make a final decision on how stormwater is to be treated very early in 2026.

Key Points Regarding Stormwater Charging

13. Under Council, stormwater is funded by rates (largely based on property values). Under the Act, a WO will have to use a different charging method over time. Here are the key points:

a. **Transitional Period (Years 1–5 of WO):** Section 89 of the Act allows the WO's stormwater charges to be based on a property's rateable value for up to five years after the WO is established. However, the Act also expects a gradual transition in that period. By Year 5, most of the charge (more than 50%) should be coming from other factors, not the property value; and by Year 6, the WO can no longer use property value in its stormwater charge at all.

b. **Post-Transition Charging Options:** After 5 years, the WO has broad flexibility to choose a charging method as long as it's reasonable and not based on land value. Acceptable methods could include:

- A flat fee per property (or per connection).
- A tiered fee based on land area or impervious surface area (since bigger hard-surfaced properties generate more runoff).
- A differentiated fee based on land use or location (e.g. residential vs commercial, or different charges for different suburbs if justified by different service costs).

- Using socioeconomic factors – the WO could set lower stormwater charges for areas with high deprivation index7 as a policy choice (as long as it's reasonable and not just a proxy to sneak property value back in). See paragraphs 14 and 15 below for an explanation of how Councils provide direction in this regard.
- Any combination: The WO could charge via a combination of a fixed component plus a variable component linked to, say, impervious area or deprivation.

14. By default, WO shareholders cannot directly dictate operational decisions like how the WO sets its charges. Section 228(3) of the Act says that a Statement of Expectations ("SOE") must not include any requirement about how the WO performs its duties or powers under the Act. In short, operational matters are intended to be left up to the WO, as opposed to the shareholding Councils.
15. However, s 228(4) provides an important exception. If the WO's foundation documents (i.e. Constitution or Shareholders' agreement) explicitly allow it, then the restriction in s 228(3) does not apply. This means that, to a degree, shareholders can "write their own rules" in the foundation documents to permit greater influence over certain matters. In practice, if from the outset TCC and WBOPDC include a clause in the WO's Constitution or Shareholders' Agreement that allows the SOE to address stormwater charging mechanisms, then the shareholders would be empowered to set specific expectations or requirements in this regard.[8] Without such provisions being included in the foundation documents, any direction in the SOE would have to stay at a high-level (e.g. urging that stormwater charges be kept affordable, without mandating the exact mechanism).
16. Ultimately the Commerce Commission (or other regulators) may end up influencing the level of stormwater charges set by the WO (or charges/rates set by the Council in the event stormwater responsibility remains with TCC). And in the event of inconsistency between the requirements imposed by a regulator, and the requirements contained within a SOE, the regulator's requirements will prevail.[9]
17. If TCC does not transfer stormwater responsibility to the WO, then TCC can continue to charge for stormwater via rates as usual (capital value basis).
18. Legal advice has been sought from Simpson Grierson and their opinion notes that in their view there are sufficient levers in the Act, in conjunction with the charging flexibility referred to paragraph 15 above, for TCC

to achieve its desired influence over the WO's charges and basis for charging, without going the further step of assuming funding responsibility itself through rates. This is expanded upon in more detail at paragraphs 19 and 20 below.

Could the WO become the WSP (with the WO determining total revenue for stormwater purposes) with the WO then charging TCC, and TCC then recovering those costs via rates?

19. We have received external legal advice that this option is legally possible, but not recommended. Because this option would be so unorthodox, we have also reached out to the DIA and we are waiting on their feedback as to the viability of this option.

20. In the meantime, the legal advice that we have received includes the following:

    a. "We see dangers and risks in separating the funding of stormwater services from responsibility for governance and delivery of those services. Although we have concluded above that TCC rates funding is not per se ruled out, this is not an easy fit with the overall model for WOs in the LGSWA, which envisages an integrated approach to the WO's planning, financial management and accountability. One of the rationales for establishing WOs (with their own charging powers) as a means of delivering water services was to achieve financial separation between a WO and its shareholders."

    b. "Separation of funding from delivery also confuses accountabilities. In this situation, the WO is not directly financially responsible to its customers for the services it provides. Section 232 of the LGWSA states that one of the purposes of the Water Services Strategy is to provide a basis for a water organisation to be accountable to its shareholders. However, it may be unfair for shareholders to hold a WO accountable for failure to provide activities or meet service levels set out in the WSS, if the WO has not received sufficient funding from its shareholders to do so."

    c. "Nor is the territorial authority directly responsible to its ratepayers for the services the WO provides."

    d. "For example:

        i. the purpose of a WO's WSS includes presenting in one document information about WO's provision of water services to provide transparency about various financial matters including the water service provider's proposed charges, levels of service and performance measures;

ii. the financial matters in a WSS are to include the WO's intended approach to funding, revenue and pricing. This must be accompanied by the WO's intended schedule of prices and charges; and the methodologies that support those prices and charges;

iii. the WO's annual budget must include fees and charges."

Stormwater Service Zone (Who Can the WO Charge for Stormwater)

21. An important concept in determining stormwater charges is the "stormwater service zone".[10] This is important because the WO's stormwater charges must be based on whether or not the property is located in the zone. A natural approach may be for a 2-tiered charging approach. One charging calculation to apply for properties inside the stormwater service zone, and a different charging calculation to apply outside the zone.

22. We have obtained guidance on how to implement the statutory stormwater service zone concept (which is a concept that did not exist previously). The key aspects of the advice is as follows:

The definition requires the geographic area to be <u>both</u> part of an urban area or adjacent land <u>and</u> receiving or having available to it stormwater services provided by the WO (which in our view includes stormwater from the land discharging to the stormwater network). Therefore, urban land which does not receive stormwater services does not qualify to be in an SSZ. Likewise (and while this scenario may be unlikely in practice) non-urban land which does receive stormwater services does not qualify to be in a SSZ unless it is adjacent to an urban area as defined.

To determine any SSZs within the overall service area of the WO, we consider the approach, in broad terms, should be:

a. *First, map the "urban area" as defined. This information is derived from the district plan or proposed district plan;*

b. *Second, map the areas where there is either a reticulated stormwater system network, or land not served by a reticulated network that discharges stormwater to an overland flowpath, green water services infrastructure, or watercourse that forms part of the stormwater network. This assessment is on a broad area rather than individual property basis;*

c. *Third, determine the areas which are in both (a) and (b);*

d. *Extend the areas determined under (c) to include any neighbouring land which receives the same stormwater services. The result will be the SSZ or SSZs.*

The application of the definition will not be an exact science and will likely involve the exercise of judgment e.g. on the questions of what is to be regarded as an "area", whether stormwater services are available to or received by an area, and what land should be treated as "adjacent". The councils will have a discretion as to how they determine these matters and therefore the boundaries of the SSZs.

...

For these purposes, roads are not considered in isolation but only in terms of whether they are within such an SZZ. Roads can be part of an SZZ, even though they are not providing, or being provided, stormwater services (because of the exclusion from the "stormwater services" definition of services relating to a transport corridor). Similarly, roads outside an SZZ are not considered SZZs themselves, as they are not "areas" and do not receive stormwater services. The same applies to railway corridors.

23. Staff are in the process of drawing up some examples of stormwater service zone maps. In the meantime, we anticipate that:

    a. The issue of properties falling outside of a stormwater service zone is more likely to affect WBOPDC to a greater degree compared to TCC. That is because WBOPDC has a higher percentage of rural properties, compared to TCC, which we believe is likely to mean a higher percentage of WBOPDC properties will fall outside of a stormwater service zone . Although this remains to be seen through mapping.

    b. The WSDP for WBOPDC and TCC anticipate that debts and charges will be "ring-fenced" for some time after the establishment of the WO. WBOPDC's WSDP does not specify a duration of ring-fencing, while TCC's WSDP states the following:

    c. Accordingly, the exact duration of ring-fencing is a commercial decision for the two Councils to make moving forward.

Interaction with Regional Council and Liability in Scenarios Involving Flooding, Storm Surges etc

24. Key points regarding the intersection of responsibility between (on the one hand) Bay of Plenty Regional Council and (on the other hand) TCC/WBOPDC and the future WO include the following:

    a. Legal responsibilities are governed by multiple pieces of legislation including the LGA[11], RMA[12], CDEM Act[13], SCRCA[14] and Local Government (Water Services) Act[15] which require coordination and allow transfer of functions.

    b. Currently:

        i. TCC and WBOPDC manage urban stormwater systems and local flood response; and

        ii. BOPRC oversees regional flood protection, hazard planning, environmental regulation and manage those civil emergencies that escalate from a local to a regional emergency.

    c. In the event TCCs elect to confirm its earlier decision to transfer responsibility for stormwater to a WO we note the following:

        i. The WO will likely own[16] and operate "hard" stormwater infrastructure assets, hold discharge consents, and manage infrastructure.

        ii. TCC will continue to own various parcels of stormwater land.

        iii. TCC and WBOPDC will continue to issue resource and building consents for the construction of stormwater assets. They will also manage responsibility for local flood responses (i.e. TCC and WBOPDC will retain their current civil defence functions).

        iv. BOPRC's role will remain unchanged. BOPRC will continue overseeing regional flood protection, hazard planning, and environmental regulation managing. It will also continue to manage those civil emergencies that escalate from a local to a regional emergency.

    d. Liability for any given scenario will always be fact-specific and depend on fault. Entities (whether it be the WO or BOPRC) are not automatically liable for natural events unless fault is proven. Insurance cover will likely apply where liability is established.

    e. The entity responsible for delivering stormwater services and maintaining stormwater infrastructure (whether it is TCC/WBOPDC or WO) will likely bear liability for flooding or damage resulting from those assets.[17] This is based on the principle that liability typically follows operational responsibility - the

party that manages and controls the stormwater assets is accountable for their performance and any resulting harm.

f. If the Council retains ownership of certain assets (e.g. overland flow paths and other parcels of stormwater land) but operational responsibility transfers to the WO, the majority of liability will likely shift to the WO.[18] However, this will likely need to be clearly defined in the transfer agreement, and any other service or management agreement, which should allocate operational responsibility, liability, and insurance obligations for each asset or class of assets.

g. Section 211 of the Local Government (Water Services) Act 2025 enables the WO to enter service agreements with road control managers (e.g. NZTA, TCC and WBOPDC) and any other entity that provides a statutory role or function (which could include the likes of Kiwirail and BOPRC) to coordinate stormwater management.

25. With the above general principles in mind the following table broadly sets out some scenarios and explains who would bear responsibility, bear liability and would be required to engage insurance. We emphasise that the following should not be relied upon as definitive legal advice because scenarios will always be fact-specific:

Scenario	Cause	Responsibility	Liability	Insurance
Urban Flooding (Pluvial)	Intense rainfall overwhelms stormwater system	WO (post-transfer)	If poor maintenance or design is proven, WO may be liable	WO's public liability insurance would likely apply
River Flooding (Fluvial)	River overflows or stopbank breach	BOPRC	If flood scheme was negligently maintained or designed, BOPRC may be liable	BOPRC's insurance would likely apply

Coastal Storm Surge	Sea inundation due to storm and tide	Shared – WO (stormwater outfalls), TAs (coastal defences), BOPRC (regional coastal planning)	Depends on infrastructure failure or planning negligence. Liability likely to be apportioned based on fault.	Each entity's insurer likely covers respective liabilities (depending on asset involved)
Combined Event (Cyclone)	Heavy rain, river flood, storm surge	Multiple entities	Liability likely to be apportioned based on fault	Each entity's insurer likely covers respective liabilities (depending on asset involved)

26. Finally, we are also mindful of the proposed change of legislation to adjust the role of Regional Councils across the country (including the proposed merger of Regional Councils with Territorial Authorities) which will also have an impact on the intersection of responsibilities held by the Territorial Authorities, Regional Councils, and WOs.

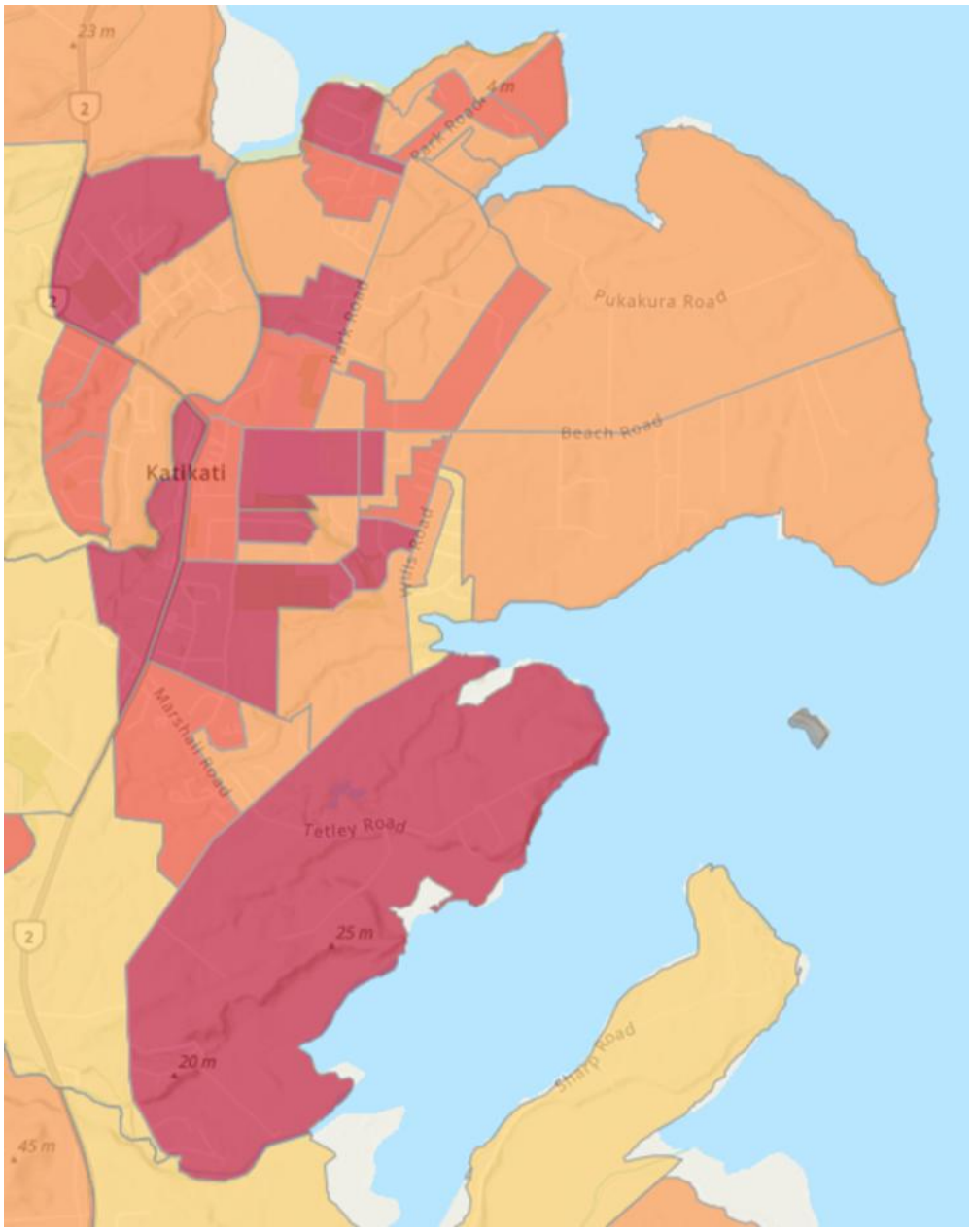
Attachment 1 – Deprivation Index

The deprivation index is produced by Statistics NZ. It is a measure at geographic mesh block level of socioeconomic deprivation and is based on census data associated with communication, income, employment, qualifications, home ownership, support, living space and dwelling condition.

A socioeconomic deprivation decile is calculated for each statistical area, not for individuals or households. The higher the deprivation decile, the more socioeconomically deprived the area. With reference to the colours in the maps below, the higher deprivation areas are in the darkest shading in the maps that follow, lowest deprivation are the lightest shading.

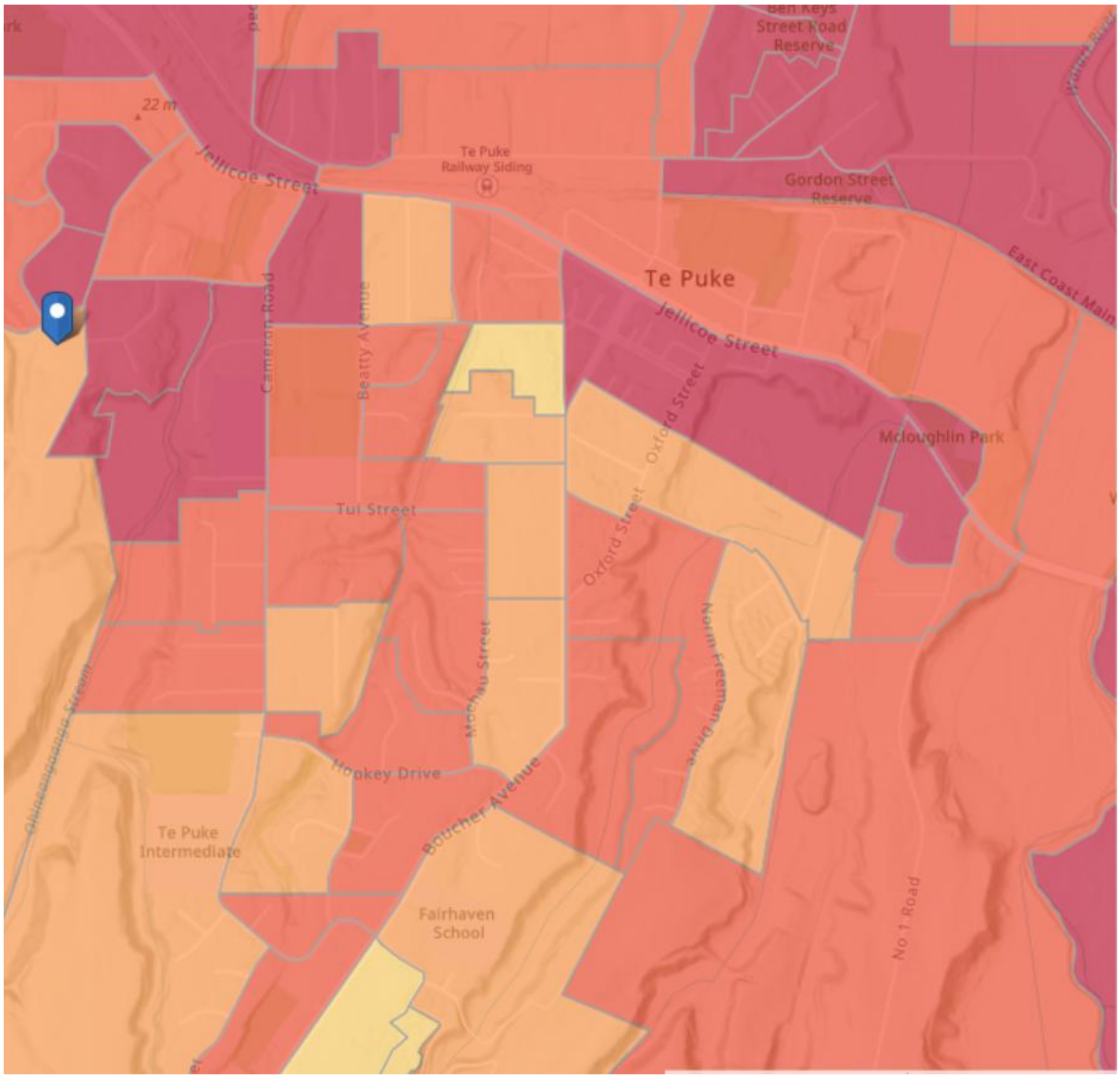
Updated:16 December 2025

Katikati Area



Updated:16 December 2025

Te Puke Area



Updated:16 December 2025

OPTIONS FOR STORMWATER

Scenario	Who owns the land?	Owner of hard sto -rmwater assets?	Statutory Water Service Provider regarding sto rmwater?	Stormwater Services Deliv ery "outsourcing " contract needed?	Who sets charges, and what charging mechan isms are available?	Update of the WSDP required?	Key Notes
TCC is WSP for Stormwater							
Scenario 1: This is in the In-house model.	TCC	TCC	TCC	No	TCC sets charges. Charges could be based on property value.	Yes (if TCC retains responsibility for delivering stormwater services, this will require an update of the WSDP)	Two WSPs:[1] WO is the WSP for water supply services and waste water services.

TCC retains ownership of land and hard stormwater assets. TCC retains responsibility for stormwater.							TCC is the WSP for stormwater services.
Scenario 2:	TCC	TCC	TCC	Yes	TCC sets charges.	Yes (if TCC retains responsibility for delivering	Two WSPs:

This is the Iawai model TCC retains ownership of land and hard stormwater assets. TCC retains responsibility for stormwater. TCC contracts with WO to deliver stormwater services					Charges could be based on property value.	stormwaters services, this will require an update of the WSDP)	WO is the WSP for water supply services and waste water services. TCC is the WSP for stormwater services.

WO is the WSP for Stormwater							
Scenario 3: TCC retains ownership of land and hard stormwater assets.	TCC	TCC	WO	No	WO sets charges. For first 5 years, charges can be based on property value. Thereafter, other mechanisms will need to apply.	No (if TCC does not retain responsibility for delivering stormwater services, an update of the WSDP will not be required)	One WSP for water supply, wastewater and stormwater. Foundation Documents can authorise TCC to

TCC transfers responsibility for stormwater services							influence charges through Statement of Expectations. Commerce Commission direction may override content in Statement of Expectations regarding e.g. pricing or affordability.

Updated:16 December 2025

Scenario 4: **Recommended model** TCC retains ownership of land. TCC transfers ownership of hard stormwater assets and responsibility for stormwater services	TCC	WO	WO	No	WO sets charges. For first 5 years, charges can be based on property value. Thereafter, other mechanisms will need to apply.	No (if TCC does not retain responsibility for delivering stormwater services, an update of the WSDP will not be required)	One WSP for water supply, wastewater and stormwater. Foundation Documents can authorise TCC to influence charges through Statement of Expectations. Commerce Commission direction may override content in Statement of Expectations regarding e.g. pricing or affordability.

Updated:16 December 2025

Scenario 5: TCC retains ownership of land. TCC transfers ownership of hard stormwater assets and responsibility for	TCC	WO	WO	Yes	WO sets charges. For first 5 years, charges can be based on property value. Thereafter, other mechanisms will need to apply.	No (if TCC does not retain responsibility for delivering stormwater services, an update of the WSDP will not be required)	One WSP for water supply, wastewater and stormwater. Foundation Documents can authorise TCC to influence charges through Statement of Expectations. Commerce Commission

stormwater services However, WO contracts with TCC to provide stormwater services							direction may override content in Statement of Expectations regarding e.g. pricing or affordability.