



# **ATTACHMENTS**

**Ordinary Council meeting  
Separate Attachments 2**

**Tuesday, 24 March 2026**



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## Issues & Options Paper #10: Cross Boundary Growth Infrastructure Access and Funding

### Recommendations

*That that Council:*

- a) *Approves progressing good faith negotiations with Western Bay of Plenty District Council to agree two separate growth-related comprehensive funding agreements by 31 March 2027 for future and current (to be specifically defined) infrastructure, one agreement for each of:
  - i) *Waters infrastructure and services*
  - ii) *Non-water infrastructure and services**
- b) *Agrees to the good faith negotiations being guided by the principles of:
  - i) *Growth pays for growth*
  - ii) *Water organisation foundation documents only deal with water growth issues (not other infrastructure issues)*
  - iii) *Water organisation set up for success**
- c) *Agrees to the good faith negotiations process steps to include the following:
  - i) *Problem statement definition developed and agreed*
  - ii) *Perspectives of each Council shared, listened to, and develop pathway options together.*
  - iii) *Define the principles, process and arrangements that will be applied going forward.**
- d) *Commits to best endeavours negotiation to reach agreement with Western Bay of Plenty District Council, and in the event that a resolution is unable to be reached by 31 March 2027, Tauranga City Council will consider options to preserve its financial interests and ensure a fair and equitable position.*

### Context

1. This paper considers cross boundary growth infrastructure access issues through a whole of system lens, recognising both the role of the Water Organisation as the delivery entity for water services and the ongoing statutory responsibilities of councils for the social, economic, environmental and cultural wellbeing of their districts.
2. While water services are delivered through a council-controlled organisation, councils retain governance, stewardship and accountability obligations under the Local Government Act 2002, including responsibilities for growth management, long term infrastructure planning, financial prudence and intergenerational equity.
3. This paper therefore frames the issue at a council level first — acknowledging the broader strategic, growth and community impacts — and then considers the implications for, and interactions with, the Water Organisation. The intent is to support informed decision making that is transparent, durable, and aligned with both council obligations and the effective operation of the Water Organisation.
4. The outcome from the discussion, depending on the pathway agreed, may result in certain operational matters being included in the founding documents.

**Purpose & Scope**

5. To set out issues and options for direction from on whether there should be specific arrangements put in place which provide for an approval process (including approval of funding principles and arrangements) for access to waters infrastructure on a cross-boundary basis. This 'Cross Boundary Infrastructure Access and Funding' issue has direct linkages with other cross boundary issues which the Councils must consider in the wider context and therefore the paper has a wider scope than solely waters related.

**Background**

6. TCC and WBOPDC's water, wastewater and stormwater networks are currently largely standalone and unconnected with each other, with some limited exceptions.
7. While TCC's water treatment plants are located in the WBOPDC they are not connected to WBOPDC properties, except in some very limited circumstances. It is acknowledged that WBOPDC jointly holds the water extraction consent for the Waiari supply with TCC and a high-level MOU is in place. However, no agreement is in place for WBOPDC to access its share of this supply via the Waiari WTP and associated infrastructure at this time.
8. WBOPDC treat and dispose of urban wastewater through their own systems separate to TCC's network, except in the case of Omokoroa which is connected to the TCC network via trunk pipeline. This is subject to an existing agreement between the two councils.
9. Stormwater is catchment based and generally managed on-site. Cross boundary stormwater issues are likely to be minimal.
10. Currently it is relatively simple to manage connection requests on a cross-boundary basis (eg a connection from a party in WBOPDC area to connect to TCC infrastructure), as the respective council can make that decision and choose to enable connection or not, and on what terms and conditions, including financial payments.
11. TCC and WBOPDC have sought legal advice from Simpson Grierson on matters associated with these issues. This advice is incorporated into this paper

**Key issues**

12. Consideration needs to be given to how a Water Organisation (**WO**) will manage requests to access assets built and funded by one Council (Council A) where there is a request for connection by existing or more likely new development in the other Council's jurisdiction (Council B). Specifically:
  - a. Debt will initially be ring fenced in relation to these assets to a specific council (Council A). If access is granted should an appropriate portion of this debt be transferred to Council B?

- b. How will contributions (most likely Development Levies at that time<sup>1</sup>) be collected and applied against the relevant debt. Will a WO be able to have a DL Policy that crosses Council boundaries?
  - c. How will opex costs be managed in respect of the waters capacity being used, including ring fencing of an appropriate share of opex costs to Council B.
  - d. What are the considerations for allocation of growth capacity? In particular, which growth has priority for infrastructure capacity allocation and why and does future planned growth impact on the decision to allocate capacity?
13. These matters are important because:
- a. Councils that have invested significantly in waters assets, generally hold debt and charge development contributions for connection and ongoing costs like rates and water by meter charges for maintenance, operations and renewals.
  - b. Development contributions (and development levies in the future) can be significant – millions and tens of millions of dollars for medium to large scale developments.
  - c. Waters assets only have limited capacity for further connections. Often this capacity is sized for planned developments and reallocation of capacity can mean insufficient capacity remains for planned growth.
14. Further to this, connection to waters infrastructure is often part of a broader discussion around cross boundary growth development proposals that extends to other services like transport, reserves and community infrastructure. These more open networks are more difficult to manage access to and therefore waters connections may be withheld until these broader issues are addressed.
15. This paper explores both the narrower issue around cross-boundary access to waters infrastructure, and the wider issue related to other activities.

#### **'Growth pays for Growth' Principle**

16. The issue being considered by this paper is one of 'growth pays for growth'. The scope of this paper is in respect of specific growth that is in one Council's area and can be identified as connected to or very highly likely to utilise infrastructure or services in a neighbouring Council area due to factors such as proximity and community of interest. It does not relate to general community use of infrastructure or services by the whole wider community of the neighbouring Council.
17. "Growth pays for growth" is a core principle that underpins the approach to funding of growth infrastructure. It is reflected in the Government's *Going for Housing Growth Programme*, the Infrastructure Funding and Financing Act 2020, and the development contributions provisions of the Local Government Act. It is also a core part of the TCC Financial Strategy, and Revenue & Financing Policy.

<sup>11</sup> A regime of Development Contributions may apply to the WO initially (i.e. from its "go-live" date in July 2027) but thereafter the WO will move to the Development Levies regime. The timing is dependent on future legislation, but currently it is proposed that the Development Levies regime will commence with a transition phase in 2028, and become fully implemented in 2030.

### Case studies

18. This section covers off two 'live' cross boundary case studies being the Waikite Road residential subdivision in Welcome Bay and the Wairakei South fast-track proposal in Papamoa East.

#### Waikite Road

19. This development proposal is located at the top of Waikite Road in Welcome Bay. Waikite Road is the boundary between WBOPDC and TCC in this location. The property falls into the WBOPDC. Approximately 130 residential lots are proposed on land zoned Rural in the WBOPDC District Plan. It is currently going through a non-complying resource consent process.
20. WBOPDC has no urban services in this location, and the development relies on connection to TCC water, wastewater and transport networks. Stormwater is to be managed on-site.
21. Due to the location of the development, residents are likely to predominantly utilise the Tauranga city area for work, shopping, schooling and the like, and rely on TCC provided services and facilities like active reserves, libraries and pools.

#### Wairakei South

22. This development proposal is located in Bell Road directly to the south of the Papamoa East Interchange which is nearly complete. The Tauranga Eastern Link motorway (TEL) is the boundary between TCC and WBOPDC in this location and the Bell Road site falls almost entirely within the WBOPDC District (there is a very small area within the TCC District). Approximately 2,700 homes and 50-60 ha of business land are proposed by the developer. Lodgement through the fast-track process is expected in March this year.
23. Urban services are not in place in Bell Road. Wastewater for the initial stages of the development will be managed through the Te Puke WWTP. For potable water, the developer and WBOPDC were initially seeking to connect to TCC's Waiari water supply. TCC understands the first development stages may now utilise an alternative water source but have no detail about this. We expect connection to the Waiari water supply may still be required for later stages of the development. Stormwater will be managed on site.
24. Beyond three waters, the Bell Road development would require connection to the Papamoa East Interchange (PEI) on the TEL, which has been designated and has been built and funded by TCC (through a multi-funding source funding stack). It has been established that the interchange has insufficient capacity to manage the full build out of planned development (Wairakei and Te Tumu) as well as Wairakei South – necessitating further investment including widening of the bridge structure or a duplicate bridge. The development would also connect into TCC's local transport network in Wairakei.
25. Again, due to the location of the development residents are likely to utilise Tauranga City (especially the Wairakei Town Centre area) for work, shopping, schooling and the like and rely on TCC provided services and facilities like active reserves, libraries and pools. While these facilities have a user pay elements that is insufficient to cover costs and there is a rate funded portion.

- 26. These matters have been considered by both TCC and WBOPDC. Attachment 1 summarises the current positions of the Councils with regard to Wairakei South.
- 27. TCC has assessed that if the Wairakei South development were in the TCC area, development contributions would be charged for access to infrastructure, which would provide circa \$93 million cost recovery for growth investment.

	Local DC	City Wide DC	Total DC
Water	10,077,508	56,265,600	61,677,508
Stormwater	388,428		388,428
Transport	12,597,695		12,597,695
Active Reserves		1,200,000	1,200,000
Community Infrastructure (libraries, aquatic and indoor courts)		12,900,000	12,900,000
<b>Total</b>			<b>\$93,429,231</b>

Omokoroa

It is important to note that TCC and WBOPDC have an agreement in place with respect to wastewater from Omokoroa being treated at Chapel Street and discharged through the Te Maunga site infrastructure. This agreement will need to be reviewed, and arrangements put in place in the WO, possibly via the SOE

**Legal advice**

- 28. As noted above, TCC has funded a broad range of transport, water and community infrastructure projects to provide growth capacity. Many of these projects are adjacent to, or will service, future developments within WBOPDC. However, at present, there is no funding agreement between TCC and WBOPDC to ensure TCC is fairly compensated for its investments, and to ensure growth in the WBOPDC, which accesses TCC funded infrastructure and services, is paying its fair share.
- 29. There are two related but distinct legal issues:
  - a. The first and broader issue is how to fairly manage access to all transport, water and community infrastructure funded by TCC?
  - b. The second and more specific issue is how to fairly manage access to water-related infrastructure funded by TCC?
- 30. Within the context of the Local Waters Done Well framework, and the Local Government (Water Services) Act 2025 (**Waters Act**), it is only proper for the proposed WO's establishment arrangements, foundation documents, and Statement of Expectations (**SOE**) to address water services infrastructure, and not the broader categories of infrastructure that fall outside the WO's statutory mandate (i.e. it would be inappropriate for the WO's foundation documents and SOE to address topics such as the PEI).
- 31. With that said, the prospect of establishing a joint WO– provides an opportunity for the parties to agree a fair and enduring resolution of the wider funding issue, including through debt transfer or funding arrangements, before the WO is established.

## Options

32. Three options have been identified for consideration. These options have been refined from the seven options that were presented to the JWG, and reflect conversations which have occurred between the TCC and WBOPDC.

33. The three options are:

**Option 1 – TCC & WBOPDC enter into comprehensive growth funding agreements for future and defined current infrastructure.**

TCC and WBOPDC agree a broad funding arrangement covering transport, water, and community infrastructure, providing an integrated approach to cross-boundary growth and infrastructure funding.

**Option 2, Water only funding arrangements:**

As a condition of establishing the WO, TCC & WBOPDC agree waters specific solutions for access to waters infrastructure (e.g. debt transfer adjustment, charges for WBOPDC customers, or a targeted funding agreement).

**Option 3, SOE based access limits (Waters Act s228):**

As a condition of establishing the WO, TCC & WBOPDC agree to use the WO SOE/foundation documents to limit access to TCC funded water assets unless funding terms are agreed.

34. These options have been informed by two separate legal opinions from Simpson Grierson, one opinion addressed to TCC, and one opinion addressed to WBOPDC. The two opinions are attached at Attachment 4. Both opinions largely agree on the legal mechanisms that are available. Where the opinions differ are on the merits and risks of implementing one or more of those mechanisms.

**Option 1: TCC & WBOPDC enter into comprehensive growth funding agreements for future and defined current infrastructure. *Recommended***

35. This option would have the following key components:

- a) Two agreements progressed in parallel, one for waters and one for all other non-waters growth infrastructure and services.
- b) Agreements progressed through good faith negotiations between TCC and WBOPDC to agree growth related comprehensive funding agreements by 31 March 2027 for future and current (to be specifically defined) infrastructure.
- c) The good faith negotiations being guided by the following principles:
  - Growth pays for growth
  - Water organisation foundation documents only deal with water growth issues (not other infrastructure issues)
  - Water organisation set up for success
- d) The good faith negotiations process steps to include the following:
  - o Problem statement definition developed and agreed

- o Perspectives of each Council shared, listened to, and develop pathway options together.
  - o Define the principles, process and arrangements that will be applied going forward. *(Refer attachment 2 for draft cross boundary principles)*
- e) The waters agreement:**
- i) Guiding principle would be that new connections to Waiari scheme and water trunk infrastructure pay their share of the capital and operational costs associated with that infrastructure capacity.
  - ii) Would provide for protection relating to planning for agreed future growth areas, which currently include Te Tumu and Te Kainga, Tauriko Western corridor growth, and consideration of arrangements for Wairakei South.
  - iii) Once finalised, would be implemented via the Statement of Expectations or other appropriate WO arrangement.
- f) Escalation pathway of mediation if insufficient progress to conclude agreements by 31 March 2027.**
36. The comprehensive funding agreement would seek to address access to, and funding of, all categories of infrastructure funded by one Council and utilised by residents and business of the other Councils area including transport, water, and community infrastructure. Both Councils are in support of a “growth pays for growth” model. This could include agreed financial contributions, cost-sharing arrangements, or other compensation mechanisms. This is the preferred pathway from a legislative perspective, and the Local Government Acts/Water Services Act intention has always been cost effective and efficient services to its communities.
37. The comprehensive agreement could also extend to defining the circumstances where a boundary adjustment will be jointly supported and progressed.
38. The advantages and disadvantages are outlined below:

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Enables growth pays for growth and fair share funding arrangements to be put in place.</li> <li>• Resolves the issue holistically, rather than in a piecemeal or sector-specific way.</li> <li>• Reduces the risk of future disputes across multiple infrastructure classes.</li> <li>• Avoids trying to use WO specific mechanisms to address broader infrastructure funding issues.</li> </ul>	<ul style="list-style-type: none"> <li>• Requires WBOPDC &amp; TCC agreement across a broad range of infrastructure types.</li> <li>• Likely to be some complexities in negotiating and reaching agreement.</li> <li>• Not being able to reach agreement may put the City /Regional deal at risk.</li> </ul>

<ul style="list-style-type: none"> <li>• Provides certainty for the future for both Councils and also developers.</li> <li>• Enables TCC to meet LGA requirements of prudent financial management.</li> </ul>	
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**Option 2: TCC & WBOPDC agree funding arrangements for water infrastructure only**

39. As a condition of establishing the proposed joint WO, TCC and WBOPDC agree to one or more of the following arrangements in relation to water-related infrastructure only:

- a. Debt transfer adjustment:  
Adjust the allocation of water-related debt transferring into the WO. This would involve reducing the debt transferred by TCC to reflect its upfront funding of assets (such as Waiāri) that is then available to benefit WBOPDC, and increasing the debt transferred by WBOPDC to reflect its share of those assets (“agreed buy out”). While each council agrees its own debt transfer with the WO, the WO has an interest in ensuring a fair allocation of debt between customer bases, particularly if the alternative is ongoing attempts by TCC to influence the use of Waiāri through access-limiting mechanisms.
- b. Higher charges through a connection cost that include recovery of upfront costs of investment for new directly connected WBOPDC customers (while ring-fencing applies):  
As an alternative, the WO could be required (via the shareholders’ agreement – see option 3 below) to charge higher prices to WBOPDC customers to reflect their sole use of TCC-funded water assets. This approach, like debt adjustment, addresses funding financing without requiring TCC to interfere in the WO’s operational decisions about network connections.
- c. Targeted funding agreement:  
Enter into a targeted funding agreement recognising WBOPDC’s use of TCC-funded water infrastructure (such as Waiāri This would assist with the cost recovery of the initial investment and allow the Water Organisation to be responsible for upgrades and future demand requirements.

40. The legal opinion does not recommend putting restrictions on the Water Organisation, although it is technically available within the legislation, the advice is that it does not provide for the best long-term outcomes to be achieved. Potentially it could be used until a decision to remove ring fencing is made.

41. The advantages and disadvantages of Option 2 are outlined in the table below.

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Supported by both Simpson Grierson opinions as the cleanest and least risky solution.</li> </ul>	<ul style="list-style-type: none"> <li>• Limited to water-related infrastructure only and leaves other growth-related infrastructure issues unresolved.</li> </ul>

<ul style="list-style-type: none"> <li>• Aligns with the purpose of the Waters Act and the WO model.</li> <li>• Preserves operational independence of the WO.</li> <li>• Likely avoids litigation, judicial review, and Ministerial intervention risk.</li> <li>• Potentially more achievable than Option 1.</li> <li>• Provides for mutually beneficial outcomes, and the ability for the Water Organisation to plan for and be responsible for future growth requirements.</li> </ul>	<ul style="list-style-type: none"> <li>• Requires WBOPDC and TCC agreement.</li> <li>• From a TCC whole of Council perspective only addresses waters infrastructure so may result in LGA prudent financial management requirements not being met.</li> </ul>
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**Option 3: TCC & WBOPDC agree to use s228 of the Waters Act, and the SOE, to manage access to TCC funded infrastructure.**

42. The legal advice confirms that it is legally possible to limit access to TCC funded water infrastructure unless TCC and WBOPDC reach agreement on funding terms. Under sections 228(3) and (4) of the Waters Act, the Councils may agree (through the WO’s foundation documents, particularly the shareholders’ agreement) to authorise such requirements in the SOE.

43. This could be achieved either by:

- a. requiring the WO to only enable connections to TCC funded water infrastructure if funding terms are agreed; or
- b. allowing TCC to direct the WO to approve or refuse such connections in the absence of agreement.

44. The advantages and disadvantages of Option 3 are outlined in the table below.

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Legally available under the Waters Act.</li> </ul>	<ul style="list-style-type: none"> <li>• Strongly cautioned against in the legal advice addressed to WBOPDC.</li> <li>• May be seen as interfering in the operational independence of the WO.</li> <li>• Introduces non-operational considerations into connection decisions.</li> <li>• Creates judicial review and appeal risk.</li> <li>• Likely to be unpopular with the future WO board if it constrains decision-making ability</li> </ul>

Advantages	Disadvantages
	<p>and potential ability to deliver efficient services. <i>This would only occur if an agreeable funding arrangement cannot be reached.</i></p> <ul style="list-style-type: none"> <li>• Requires TCC and WBOPDC agreement to address the matter in the foundation documents.</li> <li>• From a TCC whole of Council perspective only addresses waters infrastructure so may result in financial management requirements not met.</li> </ul>

**TCC Risks and Wider Legal Considerations**

45. In assessing the options TCC needs to:

- give consideration to the legal framework it operates in; and
- assess any associated risks.

46. Key legal framework considerations include provisions in the Local Government Act 2002 (LGA):

- a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region, including by planning effectively for the future management of its assets (*LGA S14(1)(g) Principles relating to local authorities*)
- A local authority must manage its revenues, expenses, assets, liabilities, investments and general financial deals prudently and in a manner that promotes the current and future interests of the community (*LGA 101(1) Financial Management*)
- The purpose of the financial strategy is to facilitate prudent financial management by the local authority by providing a guide for the local authority to consider proposals for funding and expenditure against. (*LGA 101A (2)(a) Financial Strategy*)

47. TCC’s Financial Strategy and Development Contribution Policy both include and give effect to the following key principles:

- Growth pays for growth
- Paying a fair share

48. If TCC and WBOPDC, through good faith discussions, are unable to reach agreement on both the waters and non-waters comprehensive infrastructure access and funding arrangements, then there is significant risk for TCC. The most significant risks are:

- Costs associated with growth infrastructure and services utilised by growth in the WBOPDC area transferring to the TCC ratepayer
- Planned capacity for growth in TCC’s jurisdictional area may be taken up by unplanned growth in the WBOPDC area, leaving further infrastructure investments required to enable TCC area planned growth to proceed.

49. If TCC considers that the negotiations progress is such that agreement is unlikely to be reached by 31 March 2027, it will be important at that time for TCC to identify and assess options to mitigate the risks above.
50. One of the options which could be considered is for TCC to retain ownership of some key water related assets.
51. It is legally possible for TCC to retain ownership of certain water-related infrastructure (such as Waiari) without becoming a Water Services Provider (**WSP**) under the Waters Act, provided responsibility for water supply services is transferred to the WO, which would remain the WSP. TCC could enter into an infrastructure lease type arrangement, where TCC would lease the assets to the WO. Such an agreement could include conditions relating to matters such as capacity allocation and network connections.

**Next steps**

52. If Option 1 is approved, work will commence to develop a plan to progress a framework and process for negotiating the infrastructure agreements.





































































