Water Services | Tauranga City | Western Bay of Plenty District Council

LWDW: Information Presented to the Joint Working Group that Informs the Commercial Term Sheet

Tauranga City Council and Western Bay of Plenty District Council are considering the establishment of a Water Organisation under the Local Government (Water Services) Act 2025. As part of the due diligence process, the two councils established a Joint Working Group ("JWG"). The JWG comprises elected members from both councils, in addition to Tangata Whenua representatives.

One task for the JWG was to establish a Commercial Term Sheet for the establishment of the Water Organisation. If the councils decide to proceed with the Water Organisation, then the Commercial Term Sheet will be used to prepare the foundation documents.

The following is a schedule of the materials presented to the JWG that are relevant to the Commercial Term Sheet. The agenda for each JWG meeting is included within the documents. However, where a specific agenda included items that were not relevant to the Commercial Term Sheet, those items are not included in this particular schedule.[1]

Note that some matters were put to the JWG on multiple occasions to reach consensus, so earlier versions of the material may have been superseded in later meetings.

Item	Description	PDF Page
1.	Commitment Agreement (1 September 2025)	4
2.	Commitment Agreement Variation (22 December 2025)	32
3.	JWG Terms of Reference	37
4.	Briefing Paper on the Commercial Term Sheet	42
5.	Commercial Term Sheet (pre-JWG input version)	46
6.	Commercial Term Sheet (post-JWG input version)	57
7.	8 December 2025 JWG meeting documents: • Joint Governance Group Agenda	68

[1] For clarity, this Attachment does not include papers presented to the JWG that are not relevant to the Commercial Term Sheet, and it is not a fulsome compilation of every single item ever presented to the JWG.

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	• Supporting documents (CTS Topics included JWG Terms of Reference; I&O Paper: Whether or not to establish a Shareholders Representative Forum; I&O Paper: Whether or not to issue an Interim Statement of Expectations; Commercial Term Sheet) • Powerpoint presentation	
8.	22 December 2025 JWG meeting documents • Joint Working Group Agenda & Supporting Documents (CTS Topics included I&O Paper: Stormwater; Chief Executive appointment process; Board Skills Matrix)	121
9.	29 January 2026 JWG meeting documents • Joint Working Group Agenda & Supporting Documents (CTS Topics included I&O Paper: Shareholding & Shares)	174
10.	2 February 2026 JWG meeting documents • Joint Working Group Agenda & Supporting Documents (CTS Topics included; I&O Paper: Board & SRF Memberships) • Powerpoint presentation	218
11.	13 February 2026 JWG meeting documents • Joint Working Group Agenda & Supporting Documents (CTS Topics included Feedback on I&O Papers received 29 Jan and 2 Feb)	292
12.	16 February 2026 JWG meeting documents • Joint Working Group Agenda & Supporting Documents (CTS Topics included I&O Paper: Board of Directors Matters) • Powerpoint presentation	313
13.	23 February 2026 JWG meeting documents	348

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	• Joint Working Group Agenda & Supporting Documents (CTS Topics included I&O Paper: SRF & Other matters) • Powerpoint presentation • Paper re Tangata Whenua and Class A shares	
14.	2 March 2026 JWG meeting documents • Joint Working Group Agenda & Supporting Documents (CTS Topics included Tangata Whenua Class A shareholding; I&O Paper Commercial Terms) • Powerpoint presentation	387
15.	9 March 2026 JWG meeting documents • Joint Working Group Agenda & Supporting Documents (CTS Topics included Consensus Commercial Term Sheet; Parked Issues)	430
16.	16 March 2026 JWG meeting documents • Joint Working Group Agenda & Supporting Documents (CTS Topics included Commercial Terms)	454
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Commitment Agreement

PARTIES

Tauranga City Council

Western Bay of Plenty District Council

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AGREEMENT dated 1 September 2025

PARTIES

Tauranga City Council
Western Bay of Plenty District Council
(together, the "**Councils**")

INTRODUCTION

A. The Councils have agreed to proceed with the planning for a joint operating model between the Councils in respect of each Council's service area.

B. The Councils are each required to submit a Water Services Delivery Plan ("**WSDP**") to the Secretary for Local Government (Department of Internal Affairs) by 3 September 2025 on how water services will be delivered in the Council's district as required under the Local Governance (Water Services Preliminary Arrangements) Act 2024. Each Council's WSDP will include an implementation plan (jointly developed by the Councils) and a description of the proposed joint operating model.

C. The Councils commit to working together, including on the preparation of a detailed joint implementation plan, to:

(a) develop a joint operating model for the delivery of water services for each Council's community through the Water Organisation;

(b) undertake a due diligence process on each Council's water and wastewater assets, debts, obligations and arrangements, covering financial, cultural, legal and condition assessment, to inform decision-making by Councils;

(c) agree the shareholding and governance arrangements for the Water Organisation; and

(d) establish the Water Organisation for the joint operating model in accordance with each Council's accepted WSDP, with the intention that the Water Organisation will take over the water services obligations from the Councils with effect from 1 July 2027.

D. Each Council agrees to undertake the activities and responsibilities allocated to it in this agreement to achieve the Objectives.

E. The Council have entered into this agreement to record the terms of their commitment to achieve the joint operating model and Objectives.

SIGNATURES

SIGNED for and on behalf of

TAURANGA CITY COUNCIL

By:

Signature of Authorised Signatory

Mayor Mahé Drysdale

Name of Authorised Signatory

1 September 2025

Date

Signature of Authorised Signatory

Marty Grenfell, Chief Executive

Name of Authorised Signatory

1 September 2025

Date

WESTERN BAY OF PLENTY DISTRICT COUNCIL

By:

Signature of Authorised Signatory

Mayor James Denyer

Name of Authorised Signatory

1 September 2025

Date

Signature of Authorised Signatory

Miriam Taris, Chief Executive Officer

Name of Authorised Signatory

1 September 2025

Date

SCHEDULE 1

Agreement Details

Commencement Date (*Clause 6.1, Schedule 2*)	The date on which this agreement has been signed by all parties.
Expiry Date (*Clause 6.1, Schedule 2*)	This agreement expires on the date on which the parties agree to terminate this agreement under clause 6.2.
Elected Members Governance Group *(Clause 4, Schedule 2)*	**Members**: The members of the Elected Members Governance Group will be the following persons (or such other persons as are nominated by the relevant Council from time to time): • Tauranga City Council member(s): To be nominated by the Mayor of Tauranga City Council. • Western Bay of Plenty District Council member(s): To be nominated by the Mayor of Western Bay of Plenty District Council and approved by the Western Bay of Plenty District Council. • An independent chair, who may be appointed (and removed or replaced) by the other members of the Elected Members Governance Group by unanimous agreement. The independent chair (if any) will not have a vote on any matter to be determined by the Elected Members Governance Group. **Meetings**: The Elected Members Governance Group will meet monthly or at such other times or frequency as they determine from time to time.
CEO Oversight Group (*Clause 4, Schedule 2*)	**Members**: The members of the CEO Oversight Group will be the following persons (or such other persons as are nominated by the relevant Council from time to time): • Tauranga City Council member: The Chief Executive of Tauranga City Council. • Western Bay of Plenty District Council member: The Chief Executive of Western Bay of Plenty District Council. • An independent chair, who may be appointed (and removed or replaced) by the other members of the CEO Oversight Group by unanimous agreement. The independent chair (if any) will not have a vote on any matter to be determined by the Council Executive Group. **Meetings**: The Council Executive Group will meet monthly or at such other times or frequency as they determine from time to time.

Project Steering Group *(Clause 4, Schedule 2)*	**Members**: The members of the Project Steering Group will be the following persons (or such other persons as are nominated by the relevant Council from time to time): • Tauranga City Council member: To be nominated by the Chief Executive of Tauranga City Council. • Western Bay of Plenty District Council member: To be nominated by the Chief Executive of Western Bay of Plenty District Council. **Meetings**: The Project Steering Group will meet fortnightly or at such other times or frequency as they determine from time to time.
Project Team *(clause 4 and 5.3, Schedule 2)*	**Members**: The members of the Project Team will be up to 2 persons nominated by each Council from time to time, with the members of the Project Team as at the Commencement Date being as follows: • Tauranga City Council members: To be nominated by the Chief Executive of Tauranga City Council. • Western Bay of Plenty District Council members: To be nominated by the Chief Executive of Western Bay of Plenty District Council. Additional persons may be nominated by Councils to join the Project Team from time to time in addition to the nominated members. **Meetings:** The Project Team will meet weekly or at such other times or frequency as they determine from time to time.

Address for notices *(clause 10, Schedule 2)*	**Tauranga City Council**	**Western Bay of Plenty District Council**
	21 Devonport Road Tauranga, 3143 Private Bag 12022, Tauranga 3143 Email: christine.jones@tauranga.govt.nz	1484 Cameron Road Barkes Corner, Greerton, Tauranga, 3112 Private Bag 12803 Tauranga Mail Centre Tauranga 3143 Email: adele.henderson@westernbay.govt.nz

SCHEDULE 2

Agreement Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions**: In this agreement the following definitions apply:

"Agreement Details" means Schedule 1 of this agreement.

"Business Day" means any day other than a Saturday, Sunday or a statutory public holiday in the Service Area(s) identified in the Agreement Details, New Zealand.

"Commencement Date" has the meaning given to that term in the Agreement Details.

"Confidential Information" means any of the following (whenever it was obtained):

(a) all information of a confidential nature (reasonably determined) obtained by one Council from another Council under or in connection with this agreement;

(b) all information relating to the operations and affairs of another Council; and

(c) all information obtained by a Council in respect of all activities or information undertaken, produced or discussed under the umbrella of the Project.

"Councils" means the councils who are named as counterparties to this agreement and who continue to be a participant of this agreement.

"Due Diligence Plan" means a plan setting out the due diligence exercise that the Councils will undertake on the water, wastewater and stormwater assets, debts, obligations and arrangements of each Council that would be expected to transfer from that Council to the Water Organisation, which plan will set out:

(d) the scope of the due diligence, and any specific exclusions;

(e) the timeframes within which the due diligence is to be carried out and completed; and

(f) the outputs from this exercise that will be provided to all Councils for consideration;

"Existing Material" means, in respect of any Council, all documentation and other materials used or provided by the Council under or in connection with this agreement that are:

(a) owned by, or licensed to, that Council prior to the date of this agreement; or

(b) developed independently from this agreement by that Council, and that are not developed, commissioned or created under or in connection with this agreement.

"Expiry Date" has the meaning given to that term in the Agreement Details.

"Intellectual Property Rights" means, in respect of any person, all intellectual and industrial property rights and interests (including common law rights and interests) owned or held by that person, or lawfully used by that person, including:

(a) patents, trade marks, service marks, copyright, registered designs, trade names, symbols and logos;

(b) patent applications and applications to register trade marks, service marks and designs; and

(c) formulae, methods, plans, data, drawings, specifications, characteristics, equipment, designs, inventions, discoveries, improvements, know-how, experience, software products, trade secrets, price lists, costings, brochures and other information used by that person.

"LGOIMA" means the Local Government Official Information and Meetings Act 1987.

"LG(WS) Act" means Local Government (Water Services) Act 2025.

"LG(WSPA) Act" means the Local Governance (Water Services Preliminary Arrangements) Act 2024.

"Objectives" has the meaning given to that term in clause 2.1.

"Project " means giving effect to the Objectives in the manner contemplated by this agreement.

"Project Budget" has the meaning given to that term in clause 5.2.

"Project Plan" has the meaning given to that term in clause 4.8(a).

"Water Organisation" means the Council Controlled Organisation that is proposed to be jointly owned by the Councils, that will be a water organisation once established under the LG (WS) Act .

"Water Services Delivery Plan" or **"WSDP"** has the meaning given to that term in paragraph B of the Introduction section of this agreement.

1.2 **Interpretation**: In this agreement unless the context otherwise requires:

(a) headings are for convenience only and do not affect interpretation;

(b) the singular includes the plural and vice versa, and a gender includes other genders;

(c) another grammatical form of a defined word or expression has a corresponding meaning;

(d) reference to a party, person or entity includes:

(i) an individual, firm, company, trust, partnership, joint venture, association, corporation, body corporate, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and

(ii) an employee, agent, successor, permitted assign, executor, administrator or other representative of such party, person or entity.

(e) a reference to dollars or $ is to New Zealand currency and excludes every tax and duty;

(f) a reference to a clause or schedule is to a clause or schedule of this agreement;

(g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(h) references to the word 'include' or 'including' are to be construed without limitation;

(i) references to any form of law is to New Zealand law, including as amended or re-enacted;

(j) a reference to a document or instrument includes reference to that document or instrument as novated, altered, supplemented, or replaced from time to time;

(k) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;

(l) any obligation falling due for performance on or by a day other than a Business Day shall be performed on or by the Business Day immediately following that day; and

(m) an obligation not to do something includes an obligation not to allow or cause that thing to be done.

2. PROJECT OVERVIEW

2.1 **Objectives**: The key objectives of this agreement (**"Objectives"**) are:

(a) for the Councils to continue to work closely, collaboratively and successfully to develop and plan their separate WSDPs that meet each Council's needs and objectives for their respective communities and that are aligned with each other Council's WSDPs;

(b) to provide each Council with sufficient information as to each other Council's water assets and obligations, through the carrying out of due diligence in accordance with the Due Diligence Plan, to facilitate each Council's decision making processes;

(c) to facilitate the Councils making decisions in a timely manner to ensure the joint operating model can progress in a timely way to meet the requirements for submissions of each Council's WSDP and other requirements under the LG(WSPA) Act and the LG(WS) Act ;

(d) to enable the Councils to consider how they would operate together in a way that facilitates an effective and efficient use of the Councils' resources, providing optimum benefit to the parties' ratepayers;

(e) to determine how the Water Organisation will uphold Treaty of Waitangi obligations and commitments, existing formal relationships, and maintain open engagement through support of established Iwi and Hapū collectives; and

(f) to agree the process (including timetable, key terms, allocation of responsibilities and budget) for the establishment of the Water Organisation for the joint operating model in accordance with the accepted WSDP,

in each case, in accordance with the establishment principles set out in Attachment 1 to this agreement (**Principles**). The COG may update and amend the Principles from time to time.

2.2 **Key Documents and Outcomes:** The key documents to be developed under or in alignment with this agreement are as follows:

(a) the Project Plan, which will be prepared by the Project Team and approved by the PSG;

(b) the Project Budget, which will be developed and maintained by the Project Team for each phase of the Project (as set out in the Project Plan) and approved by the PSG;

(c) the Due Diligence Plan, which will be prepared by the Project Team and approved by the PSG;

(d) a WSDP, which will be developed and approved by each Council individually; and

(e) the structure, governance and transfer arrangements, in relation to the Water Organisation, which will be developed by the Project Team and approved by the PSG, with a final approval step of the COG or the Councils as appropriate.

2.3 **Relationship principles**: The Councils will:

(a) work together collaboratively and in good faith;

(b) ensure communication between them is open, proactive, transparent and inclusive, to avoid any surprises;

(c) make every effort to understand the other Council's needs and objectives for the joint operating model, and make all reasonable endeavours to ensure the joint operating model meets such needs and objectives;

(d) raise any issues that arise in connection with this agreement at the earliest opportunity, for joint resolution;

(e) resolve disagreements between them promptly and amicably; and

(f) as a courtesy and in the interest of clear and consistent communication, consult with the other Council before commenting publicly on the joint operating model or this agreement.

3. KEY ACTIVITIES

3.1 **Council responsibilities**: Each Council will:

(a) work with the other Council to:

(i) develop and document the Council's financial, technical, operational, legal and other requirements for the joint operating model ("**Requirements**") and to agree reasonable and realistic timeframes for delivery of the joint operating model; and

(ii) plan and design the joint operating model to meet the Requirements, including at such time(s) required by the other Council;

(b) make decisions in relation to matters for the Project, within the indicative timeframes listed in the Project Plan;

(c) provide subject matter experts where relevant to assist with the development and design of the joint operating model;

(d) provide a dedicated single point of contact for that Council for the management of the Project delivery (who will also be the person authorised to make decisions (for example, approvals of proposed public comments on the Project) on behalf of that Council);

(e) provide a dedicated and senior level 'sponsor' for the Project, who will be the representative of that Council on the PSG;

(f) attend those meetings agreed by the Councils as appropriate or necessary for the effective governance of and/or the delivery of the joint operating model;

(g) where there are any changes in Government policy or direction, which affects the purposes and activities of this agreement, inform the other Council of those changes at the earliest possible opportunity thereafter, and the Councils agree to renegotiate, where necessary, any aspects of this agreement that has been or will be affected by this policy change.

(h) fund and provide resources to undertake the Project under this agreement; and

(i) be responsible for complying with any requirements to undertake consultation or reporting in respect of its own council and local government processes.

3.2 **Council individual responsibilities not affected**: Each Council acknowledges that the Councils' commitment to the obligations under this agreement does not limit or pre-empt each Council's own obligations as local government authorities at law, including in respect of decision-making responsibility, funding, prudent financial management and public consultation obligations.

3.3 **Project management, advisory and administration**:

(a) The PSG will determine what project management, advisory, and other administrative resources are required for the Project, and approve the arrangements in relation to engaging such resources.

(b) The Councils agree that Tauranga City Council will have responsibility for the following:

(i) managing Project expenditure, including paying amounts incurred in respect of the Project and seeking reimbursement from the Councils in

accordance with clause 5, and tracking against the Project Budget (once agreed);

(ii) entering into agreements for the benefit of the Project, where approved by the PSG as contemplated by clause 3.3(a), on the basis that all costs incurred by Tauranga City Council in relation to such arrangements will be treated as Project costs.

(c) The Councils may agree that Western Bay of Plenty District Council will take the role set out in clause 3.3(b), after which time, Western Bay of Plenty District Council will assume those responsibilities under this Agreement.

3.4 **Development expectations and timelines**:

(a) Each Council acknowledges that the other Council will be providing funding and resources to develop and design the joint operating model, and has an interest in ensuring a consistency of approach in the development and design of the joint operating model.

(b) Accordingly, any Council may submit a request to the other Council to:

(i) adjust expected timelines and/or reprioritise resources allocated to the development and design of the joint operating model as necessary to manage resource and funding constraints, subject to not compromising the achievement of the Objectives; and/or

(ii) change the Requirements that are not reasonably viable in order for a Council to meet its own needs, and the Councils will work together to agree and implement any agreed change to the joint operating model, including any consequential changes to the Requirements for that joint operating model.

3.5 **Project communications**: The Councils agree to jointly develop a communication plan relating to all aspects of the Project (including media releases, public announcements and public disclosures, communications with Tangata Whenua, internal communications with affected staff of each Council, as well as Council meetings relating to the Project and engagement with Department of Internal Affairs), and each Council will comply with that communication plan once agreed by all Councils.

4. PROJECT GOVERNANCE

4.1 **Governance structure**: The governance model for the Project comprises the following:

(a) Elected Members Governance Group ("**EGG**");

(b) CEO Oversight Group ("**COG**");

(c) Project Steering Group ("**PSG**"); and

(d) Project Team.

4.2 **Terms of Reference:** Each of the EGG, the COG, the PSG and the Project Team will develop its own terms of reference to align with the Objectives and its role under this agreement.

4.3 **Decisions made by the governance groups**:

(a) Each Council will be responsible for their own decision-making using the Project Team's advice and assistance.

(b) The EGG, COG, PSG, and Project Team will make decisions on a consensus basis.

(c) Where consensus is not possible, decisions will be made by the majority, or alternatively escalated to the next governance level, with final decisions to be made by the EGG (if the EGG has been established and if the EGG has not been established, by the COG).

4.4 **Meeting administration**: Each of the governance meetings will be scheduled by the Council appointed under clause 3.3, who will circulate agenda items and decisions to be discussed ahead of the meeting date.

4.5 **Elected Members Governance Group**: The EGG is to be established at the Councils' discretion with the terms of reference to be determined at a later date. If established, the EGG shall be responsible for:

(a) addressing issues that have been escalated to it by the COG;

(b) keeping informed on the Project; and

(c) referring issues raised by the COG to their respective Councils for consideration and approval where relevant.

4.6 **CEO Oversight Group**: The COG shall be responsible for:

(a) overseeing the executive direction of the Project;

(b) addressing issues that have been escalated to it by the PSG;

(c) keeping informed on the Project by information provided from the Project Team; and

(d) referring issues raised by the PSG to their respective Councils for consideration and approval where relevant.

4.7 **Project Steering Group**: The PSG shall be responsible for:

(a) providing strategic directions and decisions on the Project;

(b) ensuring that progress against the Project Plan and associated timelines are monitored and the activities set out in the Project Plan are delivered;

(c) identifying and managing risks, and escalating any such risks where appropriate;

(d) identifying the issues that require consideration and decision-making by Councils, and referring those issues to the COG;

(e) addressing issues that have been escalated to it by the Project Team;

(f) reviewing and approving any proposed changes the direction of the Project;

(g) appointing members to the Project Team;

(h) ensuring the strategic direction of the Project continues to align with the Objectives and each Council's obligations under this agreement; and

(i) approving the Project Budget and any changes to the Project Budget.

4.8 **Project Team**: The Project Team shall be responsible for:

(a) preparing a detailed scope of work and project plan (including timeline and project milestones) to deliver on the Objectives (**"Project Plan"**), which will be developed based on the draft transition plan set out in Attachment 2 to this agreement and will incorporate the due diligence and negotiations processes set out in the diagram in Attachment 3 to this agreement. The Project Plan and progress against the Project Plan will be reported to the PSG and COG on a monthly basis;

(b) preparing and implementing the Due Diligence Plan, and reporting to the PSG and COG on a weekly basis against that Due Diligence Plan;

(c) developing an initial Project Budget for approval by the PSG, and then maintaining that Project Budget (including any recommendations to the PSG to increase the Project Budget);

(d) developing such term sheets, guidance notes and documents as are required in order to formalise the way in which the joint operating model is proposed to be established, governed and operated, for review and approval by the Councils;

(e) engaging external expertise as required;

(f) preparing stakeholder/engagement framework ensuring all appropriate parties are included on an ongoing basis;

(g) preparing and attending workshops with the Councils' elected members as required to achieve the Objectives;

(h) preparing consultation packs in collaboration with individual Councils to support each Council's required consultation processes;

(i) running and/or supporting consultation processes as required;

(j) approving payments from the Project Budget up to a level set by the PSG; and

(k) any of matters required under a terms of reference agreed for the Project Team.

5. COST SHARING

5.1 **Cost sharing principles**: The Councils agree:

(a) To fund the costs of the Project in accordance with the amounts and frequency of cost contributions agreed by the PSG under clause 5.2. All such Project costs will be shared between the Councils as follows: Tauranga City Council 70% and Western Bay of Plenty District Council 30%.

(b) In the situation where there is a need for data cleansing, that the costs fall to each Council. Councils will provide the subject matter experts for data remediation, and that the work will be undertaken under the guidance of the Digital Project Workstream Lead.

5.2 **Project funding**: By no later than 30 Business Days after the date of this agreement, the Councils will (through the Project Team) prepare a Project budget for approval by the PSG, that covers:

(a) the contribution by the Councils for the costs of the Project, including the project management and administration costs that will be incurred by the Council carrying out the responsibilities set out in clause 3.3(a); and

(b) costs for any internal and external consultants (preapproved by the PSG in each instance),

(together, the "**Project Budget**"). The Councils acknowledge their intention that all costs borne by the Councils under this agreement relating to the Project will (if the Water Organisation is established and becomes operational) be treated as an advance by each Council to the Water Organisation and will be reimbursed by the Water Organisation accordingly. These costs will be ring-fenced from the costs incurred by each Council as contemplated by clause 5.5.

5.3 **Project Team delegation**: The Project Team will have delegated authority to spend up to the approved Project Budget, subject to any limits set (as contemplated by clause 4.8(j). Costs that exceed the approved Project Budget will require approval by the PSG.

5.4 **Council Exit**: If a Council exits this agreement, that Council remains responsible for their share of all costs incurred up to that date, including any committed costs which cannot be mitigated by the remaining participating Councils.

5.5 **Council Costs:** The Councils acknowledge and agree that any costs relating to the preparation of their individual WSDPs and internal work in relation to the proposed joint operating model (and any advice they obtain for their sole benefit) will be their own cost and will not form part of the Project Budget.

6. TERM

6.1 **Term**: This agreement commences on the Commencement Date and continues until the Expiry Date, unless terminated earlier by all Councils in accordance with clause 6.2.

6.2 **Termination by agreement**: This agreement may be terminated at any time with immediate effect by agreement of all current Councils to this agreement for any reason, including if there is a material change of law or policy direction that affects the Councils' obligations under the LG(WSPA) Act and LG(WS) Act.

6.3 **Council withdrawal**:

(a) Subject to clauses 5 and 6.3(b), any Council may withdraw its participation in this agreement at any time immediately by giving written notice to the other Council. The parties acknowledge that a Council's decision to withdraw may be as a result of the outcomes of the due diligence exercise to be undertaken in accordance with the Due Diligence Plan.

(b) Before a Council exercises its withdrawal right under subclause (a), that Council must use reasonable endeavours to:

(i) provide as early as possible notification to the other Council that the Council is considering, or intending to withdraw from the Project, including to provide the other Council with sufficient time to respond to and agree on any public releases in accordance with clause 3.5; and

(ii) provide the other Council an explanation for the withdrawing Council's reason(s) for the withdrawal.

(c) Where any Council breaches a material obligation, or persistently does not perform its obligations, under this agreement, then the other Council may request that such Council withdraws its participation from this agreement, in which case the parties will promptly discuss the next steps following such request.

6.4 **Effect of termination**: In addition to any other rights, powers or remedies a Council may have under this agreement or at law:

(a) if this agreement ends or is terminated, the following will apply:

(i) each Council is released from its obligations under this agreement, except clauses 5, 6, 7, 8 and 9 that shall survive expiry or termination of this agreement;

(ii) each Council retains the rights and obligations it has accrued under this agreement as at the date of expiry or termination; and

(iii) each Council must return any Confidential Information of another Council in its possession to that other Council or, if requested by the other Council, destroy the Confidential Information, except to the extent that it is required to retain the Confidential Information in order to meet its legal, contractual and governance obligations.

(b) if a Council withdraws its participation in this agreement or otherwise exits this agreement:

(i) clause 6.4(a) will apply only in respect of that Council;

(ii) that Council will not have any rights to any new Intellectual Property Rights as contemplated by clause 9.2; and

(iii) this agreement continues in force as between the remaining Councils.

7. DISPUTE RESOLUTION

7.1 **Notice in writing**: If a Council claims that a dispute has arisen, that Council must give written notice to the other Council. The written notice must specify the nature of the dispute.

7.2 **Negotiation**:

(a) On receipt of a notice delivered in accordance with clause 7.1 and before any Council may refer a dispute to mediation, the Representatives must, in good faith and acting reasonably, do their best to resolve the dispute quickly and efficiently through negotiation.

(b) If any Representative considers that the dispute is not being resolved in a timely manner, such Representative may serve written notice on the other parties' Representatives to escalate the dispute to the Chief Executives or equivalent (where the Representatives are not the Chief Executive or equivalent) of the applicable Councils for resolution.

(c) If the dispute has not been resolved within 20 Business Days (or within such other period as agreed by the Councils) of the date of the notice referred to in clause 7.2, any Council may submit the dispute to mediation.

7.3 **Mediation**:

(a) If the Councils do not resolve the dispute by negotiation, the Councils must, in good faith and acting reasonably, do their best to resolve the dispute by participating in mediation with an independent mediator.

(b) If the Councils do not agree on a mediator, then the mediator will be appointed by the New Zealand Dispute Resolution Centre.

(c) The Councils must mediate the dispute in accordance with principles agreed between them or, if no agreement can be reached, the New Zealand Dispute Resolution Centre Mediation Rules.

(d) Unless the Councils agree otherwise, the mediator's fee and any other costs of the mediation itself (such as for venue hire or refreshments) will be shared equally between the parties, but the parties will each pay their own costs of preparing for and participating in the mediation (such as for travel and legal representation).

7.4 **Arbitration**

(a) If the dispute has not been resolved within 40 Business Days (or within such other period as agreed by the parties) of the dispute being referred to mediation, any Council (the **"Initiating Council"**) may refer such dispute to binding arbitration by issuing a written notice (**"Arbitration Notice"**) to the other Council (together with the Initiating Council, the **"Disputing Council"**) for final resolution in accordance with the provisions of this clause 7.4 and in accordance with the provisions of the

Rules of Arbitration of the New Zealand Dispute Resolution Centre, as amended or modified from time to time ("**NZDRC Rules**").

(b) The arbitral panel shall consist of one arbitrator. The arbitrator will be appointed by the agreement of the Disputing Council or, failing agreement within 10 Business Days of the date of the Arbitration Notice, in accordance with the NZDRC Rules.

(c) The seat of arbitration shall be Tauranga, New Zealand and the arbitration shall be conducted in the English language.

(d) The award of the arbitration shall be in writing and must include reasons for the decision.

(e) The award of the arbitration shall be final and binding on the Councils. No Council may appeal to the High Court under Clause 5 of the Second Schedule of the Arbitration Act 1996 on any question of law arising out of an award.

(f) The award shall allocate or apportion the costs of the arbitration as the arbitrator deems fair.

(g) Neither the existence of any dispute nor the fact that any arbitration is pending hereunder shall relieve any of the Councils of their respective obligations under this agreement.

7.5 **Implementation of agreement**: The Councils must do whatever is reasonably necessary to put into effect any negotiated or mediated agreement, arbitral award or other resolution. This includes exercising voting rights and other powers as required.

7.6 **Rights and obligations during a dispute**: During a dispute, each Council must continue to perform its obligations under this agreement.

7.7 **Interlocutory relief and right to terminate**: This clause does not restrict or limit the right of a Council to obtain interlocutory relief, or to immediately terminate this agreement where this agreement provides such a right.

8. CONFIDENTIALITY AND INFORMATION DISCLOSURE

8.1 **Confidentiality**: Each Council will keep confidential and secure all Confidential Information, and no Council shall disclose the other Councils' Confidential information to any person, or use the other Councils' Confidential Information, other than:

(a) to the extent that use or disclosure is necessary for the purposes of giving effect to or exercising the rights and benefits of this agreement (which for the purpose of each Council, may involve disclosure to that council's elected members and staff);

(b) if the discloser of the information has obtained the prior written approval of the providing Council to the use or disclosure;

(c) if the use or disclosure is required by law including under the Local Government Official Information and Meetings Act 1987 ("**LGOIMA**"), or the Local Government Act 2002, provided that prior to that Council making a disclosure, that Council will

use reasonable endeavours to promptly consult in good faith with the other Council:

(i) regarding the requirement under which that Council is required to disclose the Confidential Information; and

(ii) so that the other Council is informed to arrive at a view on whether those Councils would also be required to make such disclosure if a request is made of them; or

(d) in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Councils.

8.2 **LGOIMA**: Each Council acknowledges that the other Council is subject to the LGOIMA. Accordingly, notwithstanding anything else in this agreement, each Council agrees to cooperate fully in providing the other Council with any documents or other information that the other Council is required to provide pursuant to a request made under the LGOIMA.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 **Existing Intellectual Property Rights**: Notwithstanding any of the provisions of this agreement, each Council or its licensors retain ownership of all Intellectual Property Rights, including in Existing Material belonging to that Council or its licensors at the Commencement Date (**"Existing Intellectual Property Rights"**).

9.2 **New Intellectual Property Rights**: Any new Intellectual Property Rights which are created as a result of, or in connection with, the provision of the Services or Deliverables, or otherwise in connection with this agreement, shall be jointly owned by the Councils, unless otherwise agreed by the parties.

9.3 **Licence**: If any Council's Existing Intellectual Property Rights is included in any new Intellectual Property Rights, then that Council grants to the other Council and the other Council accepts, a worldwide, perpetual, non-exclusive, transferable, sub-licensable licence during the term of this agreement to use the Council's Existing Material for the purposes relating to giving effect to and performing its obligations under this agreement. That licence will expire immediately on expiry or termination of this agreement.

10. NOTICES

10.1 **Giving notices**: Any notice or communication given to a Council under this agreement is only given if it is in writing and sent in one of the following ways:

(a) Delivered or posted to that Council at its address and marked for the attention of the relevant department or officer (if any) set out in Schedule 1.

(b) Emailed to that Council at its email address and marked for the attention of the representative set out in Schedule 1.

10.2 **Change of details**: If a Council gives the other Council three Business Days' notice of a change of its postal address or email address, any notice or communication is only given by

that other Council if it is delivered, posted or emailed to the latest postal address or email address.

10.3 **Time notice is given**: Any notice or communication is to be treated as given at the following time:

(a) If it is delivered, when it is left at the relevant address.

(b) If it is sent by post, five Business Days after it is posted.

(c) If it is sent by email, when it is received in readable form addressed in the manner specified above.

However, if any notice or communication is given, on a day that is not a Business Day or after 5pm on a Business Day, in the place of the Council to whom it is sent it is to be treated as having been given at the beginning of the next Business Day.

11. GENERAL

11.1 **No partnership, joint venture**: Nothing in this agreement shall create or evidence any partnership, joint venture, agency, trust or employer/employee relationship between any of the Councils, and a Council may not make, or allow to be made, any representation that any such relationship exists between any of the Councils. A Council shall not have authority to act for, or to incur any obligation on behalf of, any other Shareholder, except as expressly provided for in this agreement.

11.2 **No privity**: Other than as expressly provided for in this agreement, this agreement is not intended to confer a benefit on any person or class of persons who is not a party to it.

11.3 **Counterparts**: This agreement is deemed to be signed by a Council if that Council has signed or attached that Council's signature to any of the following formats of this agreement:

(a) an original;

(b) a photocopy; or

(c) an electronic copy,

and if each Council has signed or attached that Council's signature to any such format and delivered it to the other Council, the executed formats shall together constitute a single binding agreement between the Councils.

11.4 **Entire agreement**: This agreement contains everything the parties have agreed in relation to the subject matter it deals with. No Council can rely on an earlier written agreement or anything said or done by or on behalf of another Council before this agreement was executed.

11.5 **Severance**: If any provision of this agreement is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this agreement without affecting the validity of the remainder of this agreement and shall not affect the enforceability, legality, validity or application of any other provision of this agreement.

11.6 **Further assurance**: Each Council shall make all applications, execute all documents and do or procure all other acts and things reasonably required to implement and to carry out its obligations under, and the intention of, this agreement.

11.7 **Variation**: No variation of this agreement will be of any force or effect unless it is in writing and signed by each Council to this agreement.

11.8 **Assignments and transfer**: A Council must not assign or transfer any of its rights or obligations under this agreement without the prior written consent of the other Council.

11.9 **Costs**: Except as otherwise set out in this agreement, each Council must pay its own costs and expenses, including legal costs and expenses, in relation to preparing, negotiating, executing and completing this agreement and any document related to this agreement.

11.10 **Waivers**:

(a) A waiver of any right, power or remedy under this agreement must be in writing signed by the Council granting it. A waiver only affects the particular right, obligation or breach for which it is given. It is not an implied waiver of any other right, obligation or breach or an implied waiver of that right, obligation or breach on any other occasion.

(b) The fact that a Council fails to do, or delays in doing, something the Council is entitled to do under this agreement does not amount to a waiver.

11.11 **Governing law**: This agreement is governed by the laws of New Zealand and the Councils submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this agreement.

Attachment 1 – Establishment Principles

1. PURPOSE

This document presents draft establishment principles, criteria, and safeguard mechanisms. These would apply to any joint or multi-WSO to ensure beneficial arrangements between councils are able to be identified and implemented.

These principles are enduring and will apply wherever additional Water Service Providers (Councils) seek to join the multi-WSO. Principles will be upheld by Council, and any amendments will be managed through resolution of Council, consistent with legislation and delegations.

Key Strategic Principles (Approved by Councils)

1.	Affordability	The WSO is operated in a way that ensures water services are affordability focused and equitable for all communities, balancing cost-effectiveness with long-term service quality and sustainability
2.	Transparency	The WSO will operate with transparency and accountability to its shareholder councils and communities, ensuring clear, timely, and accessible information to build trust and support informed participation
3.	Safe and resilient	The WSO will deliver water services that are safe, reliable, and resilient—protecting public health and adapting to changing environmental, infrastructure, and community needs over time
4.	Environmental Wellbeing	The WSO has a kaitiaki role caring for the health and wellbeing of water for the benefit of the environment, communities, and future generations
5.	WSO is set up to be successful	The shareholder councils are committed to establishing the joint waters WSO with the right governance, capabilities, and direction to enable long-term operational success and public value from day one
6.	Iwi Hapū	The WSO will uphold Treaty of Waitangi obligations and commitments, existing formal relationships, and maintain open engagement through support of established Iwi and Hapū collectives.

CORE GUIDELINES AND CRITERIA THAT WOULD BE APPROVED BY ELECTED MEMBERS

Group (1) – Key Establishment Considerations	
Financial Transition	
Independent verification of key data	In summary - by agreement, an independent advisor assesses key financial data and other key information to ensure: • Debt transfer • outstanding revenue and liabilities, • financing arrangements and reserves • asset valuations and transfer, • asset condition, • risk registers. • capital programme and prioritisation *Further detail and linkage to guidelines below.*
Appropriate debt transfer	The amount of debt that each council transfers to the new water entity will have a major bearing on the financial health of both the water service entity and each council. Ensuring the ability to agree to a fair and equitable debt level arrangement Councils will; • Demonstrate that the debt value transferred from the council to the WSO is appropriate and sustainable and genuinely relates to the water asset • Financing arrangements are fair and equitable in relation to the remaining council operations • Financial reserves are considered as part of total debt and transferred as appropriate (including depreciation and financial instruments) and special purpose reserves (e.g. biosolids) A peer review of data and history may be engaged. Activities surrounding debt and direct costs of renewing, improving, operating and maintaining the network of each partnering Council should be ring-fenced so that communities fund their fair portion of services, and apply their fair share of debt brought to the arrangement.
Equitable asset transfer	The valuation of assets must have been revalued in the last 2 years, consistent within benchmarking rates. Asset management plans reflect the asset value, condition, performance and age. Assets that have high amenity value for the community (e.g. stormwater reserves) should stay with the councils to enable the focus to be on recreation management.
Growth pays for growth	Capital expenditure associated with enabling or supporting growth will be attributed to and funding by those who have caused or benefit from that investment.

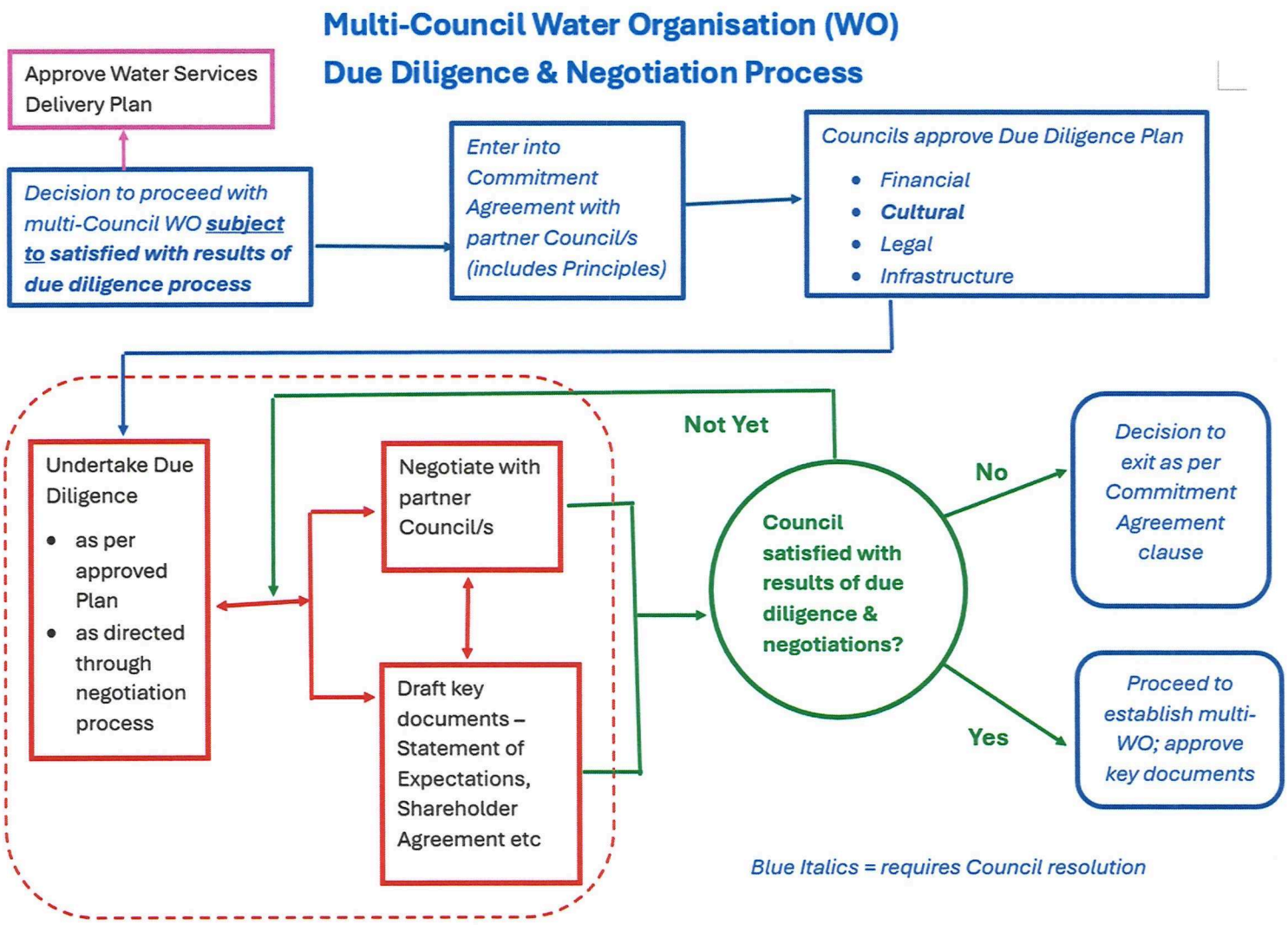
	The WSO will look to maximise all available sources of external funding in order to minimise the financial impacts of investment on ratepayers and customers.
Capital programme	Ring fencing of new debt and a prioritization approach to capital programme. A capital programme prioritisation framework to be agreed and applied across a combined programme.
Equitable allocation of guarantee	Allocation of guarantee of debt and other liability will be ring fenced, but in the event of that approach changing, in the first instance the guarantee will relate to the jurisdiction area where the investment occurred. If this is not possible to achieve, then the guarantee will be proportional to the value of the assets,
Equitable share allocation	Jointly explore and assess options for share allocation to achieve a mutually agreed allocation which is proportional and fair, both at the commencement of the multi-WSO and overtime when and when scale and membership of the business changes.
"In flight" transaction at transition date	In flight transactions to be agreed with the transferring council the arrangements for transferring of any outstanding operational and business process matters.
Revenue and Pricing	The WSO will set pricing appropriate to deliver water services (affordability of services) aligned to the objectives through the Statement of Expectation (SOE). The pricing models will: • avoid customer price shocks • reasonably reflect operation costs, in the year they occur (i.e. a balanced budget) • reasonably reflect customer segmentation and requirements • maintain financial sustainability. This relates to ring fenced operations unless Council make decision to harmonise.
Harmonisation of pricing	Initially, there will be ring fenced pricing aligning with the principles above. Any shift to equalisation/harmonisation would be a transitional process. All Councils agree, through their Statement of Expectation, that annual reports to Council will be provided identifying efficiencies, alongside the WSO position on any future harmonisation or tariffing structures.
Sustainability	
Wellbeing of Water	The WSO recognises the vital importance of wai (water) as a taonga and upholds its responsibility as a kaitiaki. In partnership with Iwi and Hapū the Board will ensure that all decisions recognise the importance of the health and wellbeing of water, for the benefit of the environment, communities, and future generations.

Environmental stewardship	Sustainable use of natural resources across all three waters should support the approach to efficient infrastructure investment. The WSO will comply with environmental requirement set through legislation or Government policy statements. Ensure management of all conditions of resource consents held by WSO.
Workforce	
Fair process and equal opportunity	Staff transition processes are underpinned by procedural; fairness that gives staff from all organisations equal opportunity to apply for roles in the new WSO (excluding board appointments)

Attachment 2 – Transition Plan

	Key Milestone / Task	Indicative timeframe
1	Draft TCC WSDP	Approved 26 August
2	Partnership Plan with Tangata Whenua (Align with Due diligence timeframes)	Aug – Dec 25
3	TCC Commitment Agreement (Establishment Principles)– Executed/Completed	End August 25
4	TCC WSDP completed and CEO sign-off	End August 25
5	TCC WSDP - Submission	3 September 25
6	Recruit and appoint Joint Programme Director	Sept / Oct 25
7	Due Diligence process starts, which includes independent review of asset and financial information	Sept – Dec 25 Continues beyond if necessary
8	Establish project governance and project team structures for WO	Early 2026
8	Developing WO Shareholder Agreement, Constitution and other key documents	Early 2026
10	If approved as part of shareholder agreement - Establish Shareholder Council (TCC/WBOPDC)	Mid - 2026
11	Recruit/appoint WO Board of Directors	Apr-- June 26
12	Recruit key management roles - (either Interim or permanent) WO CEO, CFO, CDO	Apr – June 26
13	Key management roles appointed	By Jul-Oct 26
14	Transfer arrangements, LGFA lending Arrangements, Statement of Expectations underway	Jan – Dec 2026
15	Water Services Strategy commence drafting	Jan 27 onwards
16	Go Live with Multi-WO	1 July 2027

Attachment 3 – Due Diligence and Negotiation Process



VARIATION AGREEMENT

LWDW COMMITMENT AGREEMENT

TAURANGA CITY COUNCIL

AND

WESTERN BAY OF PLENTY DISTRICT COUNCIL

VARIATION AGREEMENT
LWDW COMMITMENT AGREEMENT

DATED: 22/12/2025

PARTIES

1. **TAURANGA CITY COUNCIL** ("**TCC**")
2. **WESTERN BAY OF PLENTY DISTRICT COUNCIL** ("**WBOPDC**")

BACKGROUND

A. TCC and WBOPDC (collectively "the Councils") entered into a commitment agreement dated 1 September 2025 ("the **Commitment Agreement**") for the planning of a joint waters operation model under the Local Government (Water Services) Act 2025.

B. The Councils wish to vary the Commitment Agreement to introduce an additional working group within the Commitment Agreement's structure.

C. The parties have agreed to enter into this Variation Agreement to record the terms of the variation.

VARIATION AGREEMENT

1. INTERPRETATION

1.1 Unless the context otherwise requires:

(a) Any term in this Variation Agreement which is defined in the Commitment Agreement and is not specifically defined in this document will have the meaning given in the Commitment Agreement.

(b) The rules of interpretation and the rules relating to the construction of certain references set out in the Commitment Agreement apply as if incorporated in this Variation Agreement, with any necessary or consequential modifications.

2. VARIATION

2.1 The Commitment Agreement is varied as follows:

(a) By adding the following row to the table comprising Schedule 1 (below the row that commences "Elected Members Governance Group" and above the row that commences "CEO Oversight Group"):

Joint Working Group *(Clause 4, Schedule 2)*	**Members:** The members of the Joint Working Group will be the following persons (or such other persons as are nominated by the relevant Council from time to time): • Tauranga City Council members: To be nominated by the Mayor of Tauranga City Council.

- Western Bay of Plenty District Council members: To be nominated Mayor of Western Bay of Plenty District Council.
- Tangata Whenua representatives: To be nominated by Tangata Whenua.

Meetings: The Joint Working Group will meet regularly, based on what is dictated by the work and decision-making programme, or at such other times or frequency as they determine from time to time.

(b) By amending clause 4.1, 4.2 and 4.3 of Schedule 2 as follows:

4. PROJECT GOVERNANCE

4.1 **Governance structure**: The governance model for the Project comprises the following:

(a) Elected Members Governance Group **("EGG");**

~~(a)~~(b) Joint Working Group ("**JWG**");

~~(b)~~(c) CEO Governance Group ("**COG**");

~~(c)~~(d) Project Steering Group ("**PSG**"); and

~~(d)~~(e) Project Team.

4.2 **Terms of Reference:** Each of the EGG, JWG, COG, the PSG and the Project Team will develop its own terms of reference to align with the Objectives and its role under this agreement.

4.3 **Decisions made by the governance groups**:

(a) Each Council will be responsible for their own decision-making using the Project Team's advice and assistance.

(b) The EGG, JWG, CGG, PSG, and Project Team will make decisions on a consensus basis.

(c) Where consensus is not possible, decisions will be made by the majority, or alternatively escalated to the next governance level, with final decisions to be made by the EGG (if the EGG has been established and if the EGG has not been established, by the COG).

(c) By adding the following as clause 4.6 (and re-numbering the earlier versions of clause 4.6 – 4.8 as clauses 4.7 – 4.9 respectively).

4.6 Joint Working Group: The JWG shall be responsible for:

(a) addressing issues that have been escalated to it by the COG or the PSG;

(b) keeping informed on the Project and considering Issues & Options papers on matters where governance direction is required; and

(c) referring issues raised by the COG to the EGG (if established) or otherwise to the Councils for consideration and approval where relevant.

3. GENERAL

3.1 **Commitment Agreement**: The Commitment Agreement shall remain in full force and effect except as varied herein.

3.2 **Entire agreement**: The Commitment Agreement, as varied by this Variation Agreement and any other written variation signed by both parties, contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

3.3 **Regulatory capacity:** Except as otherwise expressly provided, the obligations of the Councils under this Variation Agreement are obligations of the Councils in their capacity as a contracting party. The Councils have certain regulatory and statutory functions, responsibilities and obligations in its capacity as a local authority outside of this Variation Agreement. The Councils shall be deemed not to be acting in the capacity of a contracting party under this Variation Agreement when exercising these functions, responsibilities and obligations.

3.4 **Counterparts:** This Variation Agreement may be executed in any number of counterparts each of which will be deemed an original and all of which together will constitute a single instrument. Either party may enter into this Variation Agreement by signing any counterpart including by way of electronic signature in accordance with Part 4 of the Contract and Commercial Law Act 2017.

3.5 **Copies:** Any copy of this Variation Agreement that is received by facsimile or via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this Variation Agreement) may be relied on by any party as though it were an original copy of this Variation Agreement. This Variation Agreement may be entered into on the basis of an exchange of facsimile, PDF or other document reproduction format.

3.6 **Costs:** The parties will each pay their own costs in connection with this Variation Agreement and any document or matter in relation to it.

EXECUTION

SIGNED for and on behalf of)
TAURANGA CITY COUNCIL)
by its authorised signatory)

Signature: 

Name: Christine Jones

Position: General Manager Strategy, Partnerships & Growt

SIGNED for and on behalf of)
WESTERN BAY OF PLENTY)
DISTRIC COUNCIL)
by its authorised signatory:

Signature: Adele Henderson
Adele Henderson (Dec 22, 2025 09:16:52 GMT+13)

Name: Adele Henderson

Position: Programme Director - Water Organisatior

TERMS OF REFERENCE – JOINT GOVERNANCE GROUP LWDW

1. Background

1.1. Tauranga City Council (**TCC**) is working, together with Western Bay of Plenty District Council (**WBOP**) towards establishment of a joint Water Organisation (**WO**) under the Local Government (Water Services) Act 2025 (**Project**).

1.2. On 1 September 2025 TCC and WBOP entered a Commitment Agreement to facilitate the establishment of the WO. The Commitment Agreement allows for an Elected Members Governance Group (**EMG**) to be established (at TCC and WBOP's discretion).

1.3. The Commitment Agreement records the following Relationship Principles:

(a) work together collaboratively and in good faith;

(b) ensure communication between them is open, proactive, transparent and inclusive, to avoid any surprises;

(c) make every effort to understand the other Council's needs and objectives for the joint operating model, and make all reasonable endeavours to ensure the joint operating model meets such needs and objectives;

(d) raise any issues that arise in connection with this agreement at the earliest opportunity, for joint resolution;

(e) resolve disagreements between them promptly and amicably; and

(f) as a courtesy and in the interest of clear and consistent communication, consult with the other Council before commenting publicly on the joint operating model or this agreement.

1.4. Following execution of the Commitment Agreement, the Councils have invited Tangata Whenua (**TW**) to be involved in the establishment discussions[1]**.**

1.5. TCC and WBOPDC have agreed, at their respective working groups, to vary the Commitment Agreement to have, in addition to the EMG[2], a Joint Governance Group (**JGG**) which includes Tangata Whenua representatives (as nominated by Tangata Whenua). This agreement shall be documented by way of a formal variation to the Commitment Agreement, and approved by TCC and WBOPDC.

1.6. This terms of reference is for the JGG.

2. Joint Governance Group Purpose and Decision Making

2.1. To ensure that governance direction is provided in a timely manner, and that the project works at pace, a Joint Governance Group (**JGG**) has been formed to provide a forum to:

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[1] To give effect to the objectives stated in the Commitment Agreement, which includes upholding Treaty of Waitangi obligations and commitments in accordance with the establishment principles.

[2] Yet to be established at the Councils' discretion in accordance with clause 4.5 of the Commitment Agreement

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- Hear and consider the views of the other parties, to give effect to the objectives set out in the Commitment Agreement.
- Address issues that have been escalated to it by the Project Sponsors or CEO Oversight Group for consideration.
- Consider Issues & Options papers on matters where governance direction is required.

3.2 Decisions will be made on the following basis:

- Where possible reach a consensus view that can proceed as a recommendation to the respective Councils for final decision making.
- 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.

3. Scope of the Joint Governance Group

3.1. The scope of Joint Governance Group meetings will include:

a. The 'Multi-Council Water Organisation Summary Plan (including Due Diligence)" endorsed by TCC on 29 October 2025 and WBOPDC on 14 November 2025.

b. The matters in the Commercial Terms Sheet endorsed by the Councils at their meetings of 16 December 2025.

c. Other matters not captured in (a) or (b) above, recommended by staff for consideration or identified by members of the JGG, and agreed to by consensus by JGG.

3 Membership and Structure

3.2. The members of the JGG will be the following persons (or such other persons as are nominated by the Mayor/Council/ Tangata Whenua from time to time):

<u>Tauranga City Council Elected Member Working Group</u>

- Cr Marten Rozeboom (Chair TMG)
- Mayor Mahe Drysdale
- Cr Kevin Schuler
- Cr Glen Crowther
- Cr Hautapu Baker

<u>Western Bay of Plenty Elected Members Working Group</u>

- Mayor James Denyer (Chair WBMG)
- Rodney Joyce
- Darlene Dinsdale
- Grant Dally
- Graeme Elvin

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Tangata Whenua Working Group

- Kylie Smallman - selected by Tauranga Moana Iwi Collective
- Hakopa Tapiata - selected by Nga Iwi o Te Tau Ihu o Te Arawa Collective
- Shadrach Rolleston
- Rohario Murray
- Kiritapu Allan
- Roana Bennett

4 Meetings and Procedures

3.3. Frequency: The JGG will meet regularly, based on what is dictated by the work and decision-making programme.

3.4. Format: Meetings may be held in person or virtually, as required.

3.5. Quorum: a minimum of three persons each from TCC, WBOP, and TW.

3.6. Chairing: The Councils have jointly appointed Lyall Thurston as Chair to facilitate meetings. In the absence of the appointed Chair, the Councils will jointly appoint an acting chair for that meeting.

3.7. Agenda: Agendas and supporting documentation will be circulated at least two working days in advance of each meeting when possible. TCC as administrative agent for the project will distribute the agenda.

3.8. Meeting outcomes and direction: Direction and Action points will be recorded and maintained.

5 Supporting Principles and Criteria

3.9. The JGG will respect the establishment principles and criteria approved by TCC and WBOP, and contained in the Commitment Agreement, including:

a. Affordability and Equity: Ensuring water services are affordable and equitable for all communities.

b. Transparency: Operating with transparency and accountability.

c. Safe and Resilient Services: Delivering reliable and resilient water services.

d. Environmental Stewardship: Acting as kaitiaki for water resources.

e. WO is set up for success: the right governance, capabilities and direction are provided to enable long-term operational success and public value.

f. Iwi/Hapū Engagement: Upholding Treaty obligations and maintaining open engagement with Iwi and Hapū.

g. Financial and Asset Management: Overseeing fair and equitable asset and debt transfer, pricing, and capital programme prioritisation.

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6 Review and Amendment

3.10. These Terms of Reference will be reassessed at the conclusion of the Due Diligence and Establishment Planning Phase when the Councils have made a final decision on whether to proceed with establishing the WO.

3.11. Amendments to the Terms of Reference require approval of both TCC and WBOP.

7 Duration

3.12. The JGG will operate for the duration of the Project (i.e. either until the WO is operational and/or successfully transitioned, or until a WO Shareholders' Representative Forum is established) or until the JGG is disestablished by agreement of the Councils.

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Briefing Paper on the Commercial Term Sheet

Introduction:

The Commercial Term Sheet is attached at **Appendix 1** to this paper (**Term Sheet**). The Term Sheet summarises the decisions to be:

- agreed by the Joint Governance Group (**JGG**) in a series of meetings between now and the end of February 2026; and,

- approved by TCC and WBOPDC at individual Council Meetings at the end of March 2026.

The approved Term Sheet will then inform drafting of the foundation documents for the proposed Water Organisation (**WO**), including the Shareholders Agreement and Constitution.

Categorisation of Decisions:

In collaboration with the TCC Elected Member Working Group (**TMG**) and the WBOPDC Elected Member Working Group (**WBMG**), each of the decisions in the Term Sheet have been categorised into one or more buckets:

- Political decisions.

- Commercial decisions.

- Topics where Tangata Whenua input is anticipated.

Due to time constraints, we are yet to receive direct feedback from Tangata Whenua on the Term Sheet including the classification of each decision within the Term Sheet. The topics we have identified as requiring input from Tangata Whenua are based on staff's interpretation of the topics requiring Tangata Whenua input (taking into account the Tangata Whenua Position Paper), with adjustments following feedback from the TMG and WBMG respectively.

To assist with planning over the coming month, direction is sought from the JGG. The JGG is asked to review, advise of any amendments and then endorse the classification of each decision within the Term Sheet.

Supporting Papers:

Any item classified as a Political decision and/or a topic requiring Tangata Whenua input, will be accompanied by a detailed Issues and Options Paper to support informed discussion and decision-making.

Any item classified as a commercial decision will be supported by a Recommendation Paper outlining the preferred approach based on best / industry practice etc.

Process and timing:

While there are approximately 28 individual decisions to be made, our plan is to address each decision within logical groupings during a series of meetings scheduled for February 2026. This is intended to make the process more efficient and ensure that all topics are reviewed in a comprehensive and coordinated manner. For example, one logical grouping may be ownership, control and governance structure of the WO. Another logical grouping may be the scope, nature and composition of the Shareholders Representative Forum (should the JGG elect to proceed with a SRF).

Next steps

The next steps are:

- JGG to review, amend as considered appropriate and then endorse the classification of each decision within the Term Sheet.

- Staff to prepare Issues and Option Papers (for political decisions and/or topics where Tangata Whenua input is anticipated) and Recommendations Papers (for commercial decisions). These papers will be prepared and presented based on logical groupings.

- Staff to facilitate a series of meetings between now and the end of February 2026 for the purpose of allowing the JGG to debate and agree on each of the items in the Term Sheet. The aim being for the JGG to reach a consensus view on each item within the Term Sheet that can then proceed as a recommendation to the respective Councils for final decision making.

- TCC and WBOPDC to endorse the agreed Term Sheet at individual Council Meetings in late March 2026.

Working draft: 4 November 2025

Tauranga City Council and Western Bay of Plenty District Council

Water Organisation Establishment Documents – Key Terms

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua input is anticipated
Constitution						
Foundational information						
1.	*Name of Water Organisation*	[TBC]	It is proposed that a workstream will be established to address the name of the WO	Yes	No	Yes
2.	*Scope of business*	Providing Drinking Water, Wastewater and Stormwater services in the Service Areas, and ancillary activities.	We understand that WBOPDC has resolved to transfer stormwater responsibility to the WO, but a question mark remains over TCC's position	Yes. Political Decision re Stormwater for TCC[3] (to be covered in its own separate issues and options paper)	No	No
Ownership and control, and governance structure						
3.	*Number of directors*	[Any number; does not need to be expressly specified but useful to have, eg "Up to 5 directors"]	There are no legislative restrictions on numbers, so this should be led by the Councils' views on 'right sizing' the board to ensure a good mix of skills and	Yes	No	Yes

[1] Proposed political decisions to be covered in issues & options paper.
[2] Proposed commercial decision to be covered by recommendation only.
[3] WBOPDC has already made a decision regarding Stormwater.

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua input is anticipated
			experience, by reference to the skills matrix to be developed for the Board. We consider a board of up to 5 directors would enable the appointment of a suitable mix of skills and experience, aligned with the skills matrix (see below). The working assumption is that there will not be an 'interim' or 'establishment' board, but that the Directors appointed will continue through to July 2027 and beyond.			
4.	*Director appointment*	(a) Each shareholder will have a right to appoint one or more directors (as specified), with additional directors appointed by agreement (but noting all directors must be independent once the Water Organisation takes on the Water Services obligations) (b) Shareholders (directly or via Shareholders Representative Forum) will jointly appoint all directors	Generally the approach being taken is to have this as one of the roles of the Shareholders Representative Forum (**SRF**) (or similar) (see discussion below). Appointments to the Board should be based on whether the proposed directors meet the requirements of the skills matrix. We have seen iwi representation on SRFs (or similar), but not with specific Board rights, given the requirement for independent directors. We would expect the skills matrix to contain reference to mana whenua knowledge and related matters, which would provide the opportunity to have appropriate expertise on the Board.	Yes	No	Yes (potential for Tangata Whenua to request a seat on the WO Board)

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua input is anticipated
			Ideally, the Constitution would align with each Council's policy relating to the appointment and remuneration of a director, as far as practicable, or a new appointment policy will be prepared and adopted for the Water Organisation itself based on these policies. Shareholding councils (through the SRF, if relevant) will prepare a board skills matrix to satisfy the requirement to have an appropriate mix of skills, knowledge, and experience on the Board in relation to providing water services, which will then be applied by the SRF in making director appointments.			
5.	*Term of appointment*	(a) Specified appointment term (eg 3 years), with a requirement to retire (but option to be re-elected) up to a maximum term (eg 9 years (3 x 3)) (b) Unspecified appointment term, with no requirement to retire unless removed/replaced	Generally the approach being taken is to have a set appointment term with a maximum aggregate term (noting that initial appointments will need to be staggered to ensure ability to rotate directors over time). We would recommend that an initial 3 year term, with a maximum of 3 terms (ie up to 9 years) would be suitable.	No	Yes	No
6.	*Director Remuneration*	(a) Determined by shareholders by ordinary resolution (ie >50% vote)	We would recommend option (c), while having regard to each shareholding council's appointment and remuneration policy and independent data (or the	Yes	No	No

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua input is anticipated
		(b) Determined by shareholders by unanimous resolution (c) Determined by the SRF	Water Organisation's remuneration policy).			
7.	*Should interested directors be allowed to vote?*	(a) Yes (b) No	We would recommend option (b), except in respect of: 1. any payment or other benefit under s 161 of the Companies Act 1993 2. the entry into an indemnity or insurance arrangement	No	Yes	No
Other matters						
8.	*Whether dividends permitted*	(a) No dividend permitted (b) Dividend permitted with board approval (c) Dividend permitted with unanimous shareholder approval	We recommend option (c) as it gives the Water Organisation some flexibility while ensuring that a decision against reinvesting all surplus funds into maintaining and improving infrastructure and services cannot be made too easily. We consider this approach to be consistent with the purpose, objectives and financial principles of the LG(WS)A.	No	Yes	No
9.	*Additional reporting obligations of the Water Organisation to each Council*	(a) Include additional reporting requirements (b) Rely on s 249 for notice to require additional plans or reports	We would recommend option (b) because it gives the parties the flexibility to develop the reporting requirements rather than having to prescribe them from the outset. Note also that Statement of Expectations will provide further opportunity to	No	Yes	No

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua input is anticipated
			prescribe reporting requirements, and frequency of reporting, and will be required to set out requirements for half-yearly report from Water Organisation to SRF.			
Shareholders' Agreement						
Foundational information						
10.	*Initial and ongoing shareholdings*	(a) Proportionate to the net assets each shareholding council transfers to the Water Organisation (and not subsequently adjusted) (b) Proportionate to the population or number of water connections each shareholding council has at the transfer date (and not subsequently adjusted) (c) One of the above options, with a subsequent review and adjustment (eg annually) to water connections	We have seen varying approaches taken to this. It is important to link the (anticipated) percentage shareholdings with decision-making thresholds.	Yes	No	No
Voting rights and decision making						
11.	*Rights attaching to shares*	(a) The number of shares determine the voting rights of a shareholder	To be considered against the potential initial and ongoing shareholding percentages.	Yes	No	No

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua input is anticipated
		(b) Each shareholder has equal voting rights	Given there are (at least initially) only 2 shareholders, the question becomes whether the larger shareholder should have any 'sole' decision-making power, or whether all shareholder decisions will be by unanimity.			
12.	*SRF membership and appointment rights*	(a) [One or more] elected member[s] of each shareholding council (b) At least one elected member, and [one or more] other person[s] appointed by a shareholding council to represent it (which can be an elected member)	Option (b) reflects the legal requirements for a joint committee under the Local Government Act 2002, which must involve a representative of each local authority. An alternative option would be to establish an other type of subordinate decision-making body, which can allow for entirely appointed members, but we anticipate that elected member representation will be preferred.	Yes	No	No (but see following item 13.)
13.	*SRF membership and appointment rights – mana whenua*	(a) No mana whenua representation (b) Person[s] appointed by iwi, and confirmed by shareholding councils (c) Person[s] appointed by each shareholding council (d) Person[s] appointed jointly by shareholding councils	Some representation on or involvement with SRF considerations and decision-making can provide an appropriate level of participation, even if mana whenua are not given a specific right to appoint director(s) of the WO.	Yes	No	Yes
14.	*SRF membership and appointment*	(a) Yes (b) No	An independent chair of the SRF will promote good governance and help streamline discussions (noting the chair will not necessarily have a casting vote).	Yes	No	No

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua input is anticipated
	rights – independent chair					
15.	*Who will have the right to appoint a shareholder representative to the SRF?*	(a) Council (b) Mayor for each Council	Option (a) may be the most attractive for elected members. Note that each Council will need to approve the delegations to the SRF.	Yes	No	Yes (with regard to the appointment of Tangata Whenua representative, rather than Council representatives)
16.	*Extent of shareholding council's guarantee to Water Organisation's under LGFA arrangements*	(a) Proportionate to shareholding (b) Equal liability	To be considered.	Yes	No	No
Board meetings						
17.	*Frequency of board meetings*	Monthly or as otherwise determined by the Board.	We would recommend adopting this as the standard approach.	No	Yes	No
18.	*Will the chair of a board have a casting vote?*	No	This is the standard approach. However, this needs to considered in the context of Board numbers (ie ability to break a tie).	No	Yes	No
Shareholder meetings						

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua input is anticipated
19.	*Frequency of SRF meetings*	Specify (eg monthly) or leave it to the SRF itself to determine.	Likely the SRF will require a regular cadence initially, and may then be on a more as-required basis except for specific annual activities.	No	Yes	No
20.	*Frequency of shareholder meetings*	Annual, with a right for either shareholder to call a meeting at any time.	We would recommend adopting this as the standard approach.	No	Yes	No
21.	*What constitutes a quorum at a shareholders meeting*	A representative from each shareholding council.	We would recommend adopting this as the standard approach.	No	Yes	No
Decision-making by SRF						
22.	*Decision-making*	Generally by simple majority	We would recommend adopting this approach as it reflects equal voting rights for representatives on SRF (note unanimity point where there are 2 shareholders).	No	Yes	No
23.	*Responsibilities of SRF*	Suggest includes the following matters: (a) Approval of initial plan and budget (b) Preparation and approval of Statement of Expectations (c) Adoption of or changes to Director Skills Matrix (d) Director appointment policy	We would recommend it is appropriate to have all of these matters decided at SRF level, rather than at individual Council level. Note mana whenua membership on the SRF may influence what is included in this scope or may require adjustments so that certain decisions are only for	Yes	No	Yes

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua input is anticipated
		(e) Comments to Water Organisation on draft Water Services Strategy (f) Review of draft Transfer Agreements (but not execution, as that is matter for Councils) (g) Review of draft Transitional or Service Level Agreements (but not execution) (h) Other matters	Shareholders as opposed to non-Shareholder representatives.			
Reserved or other matters						
24.	*Matters requiring unanimous approval of shareholders*	Can include the following matters: (a) Addition of new shareholder (b) Addition of new party to the SRF (c) Liquidation or winding up of Water Organisation (d) Amalgamation (e) Other matters	We would recommend this should be limited to the most critical matters. We recommend (a) to (d).	No	Yes	No
25.	*Matters requiring 75+% approval of shareholders*	(a) Issue of, or changes to, buy-backs of shares (b) Major transactions (being transactions with a value of 50% or more of the assets of the Water Organisation) (c) Changes to constitution	We would recommend adopting this as per the list. This list should be limited to matters which require substantial alignment among shareholding councils. We recommend (a) to (e).	No	Yes	No

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua input is anticipated
		(d) Material change to the nature of the Water Organisation's business (e) Giving financial assistance for the purposes of purchasing shares (f) Other matters				
Dispute resolution						
26.	*Dispute resolution regime*	Negotiation, mediation, arbitration	We would suggest including a usual escalation process and then mediation.	No	Yes	No

Working draft: 9 December 2025

Tauranga City Council and Western Bay of Plenty District Council

Term Sheet: Water Organisation Foundation Documents

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]
Constitution					
Foundational information					
1.	*Name of Water Organisation*	[TBC]	It is proposed that a workstream will be established to address the name of the WO	Yes	No
2.	*Scope of business*	Providing Drinking Water, Wastewater and Stormwater services in the Service Areas, and ancillary activities.	We understand that WBOPDC has resolved to transfer stormwater responsibility to the WO, but a question mark remains over TCC's position. If responsibility for stormwater does transfer to the WO, the intention is for SW related land to be retained by the Councils (dual purpose reserves etc.).	Yes. Political Decision re Stormwater for TCC[3] (to be covered in its own separate issues and options paper).	No

[1] Proposed political decisions to be covered in issues & options paper.
[2] Proposed decision to be covered by recommendation only.
[3] WBOPDC has already made a decision regarding Stormwater.

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]
Ownership and control, and governance structure					
3.	*Number of directors*	[Any number; does not need to be expressly specified but useful to have, eg "Up to 5 directors"]	There are no legislative restrictions on numbers, so this should be led by the Councils' views on 'right sizing' the board to ensure a good mix of skills and experience, by reference to the skills matrix to be developed for the Board. We consider a board of up to 5 directors would enable the appointment of a suitable mix of skills and experience, aligned with the skills matrix (see below). The working assumption is that there will not be an 'interim' or 'establishment' board, but that the Directors appointed will continue through to July 2027 and beyond.	Yes	No
4.	*Director appointment*	(a) Each shareholder will have a right to appoint one or more directors (as specified), with additional directors appointed by agreement (but noting all directors must be independent once the Water Organisation takes on the Water Services obligations) (b) Shareholders (directly or via Shareholders Representative Forum) will jointly appoint all directors	Generally the approach being taken is to have this as one of the roles of the Shareholders Representative Forum (**SRF**) (or similar) (see discussion below). Appointments to the Board should be based on whether the proposed directors meet the requirements of the skills matrix. We have seen iwi representation on SRFs (or similar), but not with specific Board rights, given the requirement for independent directors. We would expect the skills matrix to contain reference to mana whenua knowledge and related matters, which would provide the opportunity to have appropriate expertise on the Board.	Yes	No

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]
			Ideally, the Constitution would align with each Council's policy relating to the appointment and remuneration of a director, as far as practicable, or a new appointment policy will be prepared and adopted for the Water Organisation itself based on these policies. Shareholding councils (through the SRF, if relevant) will prepare a board skills matrix to satisfy the requirement to have an appropriate mix of skills, knowledge, and experience on the Board in relation to providing water services, which will then be applied by the SRF in making director appointments.		
5.	*Director Term of appointment*	(a) Specified appointment term (eg 3 years), with a requirement to retire (but option to be re-elected) up to a maximum term (eg 9 years (3 x 3)) (b) Unspecified appointment term, with no requirement to retire unless removed/replaced	Generally the approach being taken is to have a set appointment term with a maximum aggregate term (noting that initial appointments will need to be staggered to ensure ability to rotate directors over time). We would recommend that an initial 3 year term, with a maximum of 3 terms (ie up to 9 years) would be suitable.	No	Yes
6.	*Director Remuneration*	(a) Determined by shareholders by ordinary resolution (ie >50% vote) (b) Determined by shareholders by unanimous resolution (c) Determined by the SRF	We would recommend option (c), while having regard to each shareholding council's appointment and remuneration policy and independent data (or the Water Organisation's remuneration policy).	Yes	No

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]
7.	*Should interested directors be allowed to vote on remuneration or other matters?*	(a) Yes (b) No (c) No, except for specified circumstances.	We would recommend option (c), with specified exceptions as follows: 1. any payment or other benefit under s 161 of the Companies Act 1993 2. the entry into an indemnity or insurance arrangement	No	Yes
Other matters					
8.	*Whether dividends permitted*	(a) No dividend permitted (b) Dividend permitted with board approval (c) Dividend permitted with unanimous shareholder approval	We recommend option (c) as it gives the Water Organisation some flexibility while ensuring that a decision against reinvesting all surplus funds into maintaining and improving infrastructure and services cannot be made too easily. We consider this approach to be consistent with the purpose, objectives and financial principles of the LG(WS)A.	Yes	No
9.	*Additional reporting obligations of the Water Organisation to each Council*	(a) Include additional reporting requirements (b) Rely on s 249 Local Government (Water Services) Act 2025, for notice to require additional plans or reports	We would recommend option (b) because it gives the parties the flexibility to develop the reporting requirements rather than having to prescribe them from the outset. Note also that Statement of Expectations will provide further opportunity to prescribe reporting requirements, and frequency of reporting, and will be required to set out requirements for half-yearly report from Water Organisation to SRF.	No	Yes

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]
10.	*Scope and nature of Statement of Expectations*	(a) SOE cannot provide direction to the WO on operational matters (b) SOE can provide direction to the WO on operational matters.	Section 228(3) of the Local Government (Water Services) Act 2025 states a SOE must <u>not</u> include any requirement or expectation related to the WO's performance, or exercise of a duty, function or power under the Act. However, section 228(4) states section 228(3) does not apply if the WO's foundation documents provide otherwise. If the shareholders elect option (b), what are those specific operational matters it wishes to influence in the SOE? For example, stormwater charging.	Yes	No
11.	*Scope and nature of shareholders involvement in preparing, amending and finalising the WSS.*	(a) Shareholders can provide comments on the draft WSS, but cannot (i) require the WO to amend the draft WSS; or, (ii) approve the final WSS. (b) Shareholders can (i) provide comments on the draft WSS; (ii) require the WO to amend the draft WSS; (iii) approve the final WSS.	Regardless of the option selected, the WO must give effect to the SOE. Section 236(4) Local Government (Water Services) Act 2025, requires the shareholders to address the scope and nature of its involvement in preparing the WSS in the foundation documents.	Yes	No
Shareholders' Agreement					
Foundational information					
12.	*Initial and ongoing shareholdings*	(a) Proportionate to the net assets each shareholding council transfers to the Water Organisation (and not subsequently adjusted) (b) Proportionate to the population or number of water connections each shareholding council	We have seen varying approaches taken to this. It is important to link the (anticipated) percentage shareholdings with decision-making thresholds.	Yes	No

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]
		has at the transfer date (and not subsequently adjusted) (c) A hybrid model comprised of one or more of a range of metrics (net assets, population, connections etc.) (d) One of the above options, with a subsequent review and adjustment (eg annually) to water connections			
Voting rights and decision making					
13.	*Rights attaching to shares*	(a) The number of shares determine the voting rights of a shareholder (b) Each shareholder has equal voting rights	To be considered against the potential initial and ongoing shareholding percentages. Given there are (at least initially) only 2 shareholders, the question becomes whether the larger shareholder should have any 'sole' decision-making power, or whether all shareholder decisions will be by unanimity.	Yes	No
14.	*SRF membership and appointment rights*	(a) [One or more] elected member[s] of each shareholding council (b) At least one elected member, and [one or more] other person[s] appointed by a shareholding council to represent it (which can be an elected member)	Option (b) reflects the legal requirements for a joint committee under the Local Government Act 2002, which must involve a representative of each local authority. An alternative option would be to establish an other type of subordinate decision-making body, which can allow for entirely appointed members, but we anticipate that elected member representation will be preferred.	Yes	No
15.	*SRF membership and appointment rights –*	(a) No tangata whenua representation (b) Person[s] appointed by iwi, and confirmed by shareholding councils (c) Person[s] appointed by each shareholding council	Some representation on or involvement with SRF considerations and decision-making can provide an appropriate level of participation, even if tangata whenua are not given a specific right to appoint director(s) of the WO.	Yes	No

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]
	tangata whenua	(d) Person[s] appointed jointly by shareholding councils			
16.	*SRF membership and appointment rights – independent chair*	(a) Yes (b) No	An independent chair of the SRF will promote good governance and help streamline discussions (noting the chair will not necessarily have a casting vote).	Yes	No
17.	*Who will have the right to appoint a shareholder representative to the SRF?*	(a) Each Council individually appoints its own representatives to the SRF. (b) TCC and WBOPDC jointly appoint all representatives to the SRF	Option (a) is the standard approach adopted. Note that each Council will need to approve the delegations to the SRF. Depending on the decisions for items 14 and 15 above, the representatives on the SRF may include: Elected Member(s); Other representative(s), such as senior Council Officers or independent experts; Tangata Whenua Representative(s), if it is agreed Tangata Whenua should be represented on the SRF.	Yes	No
18.	*Extent of shareholding council's guarantee to Water Organisation's*	(a) Proportionate to shareholding (b) Equal liability	To be considered.	Yes	No

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]
	under LGFA arrangements				
Board meetings					
19.	*Frequency of board meetings*	Monthly or as otherwise determined by the Board.	We would recommend adopting this as the standard approach.	No	Yes
20.	*Will the chair of a board have a casting vote?*	No	This is the standard approach. However, this needs to be considered in the context of Board numbers (ie ability to break a tie).	Yes	No
Shareholder meetings					
21.	*Frequency of SRF meetings*	Specify (eg monthly) or leave it to the SRF itself to determine.	Likely the SRF will require a regular cadence initially, and may then be on a more as-required basis except for specific annual activities.	No	Yes
22.	*Frequency of shareholder meetings*	Annual, with a right for either shareholder to call a meeting at any time.	We would recommend adopting this as the standard approach.	No	Yes
23.	*What constitutes a quorum at a shareholders meeting*	A representative from each shareholding council.	We would recommend adopting this as the standard approach.	No	Yes

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]
Decision-making by SRF					
24.	*Decision-making*	Generally by simple majority	We would recommend adopting this approach as it reflects equal voting rights for representatives on SRF (note unanimity point where there are 2 shareholders).	No	Yes
25.	*Responsibilities of SRF*	Suggest includes the following matters: (a) Approval of initial plan and budget (b) Preparation and approval of Statement of Expectations (c) Adoption of or changes to Director Skills Matrix (d) Director appointment policy (e) Comments to Water Organisation on draft Water Services Strategy (f) Review of draft Transfer Agreements (but not execution, as that is matter for Councils) (g) Review of draft Transitional or Service Level Agreements (but not execution) (h) Other matters	We would recommend it is appropriate to have all of these matters decided at SRF level, rather than at individual Council level. Note tangata whenua membership on the SRF may influence what is included in this scope or may require adjustments so that certain decisions are only for Shareholders as opposed to non-Shareholder representatives.	Yes	No
Reserved or other matters					
26.	*Matters requiring unanimous approval of shareholders*	Can include the following matters: (a) Addition of new shareholder (b) Addition of new party to the SRF (c) Liquidation or winding up of Water Organisation (d) Amalgamation (e) Other matters	We would recommend this should be limited to the most critical matters. We recommend (a) to (d).	Yes	No

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]
27.	*Matters requiring 75+% approval of shareholders' votes*	(a) Issue of, or changes to, buy-backs of shares (b) Major transactions (being transactions with a value of 50% or more of the assets of the Water Organisation) (c) Changes to constitution (d) Material change to the nature of the Water Organisation's business (e) Giving financial assistance for the purposes of purchasing shares (f) Other matters	We would recommend adopting this as per the list. This list should be limited to matters which require substantial alignment among shareholding councils. We recommend (a) to (e).	Yes	No
28.	*Protection against privatisation*	Expressly address this theme within the foundation documents	This is in direct response to a request from the JGG. On that basis we recommend including this provision. However, including such a clause is very unlikely to override any central government legislation.	Yes	No
Dispute resolution					
29.	*Dispute resolution regime*	Negotiation, mediation, arbitration	We would suggest including a usual escalation process and then mediation.	No	Yes

Water Services | Tauranga City | Western Bay of Plenty District Council

AGENDA

LWDW: Joint Governance Group Meeting

8 December 2025

Date: 8 December 2025

Time: 4.00pm – 7.00pm

Location: Athenree Room, Western Bays District Council Offices, 1484 Cameron Road, Greerton

Order of Business

1. OPENING KARAKIA

2. APOLOGIES

3. BUSINESS

3.1. Part 1: TCC/WBoP/Tangata Whenua

#	Item	Comment/Direction
1	Chairperson discussion	• Chairperson Introductory Comments • Ways of Working
2	Draft Terms of Reference	• Discuss and provide direction or feedback on Draft Terms of Reference • Endorse Terms of Reference to be recommended to Councils for approval
3	Staff Presentation – Project overview and key timelines (late paper)	• Receive overview presentation on project to date, key timelines and forward work programme.
4	Issues & Options Paper – Establish a Shareholder Representative Forum (or not)	• Staff overview of the issue and key considerations • Governance Group discuss and provide direction or feedback as required. • Endorse direction to be recommended to Councils for approval.
5	Issues & Options Paper – Issue an Interim Statement of Expectation (or not)	• Staff overview of the issue and key considerations • Governance Group discuss and provide direction or feedback as required. • Endorse direction to be recommended to Councils for approval

6	Commercial Term Sheet	Refer Paper
		• Discuss and provide direction on the categorisation of commercial terms in terms of:
		  ○ Proposed Political Decision
		  ○ Proposed decision based on staff recommendation
		  ○ Topic where Tangata Whenua input is anticipated
		Notes:
		• *Tangata Whenua did not have opportunity to review prior to agenda being issued so views may differ from the 'anticipated' staff assessment.*
		• *Purpose is to agree on the categories, not to discuss the substantive issues – this will occur through future papers to the Governance Group.*

3.2. Part 2: TCC/WBOP

Item #	Item	Comment/Direction
	No items	•

4. CLOSING KARAKIA

TERMS OF REFERENCE – JOINT GOVERNANCE GROUP LWDW

1. Background

1.1. Tauranga City Council (**TCC**) is working, together with Western Bay of Plenty District Council (**WBOP**) towards establishment of a joint Water Organisation (**WO**) under the Local Government (Water Services) Act 2025 (**Project**).

1.2. On 1 September 2025 TCC and WBOP entered a Commitment Agreement to facilitate the establishment of the WO. The Commitment Agreement allows for an Elected Members Governance Group (**EMG**) to be established (at TCC and WBOP's discretion).

1.3. The Commitment Agreement records the following Relationship Principles:

(a) work together collaboratively and in good faith;

(b) ensure communication between them is open, proactive, transparent and inclusive, to avoid any surprises;

(c) make every effort to understand the other Council's needs and objectives for the joint operating model, and make all reasonable endeavours to ensure the joint operating model meets such needs and objectives;

(d) raise any issues that arise in connection with this agreement at the earliest opportunity, for joint resolution;

(e) resolve disagreements between them promptly and amicably; and

(f) as a courtesy and in the interest of clear and consistent communication, consult with the other Council before commenting publicly on the joint operating model or this agreement.

1.4. Following execution of the Commitment Agreement, the Councils have invited Tangata Whenua (TW) to be involved in the establishment discussions[1].

1.5. TCC and WBOPDC have agreed, at their respective working groups, to vary the commitment Agreement to have, in addition to the EMG[2], a Joint Governance Group (**JGG**) which includes Tangata Whenua representatives (as nominated by Tangata Whenua). This agreement shall be documented by way of a formal variation to the Commitment Agreement, and approved by TCC and WBOPDC.

1.6. This terms of reference is for the JGG.

2. Joint Governance Group Purpose and Decision Making

2.1. To ensure that governance direction is provided in a timely manner, and that the project works at pace, a Joint Governance Group (**JGG**) has been formed to provide a forum to:

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[1] To give effect to the objectives stated in the Commitment Agreement, which includes upholding Treaty of Waitangi obligations and commitments in accordance with the establishment principles.

[2] Yet to be established at the Councils' discretion in accordance with clause 4.5 of the Commitment Agreement

DRAFT

- Hear and consider the views of the other parties, to give effect to the objectives set out in the Commitment Agreement.
    - Address issues that have been escalated to it by the Project Sponsors or CEO Oversight Group for consideration by either the full JGG (TCC, WBOP, TW) or part (TCC/WBOPDC only).
    - Consider Issues & Options papers on matters where governance direction is required.

2.2. Decisions will be made on the following basis:

- Where possible reach a consensus view that can proceed as a recommendation to the respective Councils for final decision making.
- 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.

3. Scope of the Joint Governance Group

3.1. Joint Governance Group meetings will typically be split into two parts.

- Part 1; matters to be considered by TCC, WBOP, and TW.
- Part 2; matters to be considered by TCC and WBOP only.

3.2. Part 1 will include those matters identified for TW input by:

- The ‘Multi-Council Water Organisation Summary Plan (including Due Diligence)” endorsed by TCC on 29 October 2025 and WBOPDC on 14 November 2025.
- The matters in the Commercial Terms Sheet where TW interest is identified.
- Other matters not captured in (a) or (b) above, identified by members of the JGG for TW input, and agreed to by consensus by JGG.

3.3. Part 2 will include all other matters requiring governance direction.

4. Membership and Structure

4.1. The members of the JGG will be the following persons (or such other persons as are nominated by the Mayor/Council/ Tangata Whenua from time to time):

<u>Tauranga City Council Elected Member Working Group</u>

- Cr Marten Rozeboom (Chair TMG).
- Mayor Mahe Drysdale.
- Cr Kevin Schuler.
- Cr Glen Crowther.
- Cr Hautapu Baker.

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Western Bay of Plenty Elected Members Working Group

- Mayor James Denyer (Chair WBMG).
- Rodney Joyce.
- Darlene Dinsdale.
- Grant Dally.
- Graeme Elvin.

Tangata Whenua Working Group

- Kylie Smallman - selected by Tauranga Moana Iwi Collective.
- Hakopa Tapiata - selected by Nga Iwi o Te Tau Ihu o Te Arawa Collective.
- Shadrach Rolleston.
- Rohario Murray.
- Kiritapu Allan.
- Roana Bennett.

5. Meetings and Procedures

5.1. Frequency: The JGG will meet regularly, based on what is dictated by the work and decision-making programme.

5.2. Format: Meetings may be held in person. Virtual format will be the exception but may be required due to urgency.

5.3. Quorum: a minimum of three persons each from TCC, WBOP, and TW.

5.4. Chairing: The Councils have jointly appointed Lyall Thurston as Chair to facilitate meetings. In the absence of the appointed Chair, the Councils will jointly appoint an acting chair for that meeting.

5.5. Agenda: Agendas and supporting documentation will be circulated at least two working days in advance of each meeting when possible. TCC as administrative agent for the project will distribute the agenda.

5.6. As noted above, the agenda will typically be in 2 parts;

- Part 1; matters to be considered by TCC, WBOP, and TW.
- Part 2; matters to be considered by TCC and WBOP only.

5.7. Meeting outcomes and direction: Direction and Action points will be recorded and maintained.

6. Supporting Principles and Criteria

6.1. The JGG will respect the establishment principles and criteria approved by TCC and WBOP, and contained in the Commitment Agreement, including:

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(a) Affordability and Equity: Ensuring water services are affordable and equitable for all communities;

(b) Transparency: Operating with transparency and accountability;

(c) Safe and Resilient Services: Delivering reliable and resilient water services;

(d) Environmental Stewardship: Acting as kaitiaki for water resources;

(e) WO is set up for success: the right governance, capabilities and direction are provided to enable long-term operational success and public value;

(f) Iwi/Hapū Engagement: Upholding Treaty obligations and maintaining open engagement with Iwi and Hapū;

(g) Financial and Asset Management: Overseeing fair and equitable asset and debt transfer, pricing, and capital programme prioritisation.

7. Review and Amendment

7.1. These Terms of Reference will be reassessed at the conclusion of the Due Diligence and Establishment Planning Phase when the Councils have made a final decision on whether to proceed with establishing the WO.

7.2. Amendments to the Terms of Reference require approval of both TCC and WBOP.

8. Duration

8.1. The JGG will operate for the duration of the Project (i.e. either until the WO is operational and/or successfully transitioned, or until a WO Shareholders' Representative Forum is established) or until the JGG is disestablished by agreement of the Councils.

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Issues & Options Paper: Whether or not to establish a Shareholders Representative Forum ("SRF")

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. By necessity, this paper assumes that elected members decide to proceed with the establishment of the WO[1] (and we acknowledge that elected members are yet to make that decision).

3. A key question for the two Councils is whether or not to establish a Shareholder Representative Forum ("SRF")[2] as the primary governance body that will interface with the WO. This question (i.e. whether or not to establish an SRF) informs the nature and scope of other commercial terms and needs to be resolved before the WO's foundation documents (constitution and shareholders agreement) can be drafted.

4. Councils can determine whether to implement a SRF as the joint shareholder governance forum—primarily council representatives, potentially with Tangata Whenua participation—that acts as the primary interface with the WO Board on shareholder matters, holds delegated authority for routine decisions, and coordinates oversight and emergency direction.

5. There is precedent and practice around the country, and the sector trend for multi-Council Water Organisations is to have an SRF.

6. In the event the Councils elect to proceed with a SRF, a separate Issues & Options paper will explain the detail of the SRF. The scope of this paper is limited to whether or not an SRF will be established.

7. This paper will outline the following:

    a. SRF introductory principles.

    b. If a decision is made to establish an SRF, the proposed content of the next SRF Issues & Options paper.

    c. The options available: establish an SRF or not.

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[1] If elected members decide against setting up a WO and instead retain all water services in-house, then the question of whether or not to establish an SRF for the WO is redundant.

[2] Note that the SRF has also been referred to as a "Shareholders Council" and/or a "Shareholding Council". We are using the phrase Shareholders Representative Forum, or SRF to avoid any confusion that may arise from the use of the word "Council".

d. Schedule 1: Diagram of interaction between WO and Councils with / without an SRF.

e. Schedule 2: Table Comparison of Options.

"Introductory principles" regarding a Shareholder Representative Forum

8. These are some key points regarding the prospect of TCC and WBOPDC setting up an SRF for the joint WO:

a. An SRF is a joint governance body, primarily comprised of council representatives[3], whose function is to interact with the WO on behalf of the WO's shareholders.

b. There is a great deal of flexibility in the potential structure of an SRF. The exact size, make-up, mandate and role of the SRF can be designed by the Elected Members of the shareholders.

c. The overriding goal of the SRF would be to create efficiencies in the interaction between the WO and its shareholders.

d. An SRF enables unified oversight and faster decision-making. The SRF would streamline communication and engagement between the WO and Councils, and also coordinate shareholder decisions with the WO.

e. Councils can delegate authority to the SRF for routine matters, while retaining control over major decisions.

f. SRFs (sometimes known by different names) reflect normal practice among multi-council water entities[4], and align with best practice under the Local Water Done Well framework.

g. There is potential for Tangata Whenua representation on the SRF (this will be addressed in the subsequent SRF Issues & Options paper – which we will only prepare if a decision is in fact made to establish an SRF). If the SRF does include Tangata Whenua representation, the parties can consider

[3] However, as noted in this paper, it may also be appropriate, and Council may elect, to also appoint Senior Council Officers, Tangata Whenua or others to also sit on the SRF and/or have a vote on the SRF.
[4] Although many multi-council water organisations are still being established and governance mechanisms have not been finalised, our research at time of writing suggests that every multi-council water organisation will have some form of SRF (even if know by a different name). As examples, these include IAWAI (joint forum) Waikato Waters (Shareholder Representative Forum) Taranaki Regional Water CCO (Shareholders' Forum) Hawkes Bay Water (Joint Governance Group) Horowhenua-Palmerston North-Rangitikei Water (Shareholders' Committee) Tiaki Wai Metro Water (Council–Mana Whenua Partners Committee) West Coast Regional Water Organisation (Joint Shareholder Committee) Kaikōura–Hurunui Water Organisation (Shareholders' Committee)

whether they want to call the SRF the “shareholder representative forum” or something different such as “stakeholder representative forum”. This flexibility can address the fact that Tangata Whenua are not technically “shareholders”. There are also other options for Tangata Whenua involvement outside of membership on the SRF and this will also be addressed in the SRF I&O paper.

If a decision is made to establish an SRF, the proposed content of the next SRF Issues & Options paper

9. If a decision is made to establish an SRF, staff will proceed to prepare an Issues & Options paper that will address the key elements of the SRF. We anticipate that the future SRF paper will be presented to you in conjunction with additional Issues & Options papers that will cover other governance matters (so that decisions on the SRF details are not made in isolation). As mentioned, there is great deal flexibility when it comes to establishing an SRF, and the future decisions may touch on the following matters:

    a. How will SRF membership rights be determined.

    b. Who will have responsibility to appoint representatives to the SRF.

    c. How will representatives be appointed and removed from the SRF.

    d. Whether or not the SRF will have an independent chair.

    e. How Tangata Whenua will interact with the SRF (possible options may include Tangata Whenua representation on the SRF, or a Tangata Whenua Advisory Board).

    f. What responsibilities will the SRF hold (and what responsibilities will be retained by Council Elected Members).

    g. Terms of reference for the SRF.

    h. Number of SRF members.

The options available: Establish an SRF or not

10. The relevant decision is whether or not to establish an SRF. If a decision is made to establish an SRF, then as mentioned above at paragraph 99, staff will prepare a subsequent Issues & Options Paper on the relevant details of the SRF (to be presented in conjunction with other papers on broader governance matters). Schedule 1 of this paper includes a table that compares and summarises the key differences between establishing an SRF and not establishing one, across various factors. But as a

snapshot, the following table outlines the key advantages and disadvantages of each option.

Advantages	Disadvantages
1. Establish SRF	
• An SRF will mean it is not necessary for all EMs across TCC and WBOPDC to engage with the WO. Instead, the EMs can proceed on the basis that once the WO is incorporated, they will have a body of representatives mandated to interact with the WO on their behalf. • This will lead to an increased efficiency in EMs' time and resources. • Establishing an SRF offers clearer governance, stronger collaboration, and operational efficiency. • Establishing an SRF offers a structured, collaborative governance model aligning with proven practice and likely to lead to more coherent oversight of the water organisation. • An SRF facilitates unity, leverages combined expertise, and provides the WO with clear, consolidated direction. • Faster decision process • Clear oversight • Single voice	• Some Elected Members may feel out of the loop • Incremental costs of establishing a SRF • Insufficient experience • Ambiguity between SRF and Councils
2. Do Not Establish SRF	
• Potentially a greater degree of accountability for the WO if it needs to report directly to each entire Council. • All Councillors will be included in discussions with the WO (not a sub group).	• Fragmented governance arrangements with higher risk of non-alignment. • Two Councils have to convene on emergency matters. • Duplicated reporting. • Each Council will act independently as a shareholder. • Not establishing an SRF preserves maximum Council independence in theory, but at the cost of potential inefficiencies and governance risks. • This preserves autonomy but requires ad-hoc coordination for every decision. • It may slow processes, increase duplication, and risk inconsistent guidance to the WO.

Advantages	Disadvantages
	• Without a joint SRF, the water organisation must manage two sets of instructions, which may complicate operations and delay responses.

Next steps

11. Direction is sought from the EMG to decide whether or not to establish an SRF.

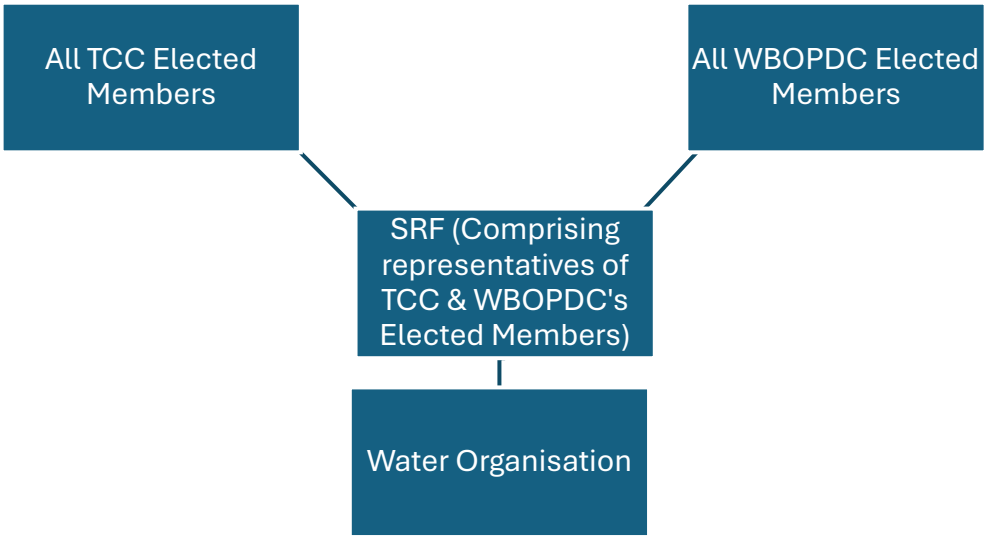
12. If the EMG direction is to establish an SRF, staff will prepare a further paper that explains the options available for how the SRF could be established and what its mandate could be (to be presented in conjunction with other papers on broader governance matters). The goal would be to have the SRF up and running once the WO is incorporated

13. If the EMG direction is not to establish an SRF, then no further work will be undertaken by staff in this “SRF” space. The subsequent work will proceed on the assumption that the Councils will directly make decisions relating to the WO.

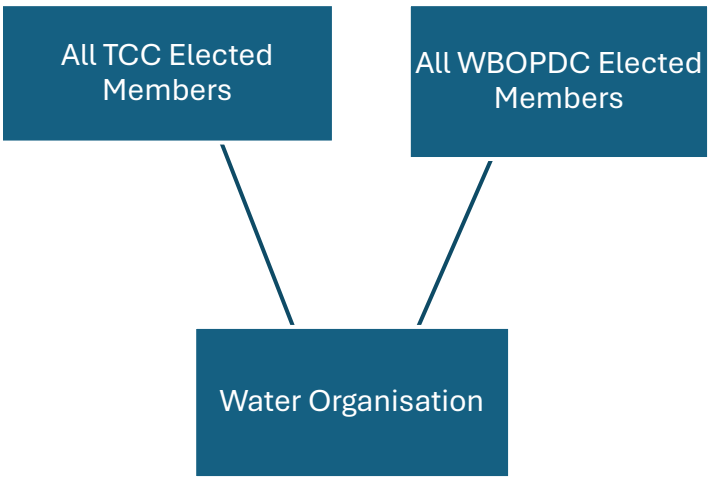
Schedule 1: Diagram of interaction between WO and Councils with / without an SRF

For ease of reference, we have set out below in diagram form how the interaction between the WO and Councils will look with and without an SRF.

With an SRF:



Without an SRF:



Schedule 2: Table Comparison of Options

The following table summarises the key differences between establishing an SRF and not establishing one, across various factors:

Aspect	Option 1: SRF (Joint Forum)	Option 2: No SRF (Separate Oversight)
Governance Structure	Formal joint committee of shareholder reps with agreed delegated powers; presents unified governance front.	No standing joint body; each full council governs independently, coordinating only as needed on an ad-hoc basis.
Decision-Making	Coordinated one-step decisions on many issues – SRF meets and decides (or makes joint recommendation for Councils) in one forum. Quicker resolution of disagreements internally.	Two-step decisions – each Council passes its own resolution; require alignment of two votes. Iteration needed if they disagree, potentially slowing decisions.
Legal Framework	SRF established via shareholders' agreement / constitution with clear terms of reference. Some powers delegated to SRF, with major matters reserved for council shareholder resolutions.	No special governance provisions beyond standard corporate / shareholder law.
Compliance & Accountability	Joint oversight helps both Councils meet any legislative obligations collectively. SRF decisions are binding on Councils by prior delegation. High transparency needed to keep all Elected Members informed.	Each Council individually ensures compliance with legislation. Need strong informal communication to avoid gaps. No joint binding decisions – each council could technically take a different stance (preventing action until resolved).
Financial Implications	Potentially minor added cost for running SRF (meetings, possible independent chair) – typically low cost relative to benefits. Enables joint budgeting for oversight and unified direction on financial matters. Likely improves efficiency and access to collective expertise.	Avoids direct SRF costs. But risk of duplicated efforts (separate analyses, meetings) and slower financial decisions if consensus is hard. Potential misalignment on funding decisions could affect WO's finances.
Operational Implications	Single channel of communication: WO engages	WO must report to and consult two separate owners. Possible

Aspect	Option 1: SRF (Joint Forum)	Option 2: No SRF (Separate Oversight)
	with SRF for shareholder matters, ensuring consistent messages. Faster response in emergencies or urgent decisions (SRF can convene quickly). Jointly set priorities means WO gets one clear direction. Builds a collaborative "one team" culture.	mixed signals or duplicative reporting. Slower to coordinate during urgent issues (must contact two councils). Requires extra effort by WO and Councils to stay aligned.
Precedent and Practice	Aligns with common practice in multi-council initiatives. Seen as good governance to protect all owners' interests and speak with one voice.	No other examples of multi-owner WOs without some joint governance.[5] Could be viable if Councils are very like-minded and committed to constant collaboration.
Council Autonomy	Requires Councils to share control via agreed rules. Full Councils give up some direct decision-making to the SRF in delegated areas, but retain ultimate say on big issues. May feel like a loss of a degree of autonomy for some members.	Maximum autonomy for each Council regarding its shareholder role – no decisions made without each Council's explicit approval. Each council can assert its position independently (though in practice must compromise for joint actions).

[5] We (and our legal advisors) are not aware of any LWDW multi-council WOs not having some form of SRF.

Issues & Options Paper: Whether or not to issue an Interim Statement of Expectations ("Interim SoE")

Background

1. Tauranga City Council ("**TCC**") and Western Bay of Plenty District Council ("**WBOPDC**") is 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. By necessity, this paper assumes that elected members decide to proceed with the establishment of the WO (and we acknowledge that elected members are yet to make that decision).

3. The Act:

    a. makes it mandatory for shareholding Councils to issue a long-term Statement of Expectations ("**Comprehensive SoE**") within 6 months of the WO being incorporated.

    b. gives an option to issue an Interim Statement of Expectations ("**Interim SoE**") that will apply from the day the WO is incorporated to the day (no more than 6 months later) when a Comprehensive SOE is issued.

4. Therefore, a key question for shareholding Councils is whether or not to issue an Interim SoE, and that is the purpose of this Issues & Options Paper. This paper will outline the following:

    a. Interim SoE introductory principles.

    b. The options available: Issue an Interim SoE or not.

    c. Next Steps

"Introductory Principles" regarding an Interim Statement of Expectations

5. An SoE is a joint statement issued by the shareholder Councils outlining their expectations for the WO's performance, strategic direction, and approach to its tasks. The SoE is not an operational plan; it is a high-level directive document that the WO's board and management must take into account. The SoE must cover at least a 10-year horizon and it is anticipated that the SoE will be reviewed (possibly amended) and reissued every three years.[1]

[1] Which is how often a WO will be required to issue a Water Services Strategy in response to a Statement of Expectations – see Local Government (Water Services) Act 2025, section 224.

6. If the Councils decide to issue an Interim SoE, it would take effect as soon as the WO is incorporated. This Interim SoE would give the WO immediate guidance from its shareholders. It would likely be a brief document focusing on the initial 6-month period and would later be replaced by the full Comprehensive SoE.

7. If the Councils do not issue an Interim SoE, the WO's initial operations would commence without a shareholder SoE in place. Instead, the two Councils and the WO's board would need to agree on interim arrangements until a Comprehensive SoE is in place.[2] The interim arrangements could include:[3]

    a. Relevant parts of each Council's long-term plan.

    b. Other business planning or budgetary documents that can guide the WO's operations, and be used for monitoring and reporting on the WO's performance.[4]

8. Key principles about SoEs are outlined below:

    a. **Comprehensive SoEs are mandatory**: Under the Act, the Council shareholders must issue to the WO a Comprehensive SoE within 6 months of the WO's establishment. The Comprehensive SoE is a high-level document in which the Councils set out their expectations for the WO's direction, priorities, and conduct over a period of at least 10 years. The WO in turn is legally required to "give effect" to the SoE in its actions and planning (including in the WO's Water Services Strategy).

    b. **Interim SoEs are optional**: The Councils have an option (but not a requirement) to provide the WO with an Interim SoE immediately upon the WO's establishment. An Interim SoE would set out the Councils' initial expectations for the WO during its first months of the WO's existence, until the Comprehensive SoE is formally adopted.

    c. **Required Content**: Any SoE (Interim or Comprehensive) must address certain key points, including:

        i. The outcomes the Councils expect the WO to achieve, any requirements on the WO regarding resource management and land-use planning, and confirmation that the WO must meet all relevant statutory obligations.

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[2] Local Government (Water Services) Act 2025, section 231(4).
[3] Local Government (Water Services) Act 2025, section 231(5).
[4] Other documents could include each Council's Water Service Delivery Plan, and even the Local Government (Water Services) Act 2025 itself.

ii. The information the WO should include in its half-yearly reports to shareholders[5].

iii. Beyond these mandated items, an SoE can[6] also outline expectations for how the WO will engage with stakeholders (community, Māori, consumers), performance measures, and strategic priorities to guide the WO's own Water Services Strategy.

iv. The Act also requires an SoE be consistent with all legislative obligations of the WO and with its constitution – the SoE cannot override the law or the directors' core duties, but rather provides guiding parameters within which the WO should operate.

d. **Legal Effect**: Once an SoE is in place, the WO is legally bound to give effect to it. This means the WO's board must ensure the organisation acts consistently with the SoE's directives, and incorporates those expectations into its planning documents (like the Water Services Strategy and annual budgets).

e. **SoEs are Published Documents:** Councils must also publish the SoE on their websites for transparency, which would apply to the Interim SoE as well.

f. **Timing for New WOs**: The Act gives a 6-month window after the WO's establishment to create the first Comprehensive SoE. During that initial period, the Act empowers the Councils to issue an Interim SoE if they wish. If an Interim SoE is not issued, the WO will operate for its first few months without a shareholder SoE, though still bound by its constitution, the Shareholders' Agreement, and general law (along with any interim arrangements as discussed above at paragraph7)

g. **Joint but Flexible**: An SoE must be agreed by both TCC and WBOPDC and presented with one voice to the WO. Beyond that, there is flexibility in how an SoE is formulated. An Interim SoE, if used, would by nature be temporary; it could be less detailed and focus on short-term expectations, and then be superseded by the Comprehensive SoE.

h. **Ordinarily, the SoE cannot include requirements or expectations on operational matters** of the WO, which is a restriction set out is section 228(3) of the Act. However, section 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

[5] See section 227(d) and section 248 of the Act.
[6] See section 227(2) of the Act.

228(3) does not apply.[7] This is a matter that can be decided on as part of the development of the commercial terms and SOE, and it is noted that the decision on whether stormwater is included or not in the WO will likely influence what is included in the SOE in terms of operational direction.

9. With these principles in mind, the next section outlines the two options.

The options available: establish an Interim SoE or not

10. The relevant decision is whether or not to establish issue an Interim SoE. At a very high level, the following table outlines the key advantages and disadvantages of each option.

Advantages	Disadvantages
Option 1 – Issue an Interim SOE	
• Early clarity and direction on each Councils' priorities on key matters. • From a governance perspective, providing an Interim SoE signals to the WO's board (and to the public) that the Councils are actively engaged as owners from the start. • By articulating interim expectations, the Councils can mitigate risks associated with the WO's start-up phase. • If the Councils do not issue an Interim SoE, the Councils and WO Board will still need to reach agreement on other interim arrangements, drawing from long-term plans and other resources.	• Preparing a meaningful Interim SoE will demand staff and governance time in parallel with many other establishment tasks.[8] • It effectively means crafting two SoEs in close succession (one Interim, then the Comprehensive). • By definition the Interim SoE would be superseded within 6 months. Some may question the value of a document that will only be in effect for a short period. • Drafting an additional document will mean that staff are not able to work on other establishment matters. • Risk that there is two SOE and there is confusion • There is limited utility in having an interim SOE if the Councils can meet

[7] The exact wording of sections 228(3) and 228(4) is:

(3) The statement of expectations must not include any requirements or expectations that—

(a) relate to the water organisation's performance or exercise of a duty, function, or power under this Act; or

(b) require the water organisation to perform, or not to perform, a specified act, or to achieve a specified result, in relation to a specified person or persons.

(4) However, subsection (3) does not apply if the water organisation's foundation documents provide otherwise.

[8] The Interim document would need to be drafted, reviewed by both Councils, and formally adopted likely within a very tight timeframe (possibly within weeks of the WO's incorporation, if not before).

Advantages	Disadvantages
	the statutory timeframe to prepare a Comprehensive SoE (i.e. within 6 months of the WO's incorporation).
Option 2 - Do Not Issue an Interim SOE	
• By forgoing the Interim SoE step, efforts of staff can be concentrated on developing a Comprehensive SoE within 6 months of the WO's incorporation. • By focusing on the Comprehensive SoE, resourcing is more effectively utilised • Not issuing an Interim SoE avoids any potential confusion between two documents (Interim vs. Comprehensive). • There is sufficient time to meet the statutory timeframe prepare the Comprhensive SoE as long as early direction is received from Council on expectations • The Councils can use other mechanisms such as a letter to the Board to provide some direction until a SOE is put in place.	• Without an Interim SoE, the WO might lack formal direction in its first months (note however that there are other mechanisms for the Council to provide some interim direction). • Stakeholders aware of the water reform may expect the Councils to articulate their expectations of the WO. • If the Councils do not issue an Interim SoE, the Councils and WO Board will still need to reach agreement on other interim arrangements (drawing from long-term plans and other resources) but would have less structure to follow.

Next Steps

11. Direction is sought on whether or not to issue an Interim SoE.

Decision Options

Option 1: Issue Interim SoE

a. Recommended if incorporation is imminent, early decisions are critical, and governance wants strong initial influence.

Option 2: Do Not Issue Interim SoE

b. Recommended if Comprehensive SoE can be adopted quickly and early decisions are low-risk.

12. If direction is to establish an Interim SoE, Council staff will commence drafting the Interim SoE for the new WO. This will involve distilling the Councils' short-term priorities and any critical expectations that should guide the WO from day one.
13. The draft Interim SoE would be brought to both Councils for approval, ideally timed to be adopted just before the WO's incorporation. Once approved, it would be provided to the WO's board.
14. In parallel, staff would continue developing the Comprehensive SoE, with a target to present the full SoE for Council adoption well before the 6-month deadline after incorporation
15. If direction is not to issue an Interim SoE, then staff will focus their attention on other matters such as the WO's establishment documents, and will only begin to focus on the drafting on a Comprehensive SoE in due course.

How Elected Members Should Weigh the Decision

When considering whether to issue an Interim Statement of Expectations (Interim SoE), elected members should apply a balanced approach that considers governance,

timing, and resource implications. The following factors provide a structured basis for decision-making:

1. Timing and Urgency

- **Key Question:** Will the Water Organisation (WO) be incorporated soon, and will critical decisions occur before a Comprehensive SoE can be adopted?
- **Implication:** If incorporation is imminent and early decisions (e.g., stakeholder engagement, compliance setup) could lock in long-term impacts, an Interim SoE provides immediate clarity.

2. Governance Risk Appetite

- **Key Question:** Do the Councils want to assert clear shareholder expectations from day one?
- **Implication:** Issuing an Interim SoE signals active governance and reduces risk of misalignment during the WO's formative stage.

3. Complexity of Initial Phase

- **Key Question:** Will the WO need to make strategic choices early (e.g., engagement with iwi, procurement frameworks)?
- **Implication:** If yes, an Interim SoE can guide these decisions and ensure alignment with Council priorities.

4. Resource Availability

- **Key Question:** Do staff and governance have capacity to draft an Interim SoE without delaying other establishment tasks?
- **Implication:** If resources are constrained, focusing on the Comprehensive SoE may be more efficient.

5. Stakeholder Expectations

- **Key Question:** Will iwi, community, and other stakeholders expect early clarity on Councils' priorities?
- **Implication:** An Interim SoE can help maintain confidence and demonstrate transparency.

6. Legal and Structural Dependencies

- **Key Question:** Does the WO's constitution allow operational direction in the SoE (per s228(4))?
- **Implication:** If operational guidance is permitted, an Interim SoE can be more impactful; if not, its scope will be limited to strategic expectations.

Briefing Paper on the Commercial Term Sheet

Introduction:

The Commercial Term Sheet is attached at **Appendix 1** to this paper (**Term Sheet**). The Term Sheet summarises the decisions to be:

- agreed by the Joint Governance Group (**JGG**) in a series of meetings between now and the end of February 2026; and,

- approved by TCC and WBOPDC at individual Council Meetings at the end of March 2026.

The approved Term Sheet will then inform drafting of the foundation documents for the proposed Water Organisation (**WO**), including the Shareholders Agreement and Constitution.

Categorisation of Decisions:

In collaboration with the TCC Elected Member Working Group (**TMG**) and the WBOPDC Elected Member Working Group (**WBMG**), each of the decisions in the Term Sheet have been categorised into one or more buckets:

- Political decisions.

- Commercial decisions.

- Topics where Tangata Whenua input is anticipated.

Due to time constraints, we are yet to receive direct feedback from Tangata Whenua on the Term Sheet including the classification of each decision within the Term Sheet. The topics we have identified as requiring input from Tangata Whenua are based on staff's interpretation of the topics requiring Tangata Whenua input (taking into account the Tangata Whenua Position Paper), with adjustments following feedback from the TMG and WBMG respectively.

To assist with planning over the coming month, direction is sought from the JGG. The JGG is asked to review, advise of any amendments and then endorse the classification of each decision within the Term Sheet. **Supporting Papers:**

Any item classified as a Political decision and/or a topic requiring Tangata Whenua input, will be accompanied by a detailed Issues and Options Paper to support informed discussion and decision-making.

Any item classified as a commercial decision will be supported by a Recommendation Paper outlining the preferred approach based on best / industry practice etc.

Process and timing:

While there are approximately 28 individual decisions to be made, our plan is to address each decision within logical groupings during a series of meetings scheduled for February 2026. This is intended to make the process more efficient and ensure that all topics are reviewed in a comprehensive and coordinated manner. For example, one logical grouping may be ownership, control and governance structure of the WO. Another logical grouping may be the scope, nature and composition of the Shareholders Representative Forum (should the JGG elect to proceed with a SRF).

Next steps

The next steps are:

- JGG to review, amend as considered appropriate and then endorse the classification of each decision within the Term Sheet.

- Staff to prepare Issues and Option Papers (for political decisions and/or topics where Tangata Whenua input is anticipated) and Recommendations Papers (for commercial decisions). These papers will be prepared and presented based on logical groupings.

- Staff to facilitate a series of meetings between now and the end of February 2026 for the purpose of allowing the JGG to debate and agree on each of the items in the Term Sheet. The aim being for the JGG to reach a consensus view on each item within the Term Sheet that can then proceed as a recommendation to the respective Councils for final decision making.

- TCC and WBOPDC to endorse the agreed Term Sheet at individual Council Meetings in late March 2026.

Working draft: 3 December 2025

Tauranga City Council and Western Bay of Plenty District Council

Term Sheet: Water Organisation Foundation Documents

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua interest is anticipated
Constitution						
Foundational information						
1.	*Name of Water Organisation*	[TBC]	It is proposed that a workstream will be established to address the name of the WO	Yes	No	Yes
2.	*Scope of business*	Providing Drinking Water, Wastewater and Stormwater services in the Service Areas, and ancillary activities.	We understand that WBOPDC has resolved to transfer stormwater responsibility to the WO, but a question mark remains over TCC's position. If responsibility for stormwater does transfer to the WO, the intention is for SW related land to be retained by the Councils (dual purpose reserves etc.).	Yes. Political Decision re Stormwater for TCC[3] (to be covered in its own separate issues and options paper).	No	No
Ownership and control, and governance structure						

[1] Proposed political decisions to be covered in issues & options paper.
[2] Proposed decision to be covered by recommendation only.
[3] WBOPDC has already made a decision regarding Stormwater.

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua interest is anticipated
3.	*Number of directors*	[Any number; does not need to be expressly specified but useful to have, eg "Up to 5 directors"]	There are no legislative restrictions on numbers, so this should be led by the Councils' views on 'right sizing' the board to ensure a good mix of skills and experience, by reference to the skills matrix to be developed for the Board. We consider a board of up to 5 directors would enable the appointment of a suitable mix of skills and experience, aligned with the skills matrix (see below). The working assumption is that there will not be an 'interim' or 'establishment' board, but that the Directors appointed will continue through to July 2027 and beyond.	Yes	No	Yes
4.	*Director appointment*	(a) Each shareholder will have a right to appoint one or more directors (as specified), with additional directors appointed by agreement (but noting all directors must be independent once the Water Organisation takes on the Water Services obligations) (b) Shareholders (directly or via Shareholders Representative Forum) will jointly appoint all directors	Generally the approach being taken is to have this as one of the roles of the Shareholders Representative Forum (**SRF**) (or similar) (see discussion below). Appointments to the Board should be based on whether the proposed directors meet the requirements of the skills matrix. We have seen iwi representation on SRFs (or similar), but not with specific Board rights, given the requirement for independent directors. We would expect the skills matrix to contain reference to	Yes	No	Yes As per Tangata Whenua position paper submitted to TCC, Tangata Whenua request involvement in governance.

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua interest is anticipated
			mana whenua knowledge and related matters, which would provide the opportunity to have appropriate expertise on the Board. Ideally, the Constitution would align with each Council's policy relating to the appointment and remuneration of a director, as far as practicable, or a new appointment policy will be prepared and adopted for the Water Organisation itself based on these policies. Shareholding councils (through the SRF, if relevant) will prepare a board skills matrix to satisfy the requirement to have an appropriate mix of skills, knowledge, and experience on the Board in relation to providing water services, which will then be applied by the SRF in making director appointments.			
5.	*Director Term of appointment*	(a) Specified appointment term (eg 3 years), with a requirement to retire (but option to be re-elected) up to a maximum term (eg 9 years (3 x 3)) (b) Unspecified appointment term, with no requirement to retire unless removed/replaced	Generally the approach being taken is to have a set appointment term with a maximum aggregate term (noting that initial appointments will need to be staggered to ensure ability to rotate directors over time). We would recommend that an initial 3 year term, with a maximum of 3 terms (ie up to 9 years) would be suitable.	No	Yes	No

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua interest is anticipated
6.	*Director Remuneration*	(a) Determined by shareholders by ordinary resolution (ie >50% vote) (b) Determined by shareholders by unanimous resolution (c) Determined by the SRF	We would recommend option (c), while having regard to each shareholding council's appointment and remuneration policy and independent data (or the Water Organisation's remuneration policy).	Yes	No	No
7.	*Should interested directors be allowed to vote on remuneration or other matters?*	(a) Yes (b) No (c) No, except for specified circumstances.	We would recommend option (c), with specified exceptions as follows: 1. any payment or other benefit under s 161 of the Companies Act 1993 2. the entry into an indemnity or insurance arrangement	No	Yes	No
Other matters						
8.	*Whether dividends permitted*	(a) No dividend permitted (b) Dividend permitted with board approval (c) Dividend permitted with unanimous shareholder approval	We recommend option (c) as it gives the Water Organisation some flexibility while ensuring that a decision against reinvesting all surplus funds into maintaining and improving infrastructure and services cannot be made too easily. We consider this approach to be consistent with the purpose, objectives and financial principles of the LG(WS)A.	Yes	No	No

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua interest is anticipated
9.	*Additional reporting obligations of the Water Organisation to each Council*	(a) Include additional reporting requirements (b) Rely on s 249 Local Government (Water Services) Act 2025, for notice to require additional plans or reports	We would recommend option (b) because it gives the parties the flexibility to develop the reporting requirements rather than having to prescribe them from the outset. Note also that Statement of Expectations will provide further opportunity to prescribe reporting requirements, and frequency of reporting, and will be required to set out requirements for half-yearly report from Water Organisation to SRF.	No	Yes	No
10.	*Scope and nature of Statement of Expectations*	(a) SOE cannot provide direction to the WO on operational matters (b) SOE can provide direction to the WO on operational matters.	Section 228(3) of the Local Government (Water Services) Act 2025 states a SOE must not include any requirement or expectation related to the WO's performance, or exercise of a duty, function or power under the Act. However, section 228(4) states section 228(3) does not apply if the WO's foundation documents provide otherwise. If the shareholders elect option (b), what are those specific operational matters it wishes to influence in the SOE? For example, stormwater charging.	Yes	No	No.

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua interest is anticipated
11.	*Scope and nature of shareholders involvement in preparing, amending and finalising the WSS.*	(a) Shareholders can provide comments on the draft WSS, but cannot (i) require the WO to amend the draft WSS; or, (ii) approve the final WSS. (b) Shareholders can (i) provide comments on the draft WSS; (ii) require the WO to amend the draft WSS; (iii) approve the final WSS.	Regardless of the option selected, the WO must give effect to the SOE. Section 236(4) Local Government (Water Services) Act 2025, requires the shareholders to address the scope and nature of its involvement in preparing the WSS in the foundation documents.	Yes	No	No
Shareholders' Agreement						
Foundational information						
12.	*Initial and ongoing shareholdings*	(a) Proportionate to the net assets each shareholding council transfers to the Water Organisation (and not subsequently adjusted) (b) Proportionate to the population or number of water connections each shareholding council has at the transfer date (and not subsequently adjusted) (c) A hybrid model comprised of one or more of a range of metrics (net assets, population, connections etc.)	We have seen varying approaches taken to this. It is important to link the (anticipated) percentage shareholdings with decision-making thresholds.	Yes	No	No

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua interest is anticipated
		(d) One of the above options, with a subsequent review and adjustment (eg annually) to water connections				
Voting rights and decision making						
13.	*Rights attaching to shares*	(a) The number of shares determine the voting rights of a shareholder (b) Each shareholder has equal voting rights	To be considered against the potential initial and ongoing shareholding percentages. Given there are (at least initially) only 2 shareholders, the question becomes whether the larger shareholder should have any 'sole' decision-making power, or whether all shareholder decisions will be by unanimity.	Yes	No	No
14.	*SRF membership and appointment rights*	(a) [One or more] elected member[s] of each shareholding council (b) At least one elected member, and [one or more] other person[s] appointed by a shareholding council to represent it (which can be an elected member)	Option (b) reflects the legal requirements for a joint committee under the Local Government Act 2002, which must involve a representative of each local authority. An alternative option would be to establish an other type of subordinate decision-making body, which can allow for entirely appointed members, but we anticipate that elected member representation will be preferred.	Yes	No	No (but subject to item 15.)

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua interest is anticipated
15.	*SRF membership and appointment rights – tangata whenua*	(a) No tangata whenua representation (b) Person[s] appointed by iwi, and confirmed by shareholding councils (c) Person[s] appointed by each shareholding council (d) Person[s] appointed jointly by shareholding councils	Some representation on or involvement with SRF considerations and decision-making can provide an appropriate level of participation, even if tangata whenua are not given a specific right to appoint director(s) of the WO.	Yes	No	Yes
16.	*SRF membership and appointment rights – independent chair*	(a) Yes (b) No	An independent chair of the SRF will promote good governance and help streamline discussions (noting the chair will not necessarily have a casting vote).	Yes	No	No
17.	*Who will have the right to appoint a shareholder representative to the SRF?*	(a) Each Council individually appoints its own representatives to the SRF. (b) TCC and WBOPDC jointly appoint all representatives to the SRF	Option (a) is the standard approach adopted. Note that each Council will need to approve the delegations to the SRF. Depending on the decisions for items 14 and 15 above, the representatives on the SRF may include: Elected Member(s); Other representative(s), such as senior Council Officers or independent experts; Tangata Whenua Representative(s), if it is agreed Tangata	Yes	No	Yes (with regard to the appointment of Tangata Whenua representative should there be a Tangata Whenua Representative on the SRF).

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua interest is anticipated
			Whenua should be represented on the SRF.			
18.	*Extent of shareholding council's guarantee to Water Organisation's under LGFA arrangements*	(a) Proportionate to shareholding (b) Equal liability	To be considered.	Yes	No	No
Board meetings						
19.	*Frequency of board meetings*	Monthly or as otherwise determined by the Board.	We would recommend adopting this as the standard approach.	No	Yes	No
20.	*Will the chair of a board have a casting vote?*	No	This is the standard approach. However, this needs to be considered in the context of Board numbers (ie ability to break a tie).	Yes	No	No
Shareholder meetings						
21.	*Frequency of SRF meetings*	Specify (eg monthly) or leave it to the SRF itself to determine.	Likely the SRF will require a regular cadence initially, and may then be on a more as-required basis except for specific annual activities.	No	Yes	No

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua interest is anticipated
22.	*Frequency of shareholder meetings*	Annual, with a right for either shareholder to call a meeting at any time.	We would recommend adopting this as the standard approach.	No	Yes	No
23.	*What constitutes a quorum at a shareholders meeting*	A representative from each shareholding council.	We would recommend adopting this as the standard approach.	No	Yes	No
Decision-making by SRF						
24.	*Decision-making*	Generally by simple majority	We would recommend adopting this approach as it reflects equal voting rights for representatives on SRF (note unanimity point where there are 2 shareholders).	No	Yes	No
25.	*Responsibilities of SRF*	Suggest includes the following matters: (a) Approval of initial plan and budget (b) Preparation and approval of Statement of Expectations (c) Adoption of or changes to Director Skills Matrix (d) Director appointment policy (e) Comments to Water Organisation on draft Water Services Strategy (f) Review of draft Transfer Agreements (but not	We would recommend it is appropriate to have all of these matters decided at SRF level, rather than at individual Council level. Note tangata whenua membership on the SRF may influence what is included in this scope or may require adjustments so that certain decisions are only for Shareholders as opposed to non-Shareholder representatives.	Yes	No	Yes (see red items only)

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua interest is anticipated
		execution, as that is matter for Councils) (g) Review of draft Transitional or Service Level Agreements (but not execution) (h) Other matters				
Reserved or other matters						
26.	*Matters requiring unanimous approval of shareholders*	Can include the following matters: (a) Addition of new shareholder (b) Addition of new party to the SRF (c) Liquidation or winding up of Water Organisation (d) Amalgamation (e) Other matters	We would recommend this should be limited to the most critical matters. We recommend (a) to (d).	No	Yes	No.
27.	*Matters requiring 75+% approval of shareholders' votes*	(a) Issue of, or changes to, buy-backs of shares (b) Major transactions (being transactions with a value of 50% or more of the assets of the Water Organisation) (c) Changes to constitution (d) Material change to the nature of the Water Organisation's business	We would recommend adopting this as per the list. This list should be limited to matters which require substantial alignment among shareholding councils. We recommend (a) to (e).	No (However, reassess after agreement on voting and shareholding, items 12 and 13 above).	Yes	No

	Term	Options for consideration	Comments	Proposed political decision[1]	Proposed commercial decision[2]	Topic where Tangata Whenua interest is anticipated
		(e) Giving financial assistance for the purposes of purchasing shares (f) Other matters				
Dispute resolution						
28.	*Dispute resolution regime*	Negotiation, mediation, arbitration	We would suggest including a usual escalation process and then mediation.	No	Yes	No

LEGAL & GOVERNANCE WORKSTREAM

8 Dec 2025

Water Services | Tauranga City | Western Bay of Plenty District Council

Shareholders Representative Forum

Q: Do you wish to establish a Shareholders Representative Forum?

A: Yes or No

Water Services | Tauranga City | Western Bay of Plenty District Council

What is the SRF?

- Joint governance body for shareholder councils (TCC, WBOPDC, with option to include Tangata Whenua)
- Unified oversight and streamlined decision-making for the Water Organisation.
- Common practice in multi-council water entities

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Options & Pros/Cons

Establish SRF:

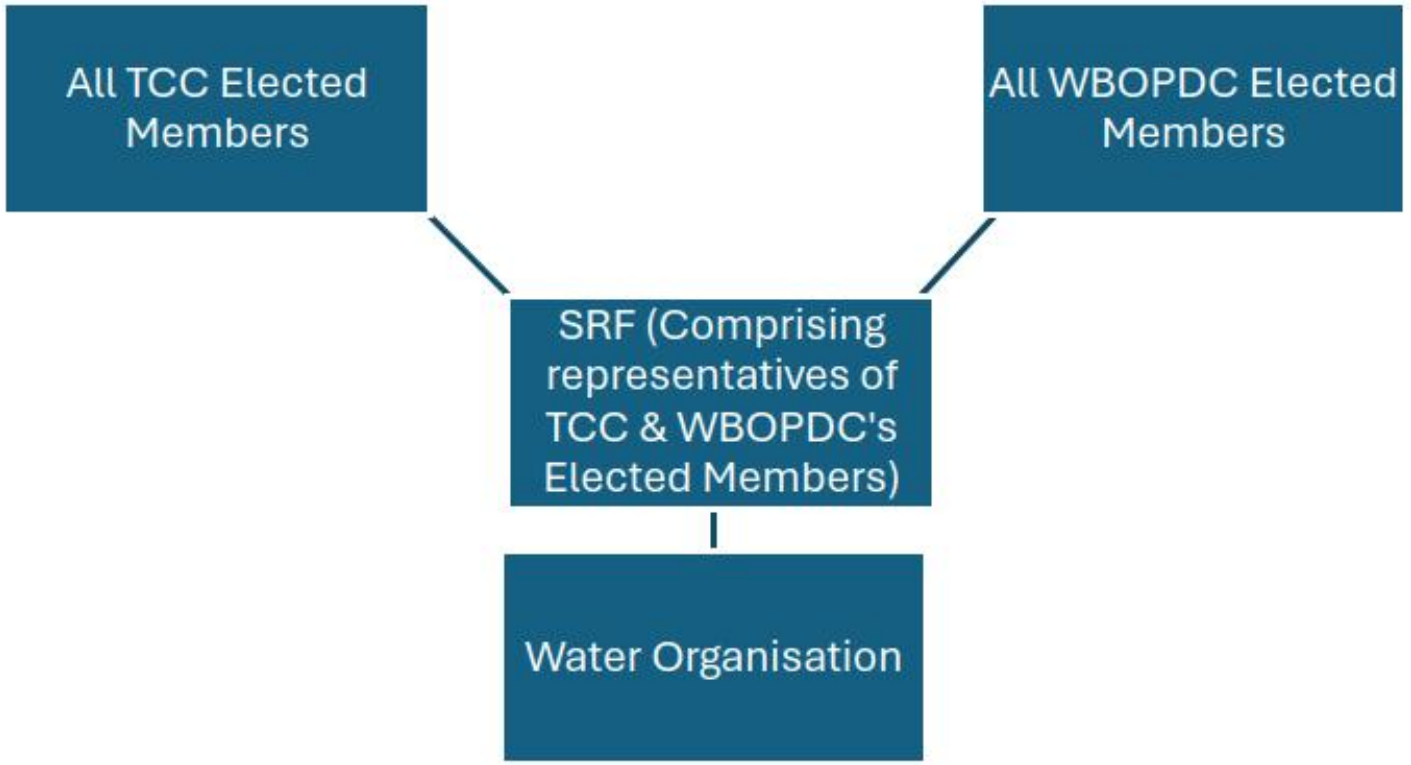
- Pros: Efficient, unified direction, clear oversight, faster decisions, consistent with other WOs across NZ.
- Cons: Some elected members less involved, minor costs.

Do Not Establish SRF:

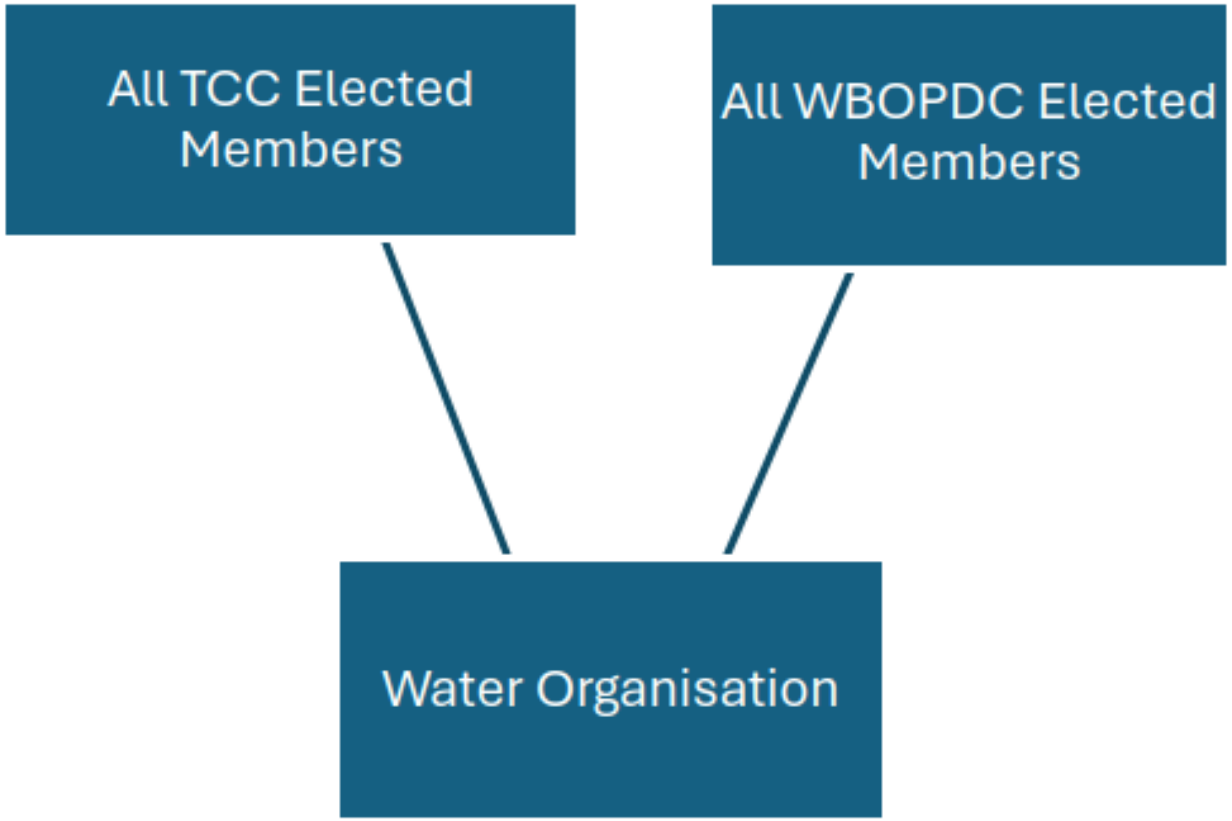
- Pros: All Elected Members involved, maximum autonomy.
- Cons: Fragmented governance, slower decisions, duplicated reporting.

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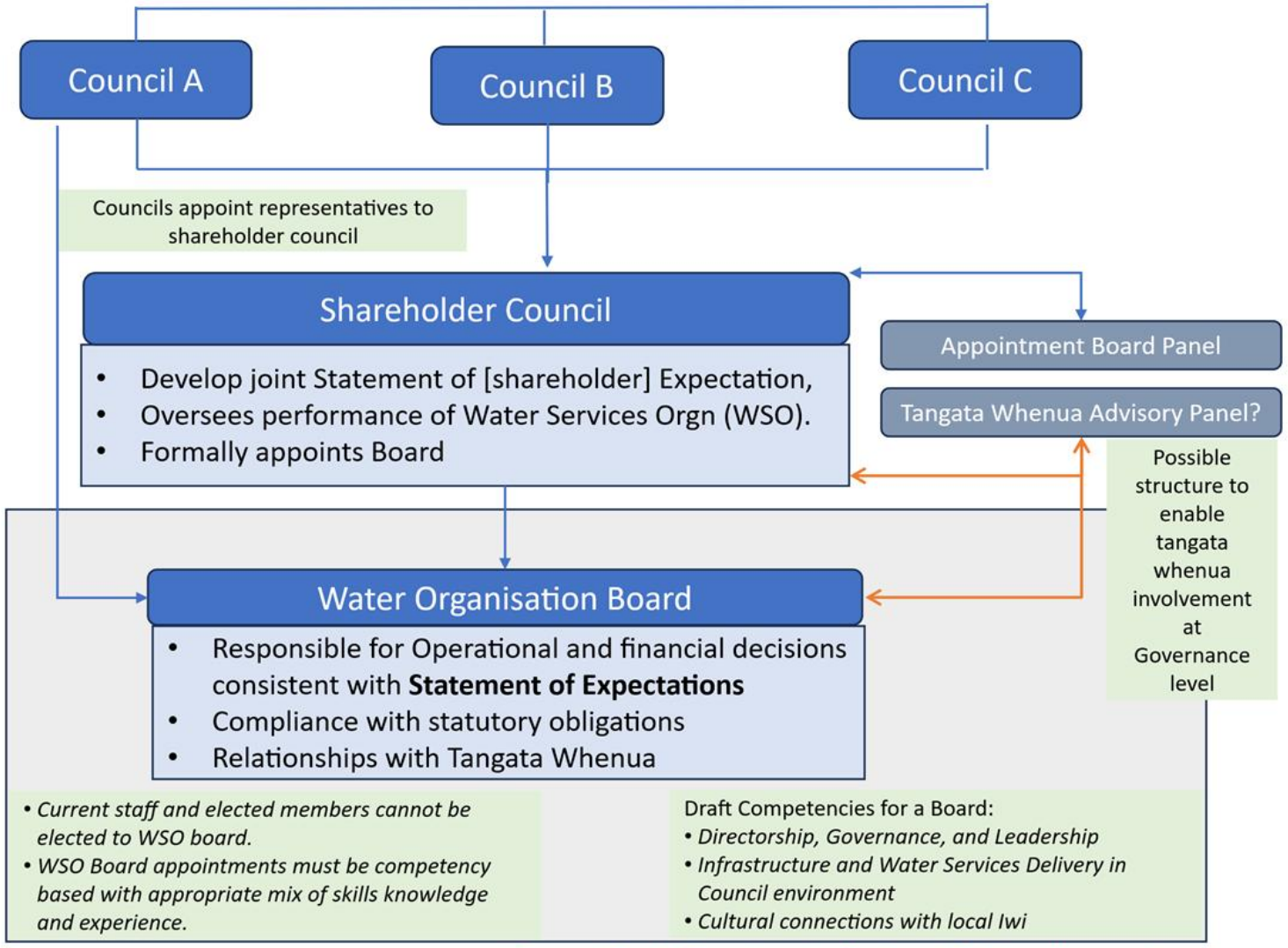
With a SRF:


All TCC Elected Members
All WBOPDC Elected Members
SRF (Comprising representatives of TCC & WBOPDC's Elected Members)
Water Organisation

Without a SRF:



A more detailed look:



Source (blue): Department of Internal Affairs with amendments

Interim Statement of Expectations

Q: Do you wish to issue an Interim Statement of Expectations?

A: Yes or No.

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What is an Interim SoE?

- Optional, short-term directive for WO until full SoE is adopted
- Provides immediate guidance and signals active governance
- Could be seen as a distraction or unnecessary as other mechanisms are available to Councils and Tangata Whenua to provide direction and oversight, such as Commitment Agreement, Interim Arrangements

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Options & Pros/Cons

- Issue an Interim SoE:
  - Pros: Early clarity, risk mitigation, public confidence.
  - Cons: Resource intensive, short-lived, possible confusion.

- Do Not Issue an Interim SoE:
  - Pros: Focus on comprehensive SoE, avoids duplication.
  - Cons: WO may lack direction initially, less structure.

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Commercial Term Sheet

Q: Do you agree with the classification?

A: Yes or No.

If no, what do you want changed?

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Overview

- Commercial Term Sheet summarises key decisions for WO foundation documents
- Categories: Political decisions, matters requiring Tangata Whenua (TW) input, commercial decisions
- Political decisions and matters requiring TW input will have Issues & Options Papers
- Commercial decisions will have a Recommendation Paper only, reflecting best/industry practice

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Classification Process

- Classifications based on staff interpretation of TW proposal, and feedback from TMG and WBMG

- Note: TW have not yet reviewed the Commercial Term Sheet due to time constraints; their views may differ.

What we would like today:

- JGG to confirm SRF (Yes or No).
- JGG to confirm interim SoE (Yes or No).
- JGG to review and endorse classifications within the Commercial Term Sheet.

Next Steps:

- Staff to prepare supporting papers
- Meetings from now to the end of February 2026
- Council formal decision in March 2026.

Water Services | Tauranga City | Western Bay of Plenty District Council

AGENDA

LWDW: Joint Working Group Meeting

22 December 2025

Time: 10.00am – 12.00pm

Location: TCC Office, Level 1 - Room 2 – Te Ara Mātua

Order of Business

1. OPENING KARAKIA

2. APOLOGIES

3. BUSINESS

#	Item	Comment/Direction
1	Chairperson discussion	• Chairperson Introductory Comments
2	Confirmation of Meeting notes	• Meeting notes of 8 December endorsed
3	Issues & Options Paper - Stormwater	• Staff overview of the issue and key considerations • Working Group discuss and provide direction or feedback which can be reflected in TCC Report for decision making

4	Finance Workstream Plan	• Staff overview of the issue and key considerations
		• Working Group discuss and provide direction or feedback as required on:
		  ○ Finance Workstream Plan Summary
		  ○ Scope of Independent Review of Financial Matters.

5	Chief Executive appointment process	• Staff overview • Working Group feedback on draft Position Description and appointment approach
6	Board Skills Matrix	• Staff overview of the issue and key considerations • Working Group discuss and provide direction or feedback as required.
7	Programme Workplan	• Staff overview of the issue and key considerations • Working Group discuss and provide direction or feedback as required.

4. CLOSING KARAKIA

LWDW Joint Governance Group Meeting

(now LWDW Joint Working Group)

Tauranga City Council & Western Bay of Plenty District Council

Western Bay of Plenty District Council Chambers

Date: 8 December 2025

Attendance

Independent Chair: Lyall Thurston

Tauranga City Council: Cr Marten Rozenboom, Cr Glen Crowther, Cr Kevin Schuler, Cr Hautapu Baker

Western Bay of Plenty District Council: Mayor James Denyer, Cr Darlene Dinsdale, Cr Grant Dally, Cr Graeme Elvin, Cr Rodney Joyce

Tangata Whenua: Kylie Smallman. Shadrach Rolleston, Kiri Allen, Roana Murray, Roana Bennett, Hakopa Tapiata

Supporting Staff: Christine Jones, Stephen Burton, Charles Lane, Tyler Buckley, Adele Henderson, Ariell King

Apologies: Mayor Mahé Drysdale

Opening Karakia

Summary Meeting Notes

- The Joint Working Group convened to progress discussions on establishing a joint water services organisation.
- Key topics included Terms of Reference, Tangata Whenua engagement, Commercial and Political Decision Framework, Shareholder Representative Forum (SRF) and Next Steps in the Water Service Delivery Plan.

Joint Working Group Terms of Reference Discussion

- Reviewed draft terms of reference for the Joint Working Group
- Confirmed in-person meetings as the norm and provide for online option also
- Clarified quorum requirements (minimum three representatives per council).
- Agreed that if consensus cannot be reached, differing positions will be documented for council consideration. Decision making sits with Council.
- Supported Terms of Reference being presented to both councils on 16 December for approval.

Tangata Whenua Engagement

- Strong emphasis from Tangata Whenua members on equal involvement of Tangata Whenua in all matters unless they opt out.

Work Programme Additions

- Tangata Whenua spoke to four key items which were requested to be included in the discussions at future JWG meetings:
  - Partnership role of Tangata Whenua
  - Health and Wellbeing of Natural Environmental Resources
  - Role of Treaty of Waitangi/Te Tiriti o Waitangi in decision-making – needs to be explicit
  - Future support requirements of Tangata Whenua for established Water Organisation – technical, governance.

Commercial Term Sheet

- Charles Lane outlined 28 core decisions for the organisation's foundation documents, categorised as political or commercial.
- Tangata Whenua will have opportunity to be involved in all discussions, while councils retain collective authority.
- Further clarified the distinction between political and commercial decisions. Political matters involve shareholder authority and will be considered based on Issues & Options papers, while commercial matters relate to operational efficiency and will be considered based on staff recommendation reports.
- Tangata Whenua representatives emphasised embedding cultural and environmental principles beyond the establishment phase.

Shareholder Representative Forum (SRF)

- Explored options for establishing an SRF to ensure shareholder input and community representation.
- Staff tasked with preparing an Issues and Options paper for February meetings.

Next Steps in Water Service Delivery Plan

Reviewed project timeline and regulatory deadlines.

Action Items

No.	Action Item	Responsible	Details
1	Amend Terms of Reference	Adele Henderson & Christine Jones	Remove distinction between Part 1 and Part 2 matters; assume Tangata Whenua involvement unless they opt out.
2	Prepare Comprehensive Statement of Expectations	Charles Lane, Christine Jone, Adele Henderson	Do not develop interim SOE. Maintain a running list of items to be included. Support intent to deliver SOE well within the 6 months statutory timeframe post establishment of entity.

3	Issues & Options Paper – SRF	Christine Jones & Adele Henderson	Prepare paper for February meetings.
4	Stormwater Inclusion/Exclusion Report	Charles & Legal Team	Report back for 22 December meeting.
5	Add Tangata Whenua Items to Work Programme	Staff	Include four items raised in programme (note some may relate to establishment planning, and some to establishment)
6	Feedback on Commercial Term Sheet	Tangata Whenua Representatives	Provide input on involvement preferences.
7	Feedback on Work Programme Priorities	Western Bay & TCC Working Group Chairs	Advise staff on additional key issues.
8	Amend Commercial Term Sheet	Staff	○ Update items 26 & 27 to 'political decision.' ○ Add a line re exploring protections for privatisation of the waters network
9	Set Up Teams Platform	Staff	Implement document-sharing platform
10	Schedule Future Meetings	Staff	Move meetings Mondays, 2- 5pm in 2026 to accommodate availability.

Updated:16 December 2025

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.

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.

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[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.

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]

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.

[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.

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).

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

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

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 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

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

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" 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

[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.

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:

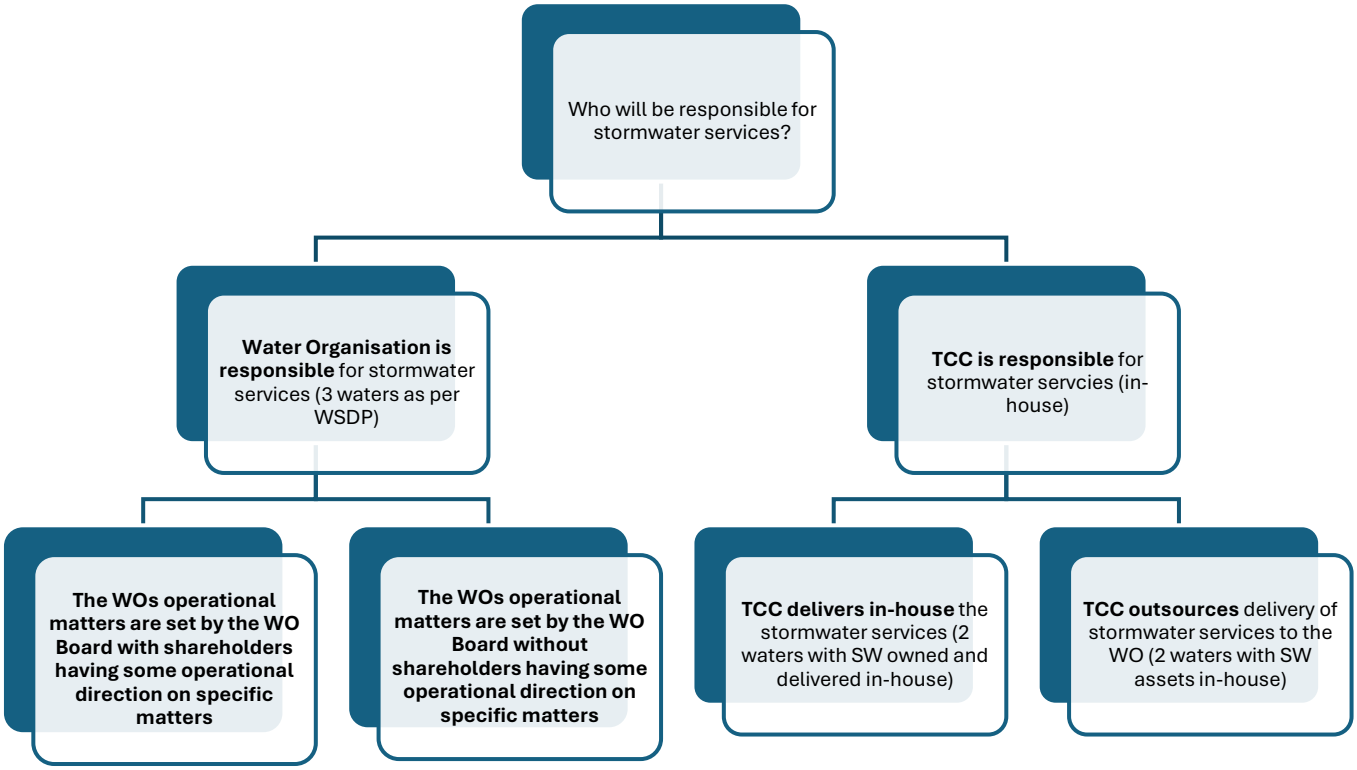
    a. Should TCC or the WO be responsible for stormwater services within the TCC region? *(**TCC decision**)*

[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.

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 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.

[10] Submitted to and approved by the DIA.

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 services for the other. This will likely impact WO governance dynamics and

[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
	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	
• Scope for the WO to achieve economies of scale efficiencies.	• Disconnect between the entity responsible for stormwater services

[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
• 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 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 cannot set direct requirements for the WO's operational matters).[15] However,

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

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.

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[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.

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

[1] On the flipside, TCC can retain ownership of all stormwater land (regardless of whether or not such land is subject to the Reserves Act 1977) and no be the WSP for stormwater, as long as TCC transfers all stormwater responsibility to the WO.
[2] Section 202 of the Act envisions scenarios where two WSPs manage different aspects of the same stormwater network (for example, a council might manage overland flow paths while a WO manages pipes)

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)**:

[3] For example, the management or maintenance of water service networks.

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.

[4] Before entering any "significant contract" (as defined by section 24 of the Act) a WSP must identify and assess options and undertake public consultation in accordance with sections 30 to 32 of the Act.
[5] There are specific requirements for a WSP to access land under section 161 of the Act.

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

[6] See section 23(2)(d) of the Local Government (Water Services Preliminary Arrangements) Act 2024.

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 index[7] 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

[7] A deprivation index is produced by Statistics NZ. It is a measure at meshblock level of socioeconomic deprivation and is based on census data associated with communication, income, employment, qualifications, home ownership, support, living space and dwelling condition. Refer Attachment 1

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:

[8] Also, under section 236(2) of the Act, again if provided for in the foundation documents (s 236(4)), the shareholders can determine that their involvement in finalising the WSS will include the ability to require the WO to amend the draft WSS, or the power to approve the final strategy. Effectively the shareholding councils can give themselves the power to direct content or veto what the WO produces.
[9] Local Government (Water Services) Act 2025, s 229(2).

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.

[10] Under the Act, "stormwater service zone" is defined as follows (but bear in mind that this definition in turn refers to other concepts that include their own definitions under the Act): *"a geographic area (one or more urban areas and adjacent land) within a water service provider's service area that provides stormwater services to, or receives stormwater services from, the stormwater network"*

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 both part of an urban area or adjacent land and 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:

> This WSDP covers the financial position for TCC, noting that financials in the multi-WO will be ring-fenced. This ring fencing was a key assumption provided in TCC's community consultation, where it was proposed that ring fencing in the short to medium term (5-10 years), would underpin the approach to partnering with other councils, and would be in place until such time as there was an explicit decision of Council to transition to a form of pricing alignment. **In a nutshell - Tauranga revenue and debt will stay with Tauranga.**

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.

[11] Local Government Act 2002
[12] Resource Management Act 1991
[13] Civil Defence Emergency Management Act 2002
[14] Soil Conservation and Rivers Control Act 1941
[15] Local Government (Water Services) Act 2025

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

[16] On the basis we have recommended this as best practice.
[17] Particularly where defects in those assets is proven.
[18] Although this will depend on the contractual arrangements between the two parties, which will need to be drafted carefully. Arguments may arise that Council as owner of land (upon which stormwater infrastructure is located) may face some liability exposure in its capacity as landowner.

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

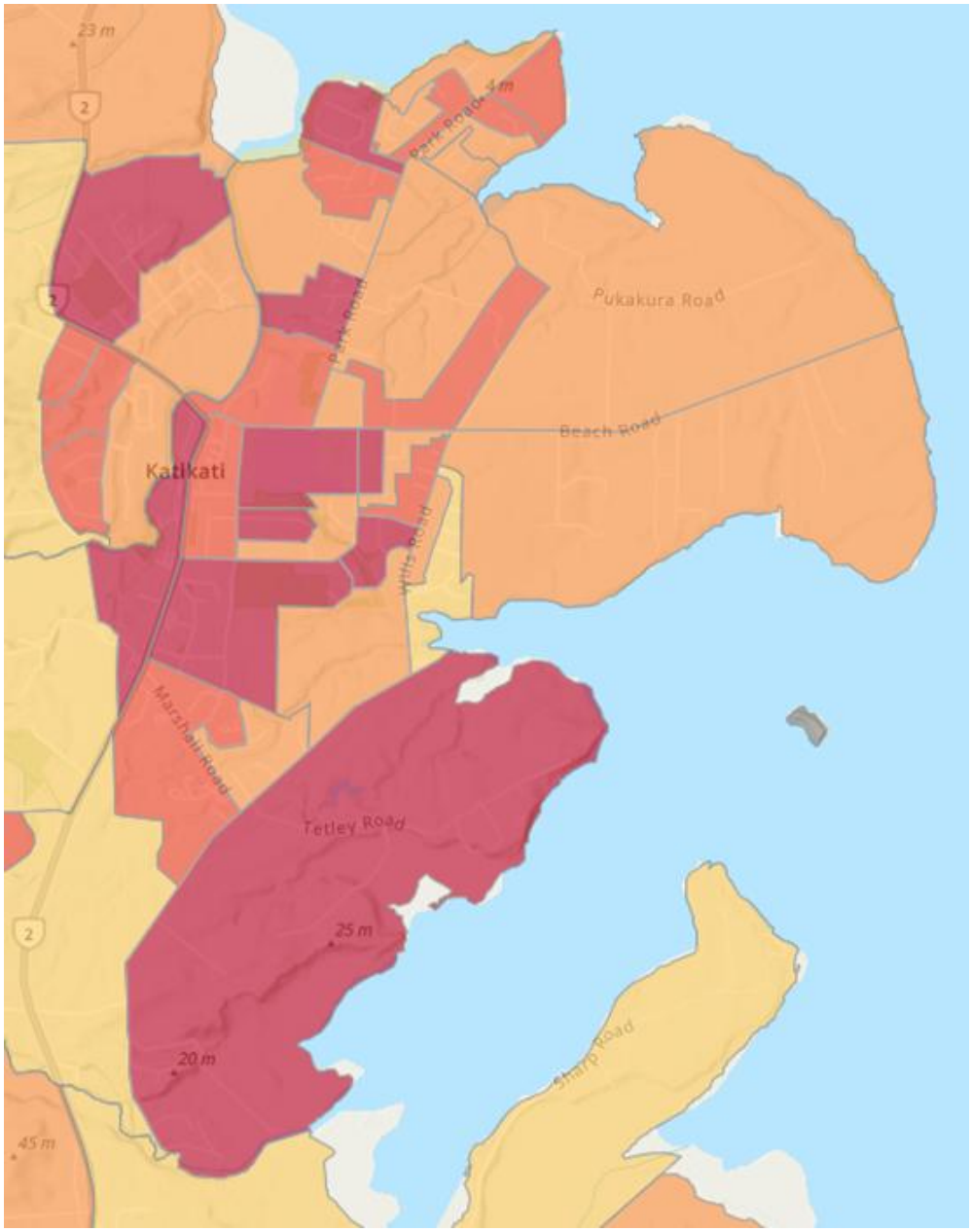
Councils with Territorial Authorities) which will also have an impact on the intersection of responsibilities held by the Territorial Authorities, Regional Councils, and WOs.

Attachment 1 – Deprivation Index

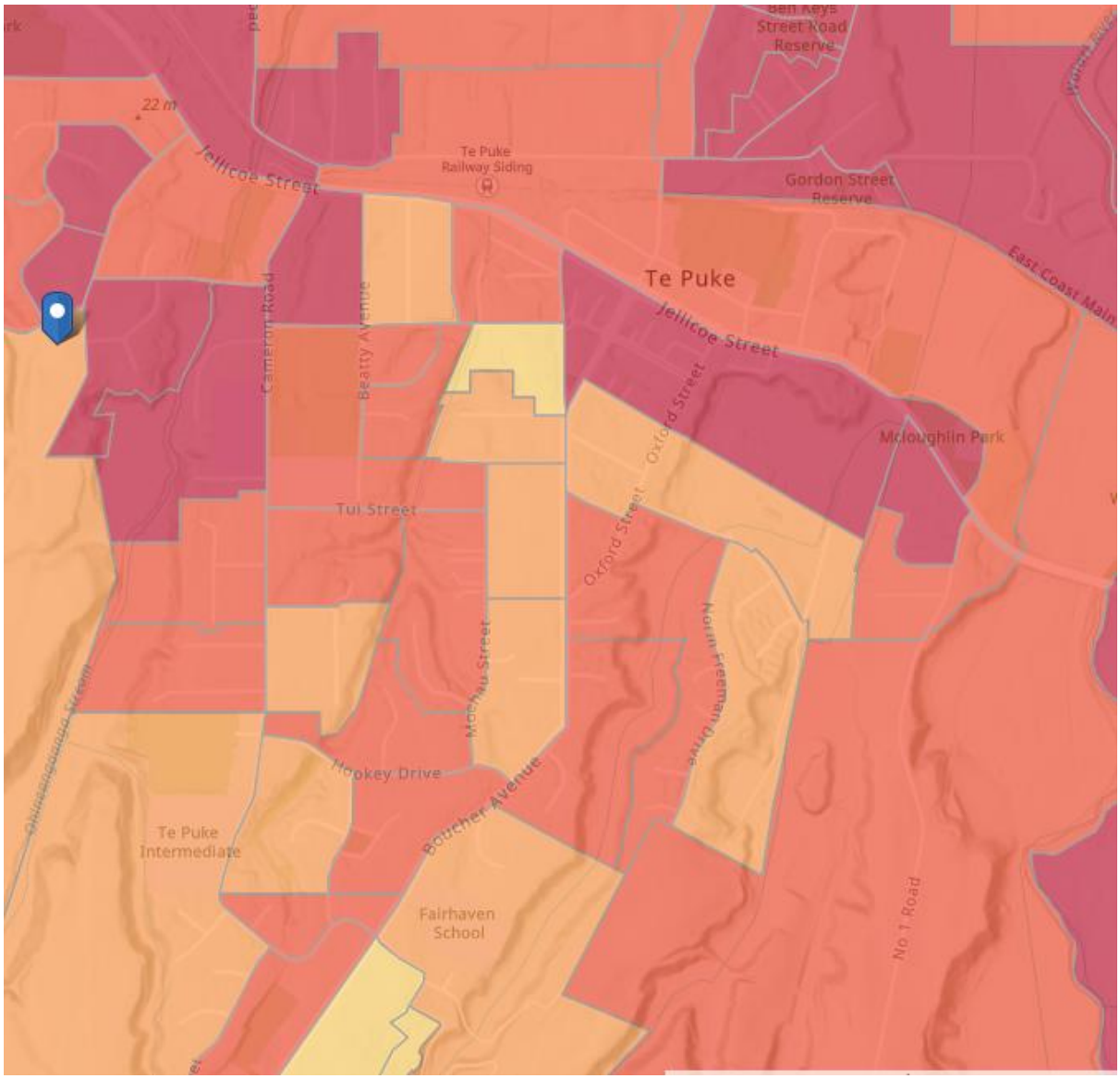
The deprivation index is produced by Statistics NZ. It is a measure at geographic mesh block level of socioeconomic deprivation and is based on census data associated with communication, income, employment, qualifications, home ownership, support, living space and dwelling condition.

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.

Katikati Area

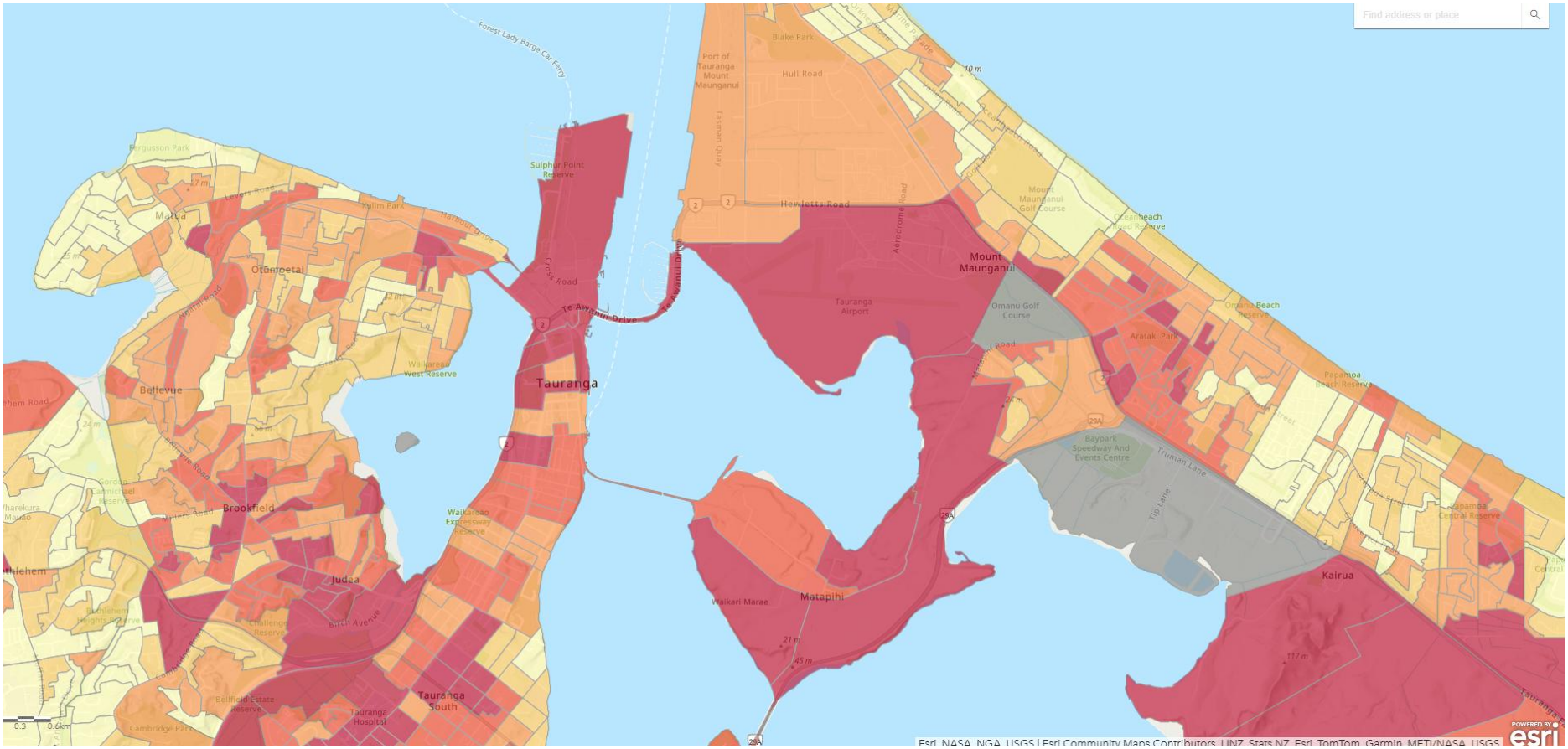


Te Puke Area


Ben Keys Street Road Reserve
22 m
Jellicoe Street
Te Puke Railway Siding
Gordon Street Reserve
Te Puke
Jellicoe Street
East Coast Main
Cameron Road
Beatty Avenue
Oxford Street
Oxford Street
Mcloughlin Park
Tui Street
Mochau Street
North Freeman Drive
Hookey Drive
Boucher Avenue
Te Puke Intermediate
Fairhaven School
No 1 Road

Updated: 16 December 2025

Tauranga



Updated: 16 December 2025

OPTIONS FOR STORMWATER

Scenario	Who owns the land?	Owner of hard stormwater assets?	Statutory Water Service Provider regarding stormwater?	Stormwater Services Delivery "outsourcing" contract needed?	Who sets charges, and what charging mechanisms are available?	Update of the WSDP required?	Key Notes
TCC is WSP for Stormwater							
Scenario 1: This is in the In-house model. TCC retains ownership of land and hard stormwater assets. TCC retains responsibility for stormwater.	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 is the WSP for stormwater services.

[1] If there are two WSPs there will be significant additional work and costs to ensure TCC can fulfill all of its reporting and compliance obligations as a WSP under the Local Government (Water Services) Act 2025.

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Scenario	Who owns the land?	Owner of hard stormwater assets?	Statutory Water Service Provider regarding stormwater?	Stormwater Services Delivery "outsourcing" contract needed?	Who sets charges, and what charging mechanisms are available?	Update of the WSDP required?	Key Notes
Scenario 2: 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	TCC	TCC	TCC	Yes	TCC sets charges. Charges could be based on property value.	Yes (if TCC retains responsibility for delivering stormwaters services, this will require an update of the WSDP)	Two WSPs: WO is the WSP for water supply services and waste water services. TCC is the WSP for stormwater services.

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Scenario	Who owns the land?	Owner of hard stormwater assets?	Statutory Water Service Provider regarding stormwater?	Stormwater Services Delivery "outsourcing" contract needed?	Who sets charges, and what charging mechanisms are available?	Update of the WSDP required?	Key Notes
WO is the WSP for Stormwater							
Scenario 3: TCC retains ownership of land and hard stormwater assets. TCC transfers responsibility for stormwater services	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 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	Who owns the land?	Owner of hard stormwater assets?	Statutory Water Service Provider regarding stormwater?	Stormwater Services Delivery "outsourcing" contract needed?	Who sets charges, and what charging mechanisms are available?	Update of the WSDP required?	Key Notes
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.
Scenario 5:	TCC	WO	WO	Yes	WO sets charges.	No (if TCC does not retain	One WSP for water supply, wastewater and stormwater.

Updated: 16 December 2025

Scenario	Who owns the land?	Owner of hard stormwater assets?	Statutory Water Service Provider regarding stormwater?	Stormwater Services Delivery "outsourcing" contract needed?	Who sets charges, and what charging mechanisms are available?	Update of the WSDP required?	Key Notes
TCC retains ownership of land. TCC transfers ownership of hard stormwater assets and responsibility for stormwater services However, WO contracts with TCC to provide stormwater services					For first 5 years, charges can be based on property value. Thereafter, other mechanisms will need to apply.	responsibility for delivering stormwater services, an update of the WSDP will not be required)	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.

Finance Workstream Plan
To be distributed 17-12-2025

Chief Executive appointment process
To be distributed 17-12-2025

Updated 16 December 2025

Briefing Paper: Board of Directors Skills Matrix

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. It is proposed that the WO will take the form of a registered company, with the company's shareholders being TCC and WBOPDC. It will ultimately fall to the Elected Members (either directly or through the Shareholders Representative Forum (SRF), in the event a SRF is established) of TCC and WBOPDC to appoint a Board of directors to the WO.

3. With the above in mind, staff have prepared this Briefing Paper with the purpose of assisting Elected Members with the decisions they will need to make on the appointment of a Board of directors. The following topics will be addressed:

    a. The legal requirements and expectations for directors of a company established under the Act; and

    b. The Board Skills Matrix document that is **attached** as Schedule 1.

4. Separate to this Briefing Paper, staff will be preparing an Issues & Options Paper that will set out other topics relating to the WO Board of directors. Topics covered in that separate paper will include the size of the Board, the director appointment process and the process for setting director remuneration etc. These topics are <u>not</u> covered within this Briefing Paper.

Legal requirements and expectations and for director appointments

5. Section 48 of the Act states that:

    a. Directors must be appointed based on their competency to perform the role;

    b. Directors must collectively have an appropriate mix of skills, knowledge and experience in relation to providing water services; and

    c. Elected members of shareholding councils, employees of shareholders, and employees of the water organisation cannot be appointed as directors.

6. It is also anticipated that directors will have the attributes and competencies set out in the Institute of Directors competency framework.[1]

[1] org.nz/resources-and-insights/guides-and-resources/director-competency-framework#

7. From an establishment perspective, any director appointments made for the purpose of guiding the transition of water service delivery to the new water organisation should be well placed to provide effective governance during the transitional / establishment phase, and the implementation of new structures and arrangements for effective water service delivery.

Board Skills Matrix

8. To assist Elected Members and/or the SRF with the task of appointing a Board of directors to the WO, we have prepared the attached Board Skills Matrix. It is expected that the Matrix will cover the skills, knowledge and experience necessary to guide the Water Organisation and contribute to the achievement of the objectives of the Act, and the broader expectations of the Council shareholders.

9. The Board Skills Matrix is intended to be used as a guide for selecting directors, and we expect it will be reviewed and updated from time to time. A director may cover one or more of the skills required for the Board, but there is no expectation that any one director would have all or a majority of the skills set out in the Board Skills Matrix.

10. For clarity, not all skills as set out in the Board Skills Matrix are required to be met at any given time (by directors either individually or collectively as a Board); some skills may be deemed irrelevant at a particular stage, or suitable candidates with specific skills that are required for the Board may not be able to be recruited. In the event that a particular skill is not possessed across the Board of directors, that skill can be fulfilled through other means (such as external consultancy or the skillset of WO's executive staff).

11. Finally, we also note that staff are reaching out to Iawai – Flowing Waters (the joint-council water organisation established by Hamilton City Council and Waikato District Council) to incorporate any "lessons learned" that they can share regarding the recruitment, composition and skill-set of a board (including the ways that Tangata Whenua participate in the Iawai process, and the cultural skill sets defined in the Iawai skill matrix).

Updated 16 December 2025

Schedule 1: Board Skills Matrix

The following is a summary of recommended skills and expertise for the appointment of persons to a Board of directors of a company established to deliver water services under the Local Government (Water Services) Act 2025.

AREA OF EXPERTISE / SKILL	REQUIREMENT
Asset and infrastructure management and planning, and delivery	Understanding of good governance of assets and infrastructure, and experience with managing civil infrastructure assets. At least one director should have experience in governing asset management planning and engineering in an infrastructure or utility environment or consulting to the water sector: • Wide-ranging experience across the operations of a asset management / utility / infrastructure organisation with a strong focus on governance and strategic oversight • Experience and understanding of regulations and laws applicable to regulated utility organisations, including economic regulation, and engaging with regulators.
Commercial strategic business expertise	Experience working in commercial business environment and overseeing commercial negotiations. Experience with digital systems and IoT for operations and awareness of associated cybersecurity risks. Experience with innovation capability or digital transformation experience, which is critical for modern water service delivery.
Customer outcomes focused relationships, partnerships and strategies, Stakeholder / community engagement and consultation	Experience in a commercial or utilities environment that demonstrates integrating a strategic customer-experience focused outcome into guiding strategies, together with inspiring a customer-focused culture across an organisation from Day 1. Experience in building and maintaining constructive relationships with partners, stakeholders, and diverse communities (including Central Government), which are underpinned by a strong, authentic, communication style. This includes the ability to understand the different drivers, expectations, and priorities of each group. At least one director should have proven experience in delivering a customer experience, including:

AREA OF EXPERTISE / SKILL	REQUIREMENT
	• Developing long-term strategies that position customers and partners as central drivers of high-performing service delivery. • The ability to champion and elevate the end-to-end customer journey, ensuring colleagues, partners, and stakeholders align their decisions and behaviours with desired customer outcomes. Prior involvement in extensive public engagement and consultation processes, including experience building and maintaining a social licence to operate, and working collaboratively with partners and communities to achieve shared outcomes.
Diversity / Inclusion	Collectively, the directors should reflect diversity of gender, ethnicity, background, and experience. They should bring a range of cognitive styles, cultural perspectives, and professional expertise to ensure inclusivity, representation, and the ability to respond effectively to the needs and expectations of stakeholders and the Tauranga/Western Bay region.
Experience operating within a regulated environment	Experience and understanding of the regulatory environment and compliance requirements specific to the utility / infrastructure sector. This includes familiarity with laws, regulations, and policies that govern that infrastructure industry and legal expertise in interpreting complex legislation, advising on compliance frameworks, and ensuring organisational adherence to statutory and regulatory obligations. Resource and environmental management experience, and a practical understanding of the RMA.

Updated 16 December 2025

AREA OF EXPERTISE / SKILL	REQUIREMENT
Finance and risk	Experience in establishing complex commercial arrangements, including capital structure, debt financing and pricing and charging mechanisms; experience within networked regulated industries; and an ability to bring appropriate pragmatic advice to the Board table. At least one director (ideally two) should have experience in finance, accounting and risk within an establishment context: • Experience managing or overseeing large high stakes investment programmes. • Experience evaluating financial plans ensuring the organisation's long term financial sustainability. • Expertise in identifying, assessing, and mitigating financial, accounting operational, and regulatory risks associated with utility operations. • Ability to assess financial strategies to support sustainable and compliant performance.
Governance and leadership experience	Significant governance and leadership experience, in either a utility, commercial sector organisation, or in a public body. Direct experience or a close understanding of local government type decision-making processes, and political understanding. Preferably leadership experience in water service delivery, or a similar service delivery industry. At least one director should have the ability and willingness to chair the Board. The ability and willingness to participate fully in the life of the Board and on subcommittees as required. A commitment to ensuring continuity of governance and maintaining the capability and expertise required for effective long-term oversight after establishment.
Health and Safety	Detailed understanding of health & safety compliance and regulatory requirements.
Knowledge of Tauranga and Western Bay / Public Accountability	A deep understanding of the Tauranga/Western Bay region and the local government context within the region, and experience and knowledge of communities and appreciation of public accountability. At least one director should be Tauranga/Western Bay based.

Updated 16 December 2025

AREA OF EXPERTISE / SKILL	REQUIREMENT
Te Ao Māori me Te Tiriti o Waitangi	Deep understanding of Treaty of Waitangi (Te Tiriti o Waitangi) and an ability implement Treaty of Waitangi (Te Tiriti o Waitangi) principles in governance, decision-making and engagement. Knowledge of the iwi and hapu in the Tauranga and Western Bay of Plenty and the impact of the water infrastructure on the iwi and hapu. A strong understanding of iwi and hapu governance arrangements and existing relationships, commitments and obligations including Treaty settlement arrangements and obligations. Ability to integrate Māori values and mātauranga Māori into strategic planning, monitoring and operational frameworks. Strong cultural competency and extensive experience in relationship management with iwi and hapu. [2]
Sustainable outcomes and environmental wellbeing	At least one director should have experience in social and environmental sustainability, climate adaptation and climate resilience planning, including an understanding of sustainability frameworks, risk-mitigation strategies, and long-term infrastructure resilience requirements. Deep understanding of kaitiakitanga as a guiding principle for environmental care and intergenerational responsibility. Proven ability to integrate Te Mana o Te Wai and environmental wellbeing objectives into strategies to ensure water services enhance ecosystems and community health. Experience in environmental governance, sustainability frameworks, and climate resilience planning. [3]
Transitional change and/or new organisation establishment	Significant senior level experience and success in large-scale sector and/or organisation reform, change and establishment, preferably at a governance level. Prior proven experience in large scale transitions, organisation reform or the establishment of a new entity. Proven experience in contributing to and building a new entity's organisational structures.

[2] Input received from Tāngata Whenua
[3] Input received from Tāngata Whenua

Programme Workplan
To be distributed 17-12-2025

Water Services | Tauranga City | Western Bay of Plenty District Council

AGENDA

LWDW: Joint Working Group Meeting

29 January 2026

Time: 4.00pm – 7.00pm

Location: TCC Council Chambers, 90 Devonport Road

Order of Business

1. OPENING KARAKIA

2. APOLOGIES

3. BUSINESS

#	Item	Comment/Direction
1	Chairperson discussion	• Chairperson Introductory Comments • Overview of content for next two meetings and how they fit together
2	Confirmation of Meeting notes	• Meeting notes of 22 December endorsed
3	Issues & Options Paper – Shareholding & Shares	• Staff overview of the issue and key considerations • Working Group questions and discussion • *Note - direction / feedback will be sought at the 13 February JWG meeting (not this 29 January meeting). The outcome of that 13 February meeting will be reflected in the TCC and WBOPDC Reports for decision making*

4	Tangata Whenua Related matters	• Verbal staff overview of 3 components on JWG agendas:
		  ○ Legal Framework Tangata Whenua related matters (29/1/26)
		  ○ Partnership role of Tangata Whenua (29/1/26)
		  ○ Stocktake of Tangata Whenua Arrangements (23/2/26)
		A stocktake of existing arrangements and policies is being prepared.
		The stocktake provides an overview of arrangements currently in place including Committees (including SmartGrowth), Advisory Groups, existing CCO's, forums, protocols, water specific arrangements, policies, procedures, tools and training.

5	Legal Framework – Tangata Whenua related matters	• Staff overview of the Factsheet • Factsheet provides an overview of the legislative framework for Councils in respect to Tangata Whenua and the establishment of the proposed Water Organisation (WO) (attached)
6	Partnership role of Tangata Whenua	• Tangata Whenua overview and presentation of core partnership principles (paper to be distributed separately) • Working Group questions and discussions *Note - direction or feedback will be sought at the 13 February JWG meeting (not this 29 January meeting). The outcome of that 13 February meeting will be reflected in the TCC and WBOPDC Reports for decision making*
8	Programme Workplan	• Update on programme workplan

4. CLOSING KARAKIA

LWDW Joint Working Group Meeting

Tauranga City Council & Western Bay of Plenty District Council

Tauranga City Council Chambers

Date: 22 December 2025

Attendance

Independent Chair: Lyall Thurston

Tauranga City Council:

Members: Cr Marten Rozenboom, Cr Glen Crowther, Cr Kevin Schuler, Cr Hautapu Baker,

Non-members: Cr Hemi Rolleston

Western Bay of Plenty District Council:

Members: Mayor James Denyer, Cr Darlene Dinsdale, Cr Grant Dally, Cr Graeme Elvin, Cr Rodney Joyce

Non-members: Cr Margaret Murray-Benge (part of meeting)

Tangata Whenua:

Members: Kylie Smallman. Shadrach Rolleston, Kiri Allan, Rohaio Murray, Roana Bennett, Hakopa Tapiata.

Non-members: Matire Duncan & Spencer Webster

Supporting Staff: Christine Jones, Stephen Burton, Charles Lane, Tyler Buckley, Cathy Davidson, Kathryn Sharplin, Adele Henderson, Ariell King

Apologies: Mayor Mahé Drysdale

Opening Karakia

Key Discussion Items

Meeting Notes – 8 December 2025

- Endorsed with minor changes

3.1 Stormwater Issues & Options Paper

Background:

- DIA-approved Water Services Delivery Plan currently transfers 3 waters to the water entity.
- TCC passed an additional resolution requesting further work on stormwater before final decision. Possible retention of stormwater in-house.

Discussion Points:

Issue 1: Who should be responsible for stormwater?

Option 1: Transfer stormwater responsibility to water entity (align with Western Bay).

Option 2: Retain stormwater with TCC (requires consultation, plan amendment, Ministerial approval).
Noted: Ownership vs responsibility can be split; statutory obligations apply to any water service provider.

Discussion on Issue 1

Tangata Whenua View:

- Preference for integrated approach across all waters; affordability and environmental coherence emphasised.
- Tangata Whenua view it as 'one water". Integrated view of the whole is an inherent cultural value (rather than splitting into 3 separate issues)
- Different owners over different boundaries not preferred.

WBOPDC

- Preference to keep stormwater in the Water Organisation (WO)
- WBOPDC will benefit from the scale which inclusion of TCC stormwater in the WO will bring.

TCC

- Mixed views. Some supportive of stormwater in WO and an alternative view that it should remain in-house in TCC.

Issue 2: If TCC retains responsibility, who delivers stormwater?
Option1: TCC delivers in-house
Option 2: TCC outsources to water entity

- Refer above comments – most spoke in support of 3 waters being in delivered in the one entity of the WO.

Issue 3: Who should set stormwater charges – Water Entity Board alone, or Water Entity Board with input from shareholders?

- Option 1: with shareholder direction
- Option 2: without shareholder direction

- Current: based on rateable value.
- Act requires transition to alternative charging within 5 years (fixed fee, deprivation index, land size, permeable area considered).

- Risks: Commerce Commission may challenge unorthodox funding models.

Discussion:

- Mixed views; no consensus reached.
- For shareholder direction:
    - More direction provided from the Councils to the WO the better
    - Gives clear guidance to the new organisation
    - Clearer picture of what the Councils are seeking.
- Against shareholder direction
    - Noted that there are other mechanisms which provide the shareholder with the ability to influence both formal and informal mechanisms (SOE, director appointments, removal of directors, ultimate asset control).
    - Allow the directors of the WO to exercise governance

Next Steps:

- TCC Staff to prepare financial modelling and implications for 10 Feb TCC meeting.
- Feedback from today to inform Council report.

4 Finance Workstream

- Finance workstream report for information only – no direction required.
- Due diligence underway on asset valuations, debt transfer, growth funding mechanisms.
- Independent review to assess debt levels and pricing pathways.
- Focus: Ensure financial sustainability and transparency.

5 CEO Appointment Process

- External recruitment agency to be engaged.
- Job description refined; feedback from Tangata Whenua incorporated where appropriate.
- Discussed that some of the points raised by Tangata Whenua may be more appropriately addressed in other documents such as the Statement of Expectation rather than the CE position description.
- Term: 2 years with expectation of continuity subject to Board review.

Action:

- Council and Tangata Whenua Chairs to work with Adele and Christine to finalise JD early January.

6 Board Skills Matrix

- Alignment with CEO JD and partnership principles emphasised.
- Strengthen legal and accounting requirements

7 Work Plan & Timeline

- Key Dates: 29 Jan (Shareholding), 2 Feb (Governance), 9 Feb (Decision-making workshop), 2 Apr (Final Council decision).
- Noted that shareholding Councils guarantee may be moved to 2 March to be presented together with the financial modelling. Stocktake of Tangata Whenua arrangements may come forward to 23 February to manage agenda items balance.
- Name & Branding: Agreement to select a transitional name; branding deferred.

Work Plan & Timeline – Tangata Whenua

- Tangata Whenua offered support in drafting partnership-related papers.
- Acknowledgement of tight timelines and need for collaboration.
- Summary provided of parts 2 & 6 of the Local Government Act principles and requirements related to facilitation of and participation by Māori in local government decision making processes. Also noted that the Water Services Act has some requirements.
- Noted no specific requirement for territorial authorities to give effect to the Treaty, but requirements for Council to take into account relationship of Māori and their culture / traditions in certain circumstances.
- Stocktake of current arrangements that each Council has in place with Tangata Whenua including participation in decision making being prepared and will be reported to the Joint Working Group (is included in the work programme). Mayor and Councillors have given undertaking that intention is that there would be some transfer of these arrangements to the waters organisation. Noted there may need to be some changes as it is 2 Councils with different arrangements coming together into one organisation. Draft of the TCC stocktake has been provided to TW, and WBOPDC is under development. Will be on a future agenda item of the Joint Working Group.

Closing

- Meeting closed with karakia.
- Next meeting: 29 January 2026 at Western Bay offices.
- Christmas/New Year wishes extended to all.

Final: 27 January 2026

Issues & Options Paper: Shareholdings, Share Rights, and Shareholder Approval Matters

Purpose

To obtain direction from the JWG on preferred options for shareholding, share rights, and shareholder approval matters for inclusion in establishment documents including the Shareholders Agreement.

Direction sought from this paper:

1. Preferred basis for share allocation.
2. Preferred approach to voting rights.
3. Identification of decisions reserved for unanimous approval vs special resolution (75% threshold, or higher).

Summary

The intent of this section is to highlight the key points arising from this paper.

Preferred basis for share allocation – Net assets

Key point

- If one party owns more shares, that does not automatically mean that the larger shareholder must have more voting rights.

What does this mean

- The shares in the WO would be allocated to each council based on the total net value of the council's assets (minus agreed liabilities) transferred to (or assumed by) the WO.
- Using the balances for TCC and WBOPDC (see Schedule A) this would mean that the shareholdings based on net assets are:
    - TCC 86%
    - WBOPDC 14%

Why

- Ease of implementing the allocation method (which can avoid disagreements), including the availability of the information required, ensuring transparency of the methodology and updating the share allocation.
- Simple to explain to key stakeholders (including ratepayers).

Potential approaches to voting rights for shareholders – JWG decision sought

Key points

- Decisions of Shareholders: There are only a limited number of decisions where a shareholder vote will be required e.g., adding new Council's to the WO, amending the constitution or Shareholders Agreement etc (see the diagram on page 7)

- Decisions of the SRF: Many governance decisions within the WO are likely to be delegated to the Shareholders Representative Forum (still to be decided whether one will be created and the membership), such as issuing the statement of expectations, appointing the WO's Board etc. (see the diagram on page 8).

- Decisions of the Board: The Board is responsible for making day to day operational decisions, such as approving budgets, capital work programmes etc. (see the diagram on page 9)

- For decisions of shareholders, there are different decision thresholds – unanimous, special resolution and ordinary resolution.

- Two options presented:

    - Voting based on share allocation.

    - Voting based on one vote per Council.

What does this mean

- Where there are two shareholding councils both options (voting based on share allocation; voting based on one vote per council) can result in negative or positive control (depending on the required decision threshold). For an explanation of how voting rights may apply in different scenarios, see the table on pages 12 and 13.

- Matters to consider include the simplicity of the voting system, what type of decision-making model the voting system supports e.g. co-operative versus a majority-minority model. The advantages and disadvantages of the options are presented for discussion.

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. By necessity, this paper assumes that elected members decide to proceed with the establishment of the WO.

3. Key questions for the shareholding councils must be decided for the purpose of drafting the WO Constitution and Shareholders’ Agreement (“**SHA**”). These include the initial and ongoing shareholdings of the WO, how shareholder voting rights will be determined, which matters will require unanimous shareholder approval, and which matters will require approval by more than 75+% (or some higher threshold) of shareholders’ votes.

4. This paper will outline the following:

    a. Introductory principles relating to shareholding, share rights and matters requiring shareholder approval by ordinary resolution, special resolution or unanimous written approval.

    b. An overview of how shareholders may make decisions by ordinary resolution, special resolution or unanimous written approvals based on theoretical shareholdings and voting rights.

    c. The options available for the following issues:

        i. Initial and ongoing shareholdings:

            1. Sub-part A: Methodology of allocating shares.

            2. Sub-part B: Ongoing review and adjustment of shares.

        ii. Rights attaching to shares.

        iii. Matters requiring unanimous approval of shareholders.

            1. Sub-part A: Are there defined material decisions which require unanimous approval?

            2. Sub-part B: If yes, what are the matters that will require unanimous approval?

        iv. Matters requiring special resolution approval of shareholders’ votes.

            1. Sub-part A: Should any matters be added to the statutory list of special resolution topics (Yes / No)?

            2. Sub-part B: If yes, what are the additional matters that will require special resolution?

            3. Sub-part C: Should the threshold for special resolutions be increased above the statutory threshold of 75% and/or above the majority shareholder’s shareholding?

"Introductory principles" regarding Shareholdings, Share Rights, and Shareholder Approval Matters

5. These are some key points regarding shareholdings, share rights, and shareholder approval matters for the joint WO:

    a. Around the country, varying approaches have been taken or are currently being considered to the initial and ongoing shareholdings of joint Water Organisations.

    b. It is important to understand that the matter of shareholding and the matter of voting rights are two separate topics, and each can be managed in different ways (based on negotiations between the parties). For example, it would be possible for *shareholding to be split on a 70/30* basis but *voting rights to be split on a 50/50* basis (or whatever else the parties may agree upon). That is, just because one party may own more shares, that does not automatically mean that the larger shareholder must have more voting rights.

    c. The SHA can provide for the initial shareholdings to be reviewed and adjusted over time, for example to reflect changes in population or water connections in each shareholder's region, or some combination of these (or other) factors. This approach is being considered by other groups, based on a regular (annual or bi-annual) review, potentially with some materiality thresholds applying before any change is made to the councils' respective shareholdings.

    d. The SHA and Constitution for the WO can provide that if a shareholding council exits the WO, then the assets (and associated debts) relating to / located in a council's district will be transferred back to that council, and therefore there may not be a need to expressly link shareholding percentages to a shareholding council's asset / debt values (either initially or over time). Having said that, where a shareholding percentage is not directly linked to net assets, from an accounting perspective, the parties are likely to end up with a profit / loss on initiation within the individual councils.[1] The potential accounting gain or loss may require careful communication with stakeholders. This gain or loss would be a one-off entry upon inception of the WO and would net off between the shareholding councils. (i.e. gains in one council will be offset by loss in another). These gains or losses would be reversed if the WO was later dissolved.

    e. Ultimately, decisions on the approach to shareholdings should take into account the kinds of decisions that will be made by councils as shareholders, as opposed to decisions which are delegated to either:

        i. the Shareholders Representative Forum ("**SRF**") (if one is established[2]); or

        ii. the WO's Board.

[1] For example, in the event initial shareholdings were issued on the basis of population, this would likely result in an initial loss to TCC of $389m, or debt within the WO back to TCC of $1,430m. See Schedule A for reference.

[2] And if one is established, we acknowledge that the name of the Forum may be something different, such as Stakeholder Representative Forum (particularly if non-shareholders sit on the Forum, such as Tangata Whenua representatives).

f. For ease of reference, these are the types of decisions that we would ordinarily expect to see falling to each of the above parties:

    i. Decisions typically left to WO's shareholders (i.e. the types of decisions where the voting rights allocated to shareholders will form the basis for the decision-making):

        - adding new councils to the WO;
        - amending the constitution or SHA;
        - approving an amalgamation, merger or major restructure of the WO;
        - issue of, or changes to rights attaching to, or buy-backs of, shares;
        - major transactions (being transactions with a value of 50% or more of the assets of the WO[3]);
        - a material change to the nature of the WO's business;
        - giving financial assistance for the purposes of purchasing shares; and approving any shareholder funding and/or shareholder guarantee obligations.

    ii. Decisions typically left to a SRF[4]:

        - reviewing and providing feedback on annual reports and performance results;
        - delivering statement of expectations;
        - reviewing and approving water services strategy;
        - appointing members of the WO's Board;
        - reviewing WO's significance and engagement policy;
        - review the performance of the WO's Board.

    iii. Decisions typically left to the WO's Board[5]:

        - annual budgets;
        - capital work programmes;

[3] On this point, we note that the WO's net assets are likely to be circa $3b+, so the likelihood of the WO entering a single transaction worth 50% of that amount is relatively low.
[4] We acknowledge that the exact decisions that will be delegated to this WO's SRF are yet to be determined (and will be discussed at JWG meetings across February 2026), and we only include general examples that we acknowledge may well be subject to change.
[5] See section 128 of the Companies Act 1993.

- asset management and renewal decisions;
- organisational policies;
- regulatory and compliance decisions;
- approval of operational contracts;
- establishing internal committees;
- monitoring internal performance and risk;
- appoint CE, set KPIs for CE and review CE's performance.

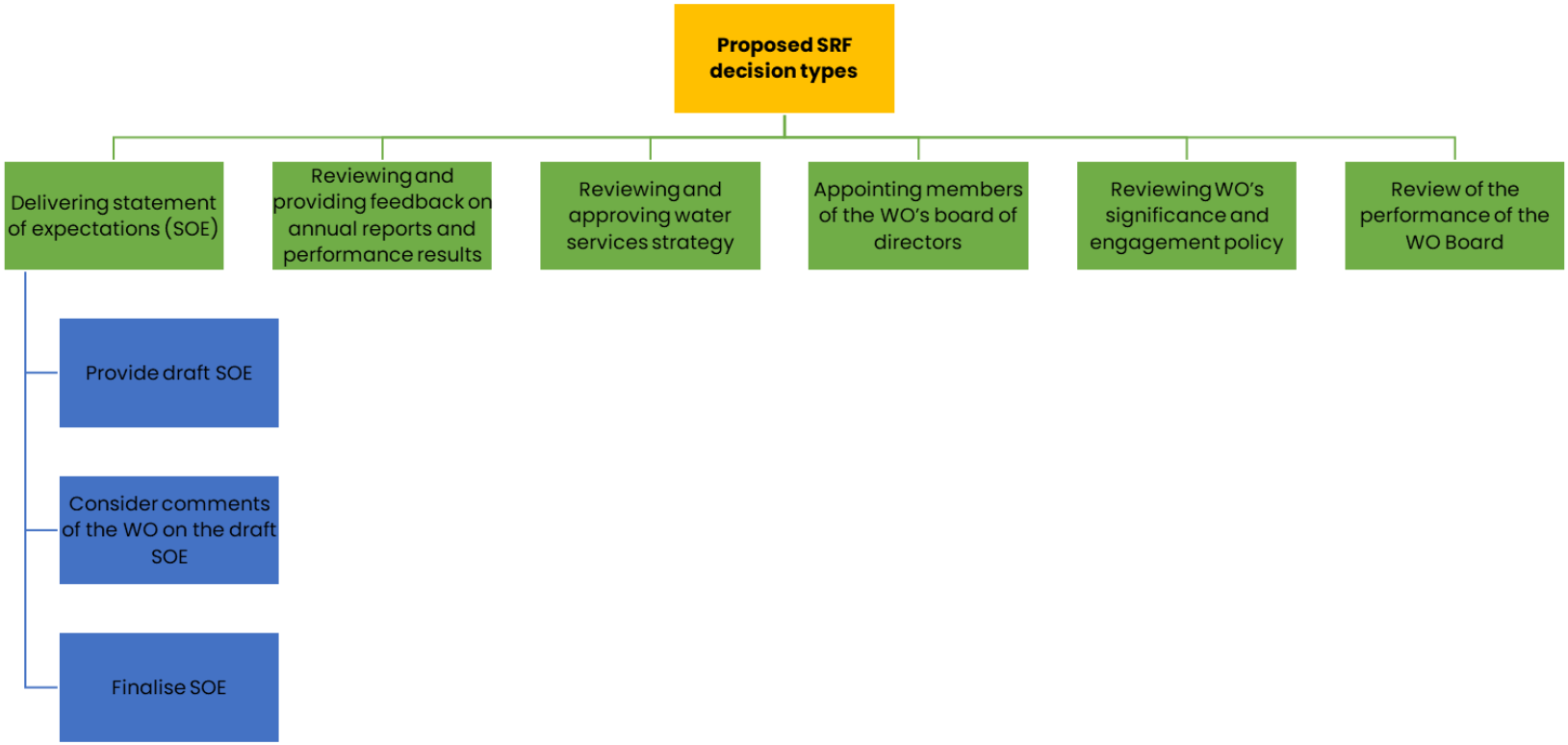
For the avoidance of doubt, the subject matter of this I&O Paper is concerned only with the types of decisions that are set out above at 5(f)(i) and are driven primarily from a legislative basis. The decisions within 5(f)(i) above are then divided into proposed unanimous decisions and proposed special resolutions (75+%[6]) decisions as summarised in the following tables.

[6] We emphasise that this reference to 75+% is the statutory default for special resolutions, and the parties can agree to change this to any percentage higher than 75% (such as 85+%).

Proposed Shareholder Decisions:



Proposed SRF Decisions:



Proposed WO Board Decisions:



g. Notwithstanding actual shareholdings, the parties may decide that certain shareholder decisions should require unanimous support. If this is the case, then the actual shareholding percentages and differences between options outlined below may be less important (apart from the topic of dividends, which are discussed further below).

h. If a decision is made that the WO is not to pay dividends[7] then shareholding percentages will be even less important, as they will not represent a pro-rata entitlement to dividends. And even if a decision is made that the WO is theoretically able to pay dividends, the Act would still prevent the WO from paying any such dividends that could compromise its ability to fund long-term investment and meet its regulatory requirements.[8] In other words, while there is some possibility, the WO's financial operating model is not likely to support regular, substantial dividends to council shareholders.

i. Provision can be made in the SHA for certain decisions to be "reserved matters", being actions that cannot be undertaken by the WO without a specified level of shareholder consent.[9] This could be unanimous approval of all shareholders, or the approval of shareholders holding at least 75% (or even some higher threshold percentage) of the voting rights. Those "reserved matter" decisions that are to be made other than by unanimous approval would be determined by a poll based on the number of shares held by each shareholder.

j. When exploring the issues set out below and options available, it is important to bear in mind the long-term picture that as shareholders, TCC and WBOPDC, may want other councils to join the WO in the future[10] and may want to set up the WO in such a manner that it is an attractive organisation for other councils to join. Documents like the Constitution and the SHA will be drafted in a manner that leaves the door open for other councils to join (with appropriate checks and balances in place). But in making decisions about how to calculate share allocations and voting right allocations etc., the parties should bear in mind a future WO that includes not only TCC and WBOPDC, but other councils also. For this reason, the share allocation methodology should be flexible to scale well to include additional councils in the future.

k. Schedule A comprises statistics relevant to the various shareholding ownership options set out within this paper (i.e. it sets out net assets, number of connections, population etc).[11] The first part of Schedule A comprises statistics relevant to TCC and WBOPDC only. The pie charts included within the paper are based on those statistics. The second part of Schedule A outlines the statistics with the hypothetical future inclusion of a third council, referred to as Council X.

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[7] Note that this decision is currently scheduled to be addressed in a paper being presented to the JWG on 16 February.

[8] See section 18 of the Local Government (Water Services) Act 2025.

[9] We note that s 106 of the Companies Act 1993 lists four matters (amending constitution; approving major transaction; approving amalgamation; putting company into liquidation) that must be exercised by way of special resolution requiring approval by at least 75% of the votes of those shareholders who are entitled to vote and who actually vote on the resolution. Additional matters can also be treated in this manner, but the 4 items listed above must be exercised in accordance with s 106.

[10] To achieve further economies of scale, efficiencies etc.

[11] The models have been based on stormwater assets transferring to the WO. The calculations would change significantly if stormwater assets remained in TCC.

l. Schedule B comprises DIA guidance on the topic of holding shares within a Water Organisation.

m. Schedule C comprises guidance from the National Infrastructure Funding and Financing on key commercial matters that are covered in this paper.

n. Finally, we note that the decisions regarding shareholding and voting rights need to be made in accordance with the "Establishment Principles" that formed part of the Commitment Agreement, which include "equitable share allocation".

6. With the above introductory principles in mind, we have set out below the proposed options available for the following four issues (including advantages and disadvantages for each option):

   a. Initial and ongoing shareholdings.

   b. Rights attaching to shares.

   c. Matters requiring unanimous approval of shareholders.

   d. Matters requiring 75+% approval of shareholders' votes.

7. We note that the options mentioned for each issue are guided by the options included in the "Commercial Term Sheet" that has previously been presented to the JWG for discussion, feedback and approval. In other words, we acknowledge that a very wide range of theoretical options are available for each of the issues, however we have focused on the options already presented to the JWG via the Commercial Term Sheet.

Decision Making Table

8. The following table provides an overview of how shareholders may make decisions by ordinary resolution, special resolution or unanimous written approvals based on theoretical shareholdings and voting rights. Some notes about the table:

   a. The shareholding allocations (listed in the top row of the table) are hypothetical and are intended solely to demonstrate potential voting rights in various scenarios.

   b. Examples of a shareholder having positive control, being an ability to make a decision unilaterally, are shaded green.

   c. Examples of a shareholder having negative control, being an ability to block a decision unilaterally, are shaded red.

   d. An ordinary resolution requires approval by a simple majority (more than 50%) of the votes of those shareholders who are entitled to vote and who actually vote on the resolution. This means that it is not based on 50% of the total shareholdings or the total number of shareholders, but rather on the majority of votes cast by those shareholders who are entitled to vote and who participate in the voting process.

   e. A special resolution requires approval by at least 75% of the votes of those shareholders who are entitled to vote and who actually vote on the resolution. This means the threshold is not based on 75% of all shares on issue or 75% of all shareholders, but rather on 75% of the votes cast by shareholders who are entitled to vote and who participate in the voting process.

Threshold	**2 Council model** Shareholding: Council A: 80% Council B: 20%	**3 Council model** Shareholding: Council A: 70% Council B: 15% Council C: 15%	**4 Council model** Shareholding: Council A: 55% Council B: 20% Council C: 15% Council D: 10%	**5 +Council model** Shareholding: Council A: 45% Council B: 20% Council C: 15% Council D: 10% Council E: 10%
Option 1: Votes align with Shareholding				
Unanimous	All need to agree	All need to agree	All need to agree	All need to agree
Special Resolution Option A: **The greater of:** • **75% or greater; or,** • **the largest shareholder's shareholding**	Can pass with: • Council A+B	Can pass with: • Council A+B • Council A+C	Can pass with: • Council A+B • Council A+B+C • Council A+B+D • Council A+C+D	Can pass with: • Council A+B+C • Council A+B+D+E • Council A+B+C+D • Council A+B+C+E • Council A+C+D+E • Etc.
Special Resolution Option B: **75% or greater**	Can pass with: • Council A • Council A+B	Can pass with: • Council A+B • Council A+C • Council A+B+C	Can pass with: • Council A+B • Council A+C	Can pass with: • Council A+B+C • Council A+B+D • Council A+B+E • Council A+B+C+D • Etc.
Ordinary resolution: **>50% majority decision**	Can pass with: • Council A • Council A+B	Can pass with: • Council A • Council A+B • Council A+C	Can pass with: • Council A • Council A+B • Council A+C • Council A+D • Council A+B+C • Etc.	Can pass with: • Council A+B • Council A+C • Council A+D • Council A+E • Council B+C+D+E • Etc.

Threshold	**2 Council model** Shareholding: Council A: 80% Council B: 20%	**3 Council model** Shareholding: Council A: 70% Council B: 15% Council C: 15%	**4 Council model** Shareholding: Council A: 55% Council B: 20% Council C: 15% Council D: 10%	**5 +Council model** Shareholding: Council A: 45% Council B: 20% Council C: 15% Council D: 10% Council E: 10%
Option 2: Every Shareholder Has One Vote				
Unanimous	All need to agree	All need to agree	All need to agree	All need to agree
Special resolution: **75% + majority decision**	Can pass with: • 2/2 votes	Can pass with: • 3/3	Can pass with: • 3/4 votes • 4/4 votes	Can pass with: • 4/5 votes • 5/5 votes
Ordinary resolution: **>50% majority decision**	Can pass with: • 2/2 votes	Can pass with: • 2/3 votes • 3/3 votes	Can pass with: • 3/4 votes • 4/4 votes	Can pass with: • 3/5 votes • 4/5 votes • 5/5 votes

Issue 1: Initial and ongoing shareholdings

9. This issue is divided into two sub-parts:

    a. Sub-part A: methodology of allocating shares

    b. Sub-part B: ongoing review and adjustment of shares

Issue 1, Sub-part A: methodology of allocating shares

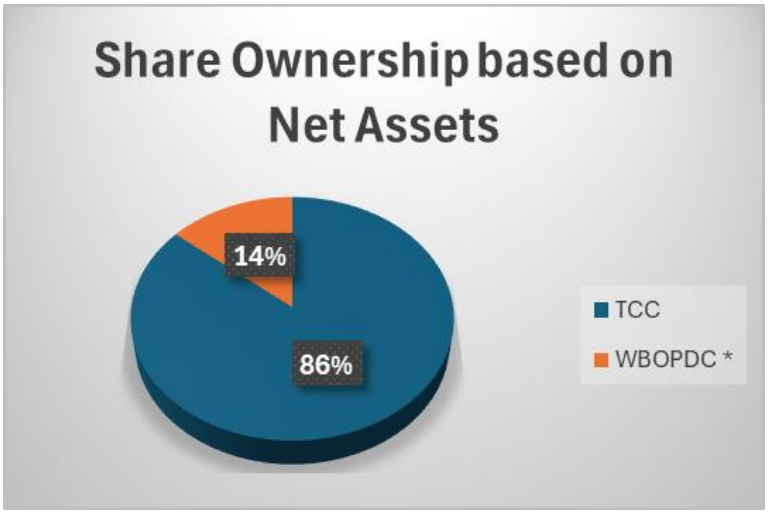
10. TCC and WBOPDC will need to agree how to allocate the initial and ongoing shareholdings of the WO. To reiterate, the split of shareholding does not need to mirror the split of voting rights. And where a company is unlikely to be paying out regular dividends to its shareholders, the split of shareholding becomes even less important. The DIA has provided guidance (see Schedule B) that when selecting a share allocation method the following should be considered:

    a. the ease of implementing the allocation method (which can avoid disagreements), including the availability of the information required, ensuring transparency of the methodology and updating the share allocation; and

    b. whether the allocation can be made transparently and able to be explained simply to key stakeholders (including ratepayers).

11. The shareholding allocation options available[12] include:

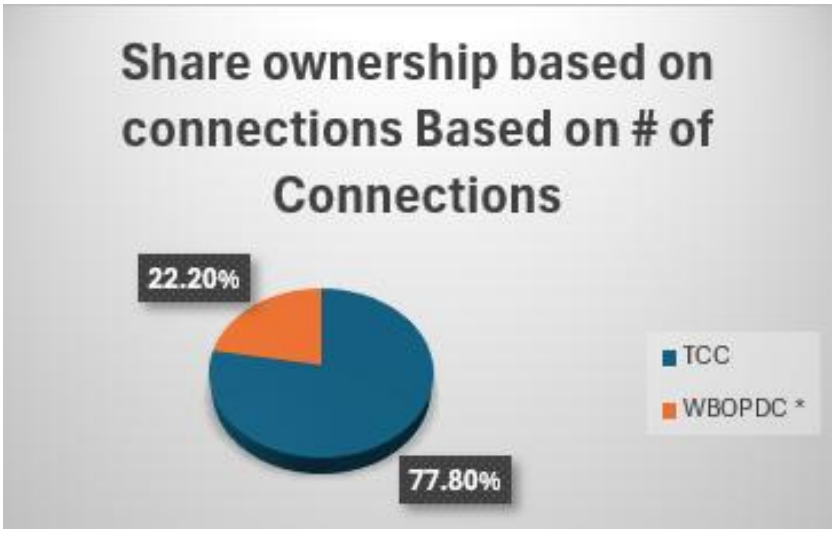
    a. Proportionate to the net assets each shareholding council transfers to the WO. The shares in the WO would be allocated to each council based on the total net value of the council's assets (minus agreed liabilities) transferred to (or assumed by) the WO. Using the balances for TCC and WBOPDC (see Schedule A) the following chart sets out the respective shareholdings based on net assets:

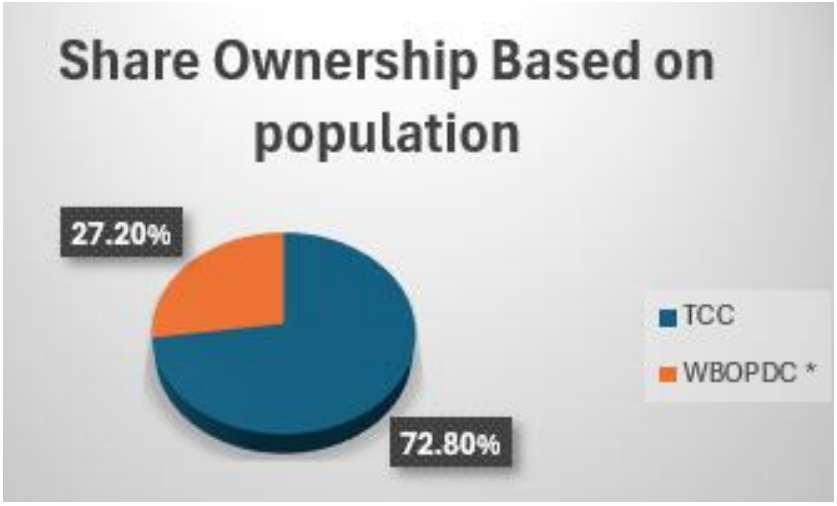


    b. Proportionate to the population of each council's service area, or the number of water connections each shareholding council has at the transfer date.

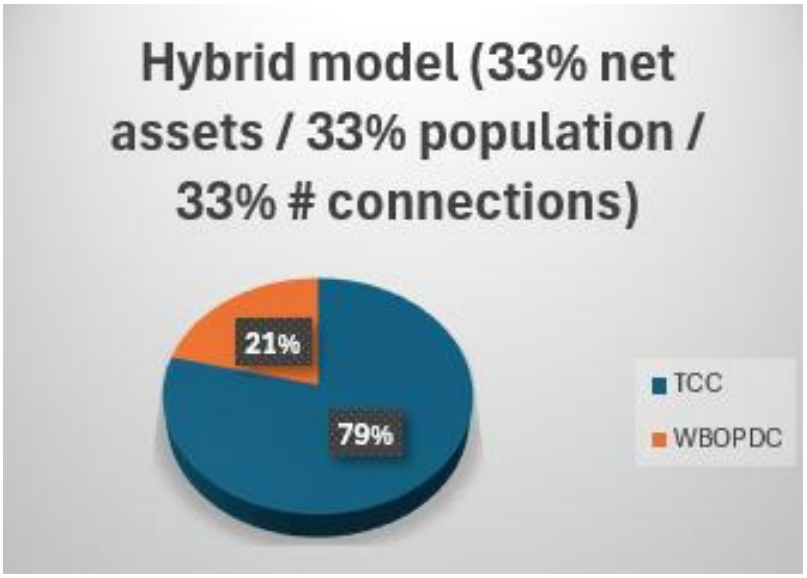
[12] To reiterate, the options covered in this paper are those options that have previously been presented to the JWG within the "Commercial Term Sheet".

Using the figures for TCC and WBOPDC (see Schedule A) the following chart sets out the respective shareholdings based on either number of connections or population:

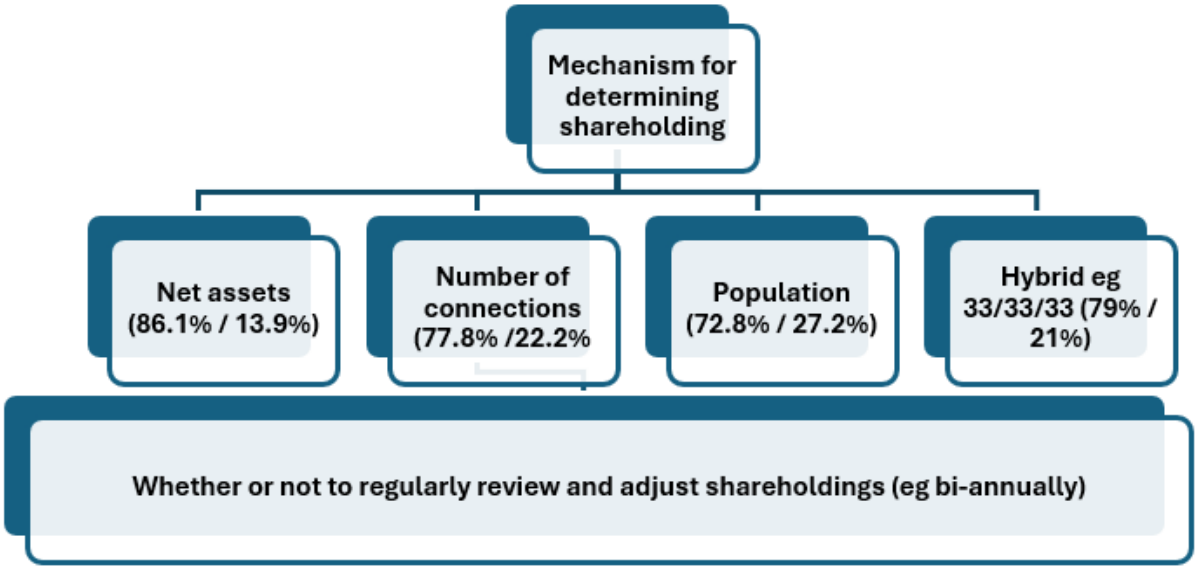




c. A hybrid model comprised of one or more of the above metrics (being net assets, population, connections). For example (and to emphasise, this is just an example – the parties could agree any weighting they choose) 33.33% of the shares could be allocated based on net asset value; 33.33% could be based on the number of water connections; and 33.33% based on population. The following chart sets out shareholdings on this basis:



12. In diagrammatic form, the options / decisions are set out below:



13. The following table outlines the key advantages and disadvantages of the options outlined above.

Advantages	Disadvantages
(a) Proportionate to the net assets each shareholding council transfers to the WO).	
• Simple to administer and calculate • Offers clarity and certainty for both councils from the outset. • Recognises the extent of assets (less liabilities) each shareholding council is transferring to the WO.	• This would need to be considered based on information the councils have as to anticipated net asset values (and whether debt is relevant to this). • Requires reliable, agreed asset valuations (potential for dispute).
(b) Proportionate to the population or number of water connections each shareholding council has at the transfer date	
• Ties shareholding to service demand or community size. • Simple to administer after initial allocation as no ongoing recalculation.	• Does not account for the value of assets transferred and may disadvantage the council with higher-value infrastructure. • Ignores future infrastructure investment or depreciation. • Some Councils population may not be representative of the district asset requirements. • This approach will likely result in a write down of assets in one council and a write up of net value in waters investment in the other. • If the Council recognises its investment in the WO using the equity method, the resulting investment balance reflects Council's proportional interest in the entity based on the shareholding, and therefore does not represent the net assets directly attributable to the Council's community.
(c) A hybrid model comprised of one or more of a range of metrics (net assets, population, connections etc.)	
• Can balance multiple factors for a more bespoke approach. • Can be tailored to local priorities and negotiated between the councils. • May be more robust to future changes in demographics or infrastructure or differences between Councils.	• More complex to design, agree, and administer. • Ignores future infrastructure investment or depreciation • Potential for disagreement over weighting of metrics. • This approach will likely result in a write down of assets in one council and a write up of net value in waters investment in the other.

Advantages	Disadvantages
	• If the Council recognises its investment in the WO using the equity method, the resulting investment balance reflects Council's proportional interest in the entity based on the shareholding, and therefore does not represent the net assets directly attributable to the Council's community

Issue 1, Sub-part B: ongoing review and adjustment of shares

14. Once the parties have decided on the methodology for allocating shares, they will then need to decide whether or not the shares should be periodically reviewed and adjusted.

15. These are the options, followed by an overview of advantages and disadvantages:

    a. Review and adjust shareholding on a regular basis (such as bi-annually).

    b. Do not review and adjust shareholding.[13]

Advantages	Disadvantages
(a) Review and adjust shareholding on an ongoing basis (such as bi-annually)	
• Allows shareholdings to adapt to changing realities and investment over time (growth, new connections, etc). • Review and adjustment could occur as frequently or infrequently as agreed between the councils. • If they wish, the parties could agree a "de minimis" approach where the administration of changing shareholdings would only be undertaken if, on review of the agreed methodology, a certain threshold is met (i.e. shares will be reviewed bi-annually, but if the methodology shows that the allocation of shares should be changed by less than 2%, then the administrative steps of changing the shares won't be undertaken).	• Ongoing administrative effort to recalculate and adjust shareholdings. • Approach would likely require review if there was an agreement to cease ring fencing. • May be limited benefit in regularly updating shareholders if shareholding is not a key determinant of voting outcomes (refer Issue 2), and dividends are not paid
(b) Do not review and adjust shareholding on an ongoing basis	
• Avoids any ongoing administrative effort to recalculate and adjust shareholdings.	• Does not enable shareholdings to adapt to changing realities and investment over time.

[13] Other than where a new council joins the WO.

Advantages	Disadvantages
• Provides certainty upfront for the parties regarding their ongoing shareholding.	• While ring fencing is in place, investment by the community subsequent to establishment of the WO is not attributable to that community - but rather shared. However, the associated debt will sit with that respective community. • May create issues at the point that another entity is amalgamated into the WO.

Issue 2: Rights attaching to shares

16. The second decision is to determine the rights attaching to shares. To reiterate a few key points:

    a. The split of share allocation does not need to mirror the split of voting rights.[14]

    b. The split of voting rights should be considered in the context of the types of decisions that this WO's shareholders are likely to be making (which is basically a very limited number of very influential decisions – see paragraph 5(f)(i) above). This is not an organisation where the shareholders will be required to vote on operational matters, or even those matters that are likely to be delegated to the SRF.[15]

    c. Provision can be made in the SHA for certain decisions to require unanimous approval of all shareholders, or the approval of shareholders holding at least 75+% (or even some higher threshold percentage) of the voting rights. These points are discussed below at issues 3 and 4 respectively.

    d. By default, the method that TCC and WBOPDC decide upon to allocate voting rights between themselves as a 2 council WO[16] will be carried through to any expansion of the WO. That is, if a 3rd, 4th, 5th council joins the WO, then their voting rights will be determined on the same basis as that of a 2 council WO.[17]

    e. Notwithstanding point d. above, the way voting rights are determined can potentially be revisited prior to any further councils joining the WO. For example, TCC and WBOPDC may be comfortable that while the WO is a 2 council WO, each of them will have equal voting rights[18]. But prior to WO becoming a 3 council WO (or a 4 or

[14] See section 36(2) Companies Act 1993.

[15] Instead, examples of the types of decisions that shareholders in this WO are likely to be called to vote upon include adding new councils; amending the WO's constitution or SHA; issue of, or changes to rights attaching to, or buy-backs of, shares; major transactions (being transactions with a value of 50% or more of the assets of the WO); a material change to the nature of the WO's business; giving financial assistance for the purposes of purchasing shares; and approving any shareholder funding and/or shareholder guarantee obligations.

[16] i.e. whether the method is equal voting rights regardless of shareholding or voting rights based on shareholding.

[17] See the table at paragraph 8 for an illustration of how decisions might be made based on a 2, 3,4 and 5 shareholder WO.

[18] Especially if TCC's initial shareholding is less than 75% of the shares which would mean any special resolution (requiring more than 75% of votes cast by shareholders entitled to vote and voting) would require both shareholders to vote unanimously in any event.

5 council WO for that matter) TCC and WBOPDC will have an opportunity to consider whether it would still be appropriate for each council to have equal voting rights or instead whether voting rights should align more closely with their respective shareholdings. In the event TCC and WBOPDC determined equal voting rights would no longer be appropriate, then TCC and WBOPDC could amend the WO's Constitution or SHA prior to the addition of a third, fourth or fifth council.[19]

f. As set out below, if voting rights are tied to shareholding then there is a potential for the larger shareholder to have a very significant amount of influence, especially if the larger shareholder has more than 75% of the shareholding which may mean it would have the ability to pass ordinary resolutions and special resolutions unilaterally (depending on how the parties decide to define the threshold for special resolutions – see below), known as positive control[20]. On the other hand, if each shareholder has equal voting rights, then there is a potential for the smaller shareholder to have an influence that is disproportionately large to its shareholding, and the smaller shareholder could block decisions unilaterally, known as negative control[21].

g. If one shareholder has more than 75% of the shareholding (which is the statutory fall-back threshold for a special resolution) then the parties could consider increasing the special resolution threshold to something above 75%, and above the major shareholder's shareholding in order to prevent unilateral control of special resolutions. Another option to prevent unilateral control would be to leave the special resolution threshold at 75%, but increase the amount of decisions that are reserved for unanimous shareholder agreement.[22]

h. Under all the options of shareholding allocation methods, all options except equal shares per Council, have the potential for TCC to hold more than 75% of the shareholding (refer Schedule A).

17. The options available for voting rights include, but are not limited to:

    a. The number of shares (however the split of shareholdings may be determined) will then determine the voting rights of a shareholder.

    b. Each shareholder has equal voting rights (regardless of shareholding percentage).

[19] Although we reiterate the point mentioned at 5.j above that the councils will want to make the WO attractive for other councils to join.
[20] See the cells shaded green in the table at paragraph 8.
[21] See the cells shaded red in the table at paragraph 8.
[22] Again, these are topics that can be revisited in the future prior to other councils joining the WO (if the parties can meet the required threshold to amend the constitution and SHA).

Refer to the table at paragraph 8 of this paper for explanation of these options under different scenarios of shareholdings.

18. The following table outlines the key advantages and disadvantages.

Advantages	Disadvantages
(a) The number of shares determines the voting rights of a shareholder.	
• Directly links shareholdings to influence / voting rights. • May facilitate efficient decision-making if one council has a larger shareholding.	• The larger shareholder may become a 'sole' decision-maker, potentially undermining the collaborative nature of the arrangement depending on initial shareholdings (discussed above), and decision-making thresholds (discussed below). • Could discourage collaboration if one council perceives little influence. • Does not necessarily promote collective decision-making • Local issues/priorities may be lost for the lower shareholding council. • May discourage smaller councils from joining the WO as they may perceive that they are losing control.
(b) Each shareholder has equal voting rights (regardless of shareholding percentage).	
• Ensures each council has an equal say. • Promotes collective decision-making. • All decisions will require unanimity. • Supports a long-term, cooperative model rather than a majority–minority dynamic. • Because unanimity is required on decisions, councils must stay fully engaged with strategy, finances, and risk.	• May be perceived as unfair by the council contributing more assets or serving a larger population. • Potential for deadlock if the two councils disagree, especially on strategic or urgent matters. Could require additional mechanisms (dispute resolution) to resolve impasses, otherwise status quo will prevail. • Unanimity requirements mean more negotiation, and more governance time.

Issue 3: Matters requiring unanimous approval of shareholders

19. The third decision is to determine the matters requiring unanimous approval of shareholders. This issue is divided into two sub-parts:

    a. Sub-part A: Are there defined material decisions which require unanimous approval (Yes / No)?[23]

    b. Sub-part B: If yes, what are the matters that will require unanimous approval?

Issue 3, Sub-part A: Are there defined material decisions which require unanimous approval?

20. The Companies Act 1993 ("**Companies Act**") provides for a very limited set of decisions that may be made with unanimous shareholder approval. However, those decisions are unlikely to have much relevance to the WO (and therefore they are not discussed further within this issue 3).[24] Beyond the very limited set of decisions which may be made with unanimous approval of the shareholders, the default thresholds under the Companies Act are >50% for ordinary resolutions and 75% for special resolutions.[25]

21. Notwithstanding the default Companies Act thresholds, the parties can decide that certain decisions will require unanimous shareholder approval (which is discussed in this issue 3) and/or the parties can agree to increase the threshold for special resolutions (and any other decisions) beyond 75% (which is discussed in issue 4).

22. Regarding whether certain decisions must obtain unanimous shareholder approval (beyond the matters already listed in in section 107 of the Companies Act, which may be made with unanimous approval), the options are as follows, along with an overview of their advantages and disadvantages:

    a. Yes, some matters[26] will require unanimous shareholder approval.

    b. No matters[27] will require unanimous shareholder approval.

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[23] No being the default position under the Companies Act 1993. However, section 107 of the Companies Act lists various decisions that a company "may" take with unanimous approval.

[24] The decisions that require unanimous approval of all entitled persons under the Companies Act 1993, section 107 are (a) a dividend may be authorised otherwise than in accordance with section 53: (b) a discount scheme may be approved otherwise than in accordance with section 55: (c) shares in a company may be acquired otherwise than in accordance with sections 59 to 65: (d) shares in a company may be redeemed otherwise than in accordance with sections 69 to 72: (e) financial assistance may be given for the purpose of, or in connection with, the purchase of shares otherwise than in accordance with sections 76 to 80: (f) any of the matters referred to in section 161(1) may be authorised otherwise than in accordance with that section.

[25] The decisions that require special resolution under the Companies Act 1993, section 106 are (a) adopt a constitution or, if it has one, alter or revoke the company's constitution: (b) approve a major transaction: (c) approve an amalgamation of the company under section 221: (d) put the company into liquidation.

[26] In addition to the matters at section 107 of the Companies Act 1993 (set out in the footnote above) which may be undertaken with the unanimous approval of the shareholders

[27] Other than the matters at section 107 of the Companies Act 1993 (set out in the footnote above) which may be undertaken with the unanimous approval of shareholders.

Advantages	Disadvantages
(a) Yes, some matters will require unanimous shareholder approval	
• Provides comfort to each shareholder that full shareholder support is required (with respect to certain key decisions). • Shareholders can agree what matters are so material to the WO (in terms of structure and purpose) to require unanimity. • Reduces perceived risk for the minority shareholder. • By requiring alignment on truly material matters, it reinforces the importance of collaboration at the top level.	• Enables any shareholder to veto decisions of high importance without being required to justify its position. • Unanimity could prevent timely decisions. • Unanimity could be used as a "bargaining chip" by shareholders.
(b) No matters require unanimous shareholder approval	

• Enables the WO to remain agile and responsive.
• All shareholder decisions would be made by Companies Act thresholds, being 50% ordinary resolutions and 75% special resolutions (although the parties could still decide that some decisions will require a higher threshold – something higher than 75% but lower than unanimous – see Fourth Issue).
	• Default position under the Companies Act may result in one shareholder being perceived as having too much control over decision-making.
	• Depending on how shares are allocated and how thresholds for special resolutions are defined, there is a risk that the majority shareholder may be able to take steps such as the following without minority shareholder consent:
	  ○ Add new shareholders
	  ○ Change governance structures
	  ○ Adjust constitution/SHA settings
	  ○ Enter large financing arrangements

Issue 3, Sub-part B: If yes, what are the matters that will require unanimous approval

23. If the parties decide that they do want some shareholder decisions to require unanimous approval, it is necessary to define what those decisions will be. For the parties to consider, we propose that the decisions requiring unanimous shareholder approval could be:

    a. The addition of new shareholder;

    b. Liquidation or winding up of WO;

c. Amending the WO's constitution or SHA;

d. Approving an amalgamation, merger or major restructure of WO; and

e. The future addition of any further decisions that will require unanimous approval.

24. We emphasise that the parties could extend the list to include additional matters (or reduce the number of matters) if they see appropriate, staff will just require clarity upfront.

Issue 4: Matters requiring special resolution

25. The fourth decision to determine relates to the matters requiring special resolution approval of shareholders' votes.

26. This issue is divided into two sub-parts:

a. Sub-part A: Should any matters be added to the statutory list of special resolution topics (Yes / No)?

b. Sub-part B: If yes, what are the additional matters that will require special resolution?

c. Sub-part C: Should the threshold for special resolutions be increased above 75% and above the major shareholder's shareholding?

27. For background:

a. Section 106 of the Companies Act requires the following decisions to be made by special resolution:

i. Adoption of a constitution or, if it has one, altering or revoking the company's constitution.

ii. Approving a major transaction. [28]

iii. Approving an amalgamation of the company under section 221 of the Companies Act.

iv. Putting the company into liquidation.

Where reference is made to the "statutory list of special resolution topics", this is a reference to the above list taken from s 106 of the Companies Act.

b. Section 2 of the Companies Act requires special resolutions to be approved by a minimum of 75% of the shareholders. But the Act allows the company constitutions to set the threshold for special resolutions above (but not below) 75%.

[28] Being transactions worth more than half the value of the WO's assets (see section 129 Companies Act).

Issue 4, Sub-part A: Should any matters be added to the statutory list of special resolution topics (Yes / No)?

28. These are the options, followed by an overview of advantages and disadvantages:

    a. Yes, matters will be added to the statutory list of special resolution topics.

    b. No, matters should not be added to the statutory list of special resolution topics.

Advantages	Disadvantages
(a) Yes, matters will be added to the statutory list of special resolution topics	
• Shareholders can agree any additional matters that are sufficiently material to exceed the ordinary resolution threshold, but which should not require unanimous approval. • Gives both councils additional confidence that defined major decisions will require broad support. • Encourages negotiation and collaboration on the significant changes. • More decisions will require special resolutions, so minority shareholders will have more of a say on those matters.	• This will see the WO move away from the default position under the Companies Act (which is what most people are familiar with).
(b) No, matters should not be added to the statutory list of special resolution topics	
• This will see the WO remain consistent[29] with default position under the Companies Act (which is what most people are familiar with) in terms of the subject matter that will be dealt with by either ○ ordinary resolutions; and ○ special resolutions.	• Could result in matters that one or both councils consider to be "material" being decided by an ordinary resolution.

Issue 4, Sub-part B: If yes, what are the additional matters that will require special resolution?

29. If the parties decide that they do want some matters be added to the statutory list of special resolution topics, it is necessary to define what those matters will be. For the

[29] This is subject to whether any of the above matters are escalated to requiring unanimous approval.

parties to consider, we propose that the decisions requiring a special resolution by the shareholders could be:

a. Issue of, or changes to rights attaching to, or buy-backs of, shares.

b. A material change to the nature of the WO's business.

c. Approving any shareholder funding and/or shareholder guarantee obligations.

d. Giving financial assistance for the purposes of purchasing shares.

e. The future addition of any further matters that will require special resolution approval.

30. We emphasise that the parties could extend the list to include additional matters (or reduce the number of matters) if they see appropriate, staff will just require clarity upfront.

Issue 4, Sub-part C: should the threshold for special resolutions be increased above 75% and above the major shareholders shareholding?

31. As mentioned throughout this paper, the Companies Act threshold for special resolutions (75%)[30] can be increased in the WO's constitution. If the parties decide to increase the threshold, then that higher threshold will apply to all special resolution matters (being, the statutory list of special resolution topics outlined above, and any other topics the parties might choose to add to the list of statutory list).

32. These are the options, followed by an overview of advantages and disadvantages:

a. Leave the special resolution threshold at the statutory default 75%; or

b. Increase the special resolution threshold above 75% and above the major shareholders shareholding.

Advantages	**Disadvantages**
(a) Leave the special resolution threshold at the statutory default 75%	
• This will see the WO remain consistent with the default position under the Companies Act (which is what most people are familiar with). • The prospect of the larger shareholder making decisions unilaterally may lead to quicker decision making.	• This exposes the smaller shareholder to the majority shareholder being able to make key decisions unilaterally. • Does not foster collaboration or partnership.

[30] A special resolution requires approval by at least 75% of the votes of those shareholders who are entitled to vote and who actually vote on the resolution. This means the threshold is not based on 75% of all shares on issue or 75% of all shareholders, but rather on 75% of the votes cast by shareholders who are entitled to vote and who participate in the voting process.

Advantages	Disadvantages
	• Smaller shareholder may feel impotent and un-heard on important decisions. • A minority shareholder may not be able to influence important decisions. • Does not give both councils confidence that major decisions will require broad support.
(b) Increase the special resolution threshold above 75% and above the major shareholders shareholding	
• This would ensure that majority shareholder cannot unilaterally make decisions on special resolution topics. • Ensures that the smaller shareholder's voice will be heard on special resolution topics. • Fosters collaboration or partnership. • May make the prospect of equating shareholding with net assets (for example) more palatable to both parties. • A minority shareholder will have real influence over important decisions (including, essentially a power of veto over special resolution topics). • Ensures that the smaller shareholder will have governance leverage on special resolution topics.	• The smaller shareholder will have the right to veto decisions regarding special resolution topics. • Decisions may not be made as quickly.

Next steps

- In the above sections we have identified the reasonable options for the JWG to consider.
- At the JWG meeting on 13 February there will be an opportunity for the JWG members to reach a consensus view (or otherwise) on these options.
- 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.

Schedule A

Ownership options for new Water CCO (TCC & WBOPDC only)

Inputs

Basis
(per WSDP)
Closing 2026/27 Closing balances

Figures	TCC	WBOPDC	Other Council	Total
Total Assets	3,302,172,362	653,799,889		3,955,972,251
Total Liabilities	(775,995,410)	(244,306,109)		(1,020,301,519)
Net Assets - Equity	2,526,176,952	409,493,781	0	2,935,670,733
Water Connections - Total (DIA Calc)	67,671	19,262		86,933
Population	168,442	62,953		231,395
Number of Councils	1	1		2

Basis for Mix

	Assets	Connections	Population	Councils	Total
Weighting (input as %)	50%	50%	0%	0%	100%

Note: Needs to add to 100%

Outputs

Table showing impacts of various CCO ownership options

	TCC	WBOPDC *	Other Council	Total	Accounting Options: TCC initial loss	Accounting Options: Debt to TCC
Option 1: Based on Net Assets						
Ownership %	86.1%	13.9%	0.0%	100%		
Net Assets of new CCO ($M)	2,526.2	409.5	0.0	2,935.7	0.0	0.0
Option 2: Based on # of Connections						
Ownership %	77.8%	22.2%	0.0%	100%		
Net Assets of new CCO ($M)	2,285.2	650.5	0.0	2,935.7	241.0	1,087.6
Option 3: Based on Population						
Ownership %	72.8%	27.2%	0.0%	100%		
Net Assets of new CCO ($M)	2,137.0	798.7	0.0	2,935.7	389.2	1,430.5
Option 4: Based on Share per Council						
Ownership %	50.0%	50.0%	0.0%	100%		
Net Assets of new CCO ($M)	1,467.8	1,467.8	0.0	2,935.7	1,058.3	2,116.7
Option 5: Based on Mixed basis (per above)						
Ownership %	81.9%	18.1%	0.0%	100.0%		
Net Assets of new CCO ($M)	2,405.69	529.98	-	2,935.7	120.5	667.4

Ownership options for new Water CCO (TCC & WBOPDC plus Council X)

Inputs

Basis
(per WSDP)
Closing 2026/27 Closing balances

Figures	TCC	WBOPDC	Council X	Total
Total Assets	3,302,172,362	653,799,889	384,027,000	4,339,999,251
Total Liabilities	(775,995,410)	(244,306,109)	(119,889,000)	(1,140,190,519)
Net Assets - Equity	2,526,176,952	409,493,781	264,138,000	3,199,808,733
Water Connections - Total (DIA Calc)	67,671	19,262	13,474	100,407
Population	168,442	62,953	40,550	271,945
Number of Councils	1	1	1	3

Basis for Mix

	Assets	Connections	Population	Councils	Total
Weighting (input as %)	50%	50%	0%	0%	100%

Note: Needs to add to 100%

Outputs

Table showing impacts of various CCO ownership options

	TCC	WBOPDC *	Council X	Total	Accounting Options: TCC initial loss	Accounting Options: Debt to TCC
Option 1: Based on Net Assets						
Ownership %	78.9%	12.8%	8.3%	100%		
Net Assets of new CCO ($M)	2,526.2	409.5	264.1	3,199.8	0.0	0.0
Option 2: Based on # of Connections						
Ownership %	67.4%	19.2%	13.4%	100%		
Net Assets of new CCO ($M)	2,156.6	613.9	429.4	3,199.8	369.6	1,133.7
Option 3: Based on Population						
Ownership %	61.9%	23.1%	14.9%	100%		
Net Assets of new CCO ($M)	1,982.0	740.7	477.1	3,199.8	544.2	1,429.9
Option 4: Based on Share per Council						
Ownership %	33.3%	33.3%	33.3%	100%		
Net Assets of new CCO ($M)	1,066.6	1,066.6	1,066.6	3,199.8	1,459.6	2,189.4
Option 5: Based on Mixed basis (per above)						
Ownership %	73.2%	16.0%	10.8%	100.0%		
Net Assets of new CCO ($M)	2,341.37	511.67	346.77	3,199.8	184.8	688.9

Schedule B

LOCAL WATER DONE WELL

Te Tari Taiwhenua
Internal Affairs

Share allocation options for multi-council owned water council-controlled organisations

Councils establishing a multi-council owned water council-controlled organisation (water CCO) will need to agree how to allocate the number of shares in the water CCO between the shareholde councils. This is relevant at the establishment of the water CCO, but also when a new council joins the water CCO or an existing council exits the water CCO. When selecting a share allocation method, the following should be considered:

- the rights and obligations of each council that are determined by the level of shareholding, and whether each council is able to discharge those obligations;
- the ease of implementing the allocation method (which can avoid disagreements), including the availability of the information required, ensuring transparency of the methodology and updating the share allocation (where applicable – see above); and
- whether the allocation can be made transparently and able to be explained simply to key stakeholders (including ratepayers).

The table below outlines five options for how shares can be allocated across councils, with benefits and risks associated with each option.

This guidance has been prepared to provide information to councils considering options as to how shareholding allocations could be determined for multi-council owned water CCOs. It is important to note that:

- New Zealand Local Government Funding Agency Limited (LGFA) will require shareholder guarantees or uncalled capital to be in place for LGFA funding of water CCOs; and
- the structure or allocation of guarantees or uncalled capital does not necessarily need to be attributed to shareholding councils on the same basis as shareholding allocations.

This guidance is not legal advice; and is intended to support council decision-making under Local Water Done Well.

Option 1 - Population allocation	**The shares in the water CCO are to be allocated to each council shareholder based on the proportionate population of its service area (as determined by the most recent census data) against the population of all of the service areas of all of the council shareholders. Relative shareholding can be reviewed and updated at agreed frequency (e.g. five yearly) to reflect population changes, or earlier, when any council joins or exits as a shareholder.**	Benefit • Likely to more accurately reflect the relative level of effort and assets required by the water CCO to serve each community within a council's service area, without being masked by the number households (without reference to household size). • Provides a better proxy for the relative number of individuals entitled to vote in local government elections, and is simple to calculate. Risk • Census data is available only every five years, and may be out of date when used for share allocation, in particular where there is rapid change to the relative populations between the service areas of the councils. • The census may not provide accurate information if there is low participation. • The allocation will not reflect the value of the net assets (after deduction of liabilities) transferred by each council to the water CCO.
Option 2 - Connections allocation	**The shares in the water CCO are to be allocated to each council based on the number of water connections (residential and commercial) in the council's service area (as determined by the water CCO's records). The number of connections in a community would be a proxy for the number of water ratepayers in that area. Again, relative shareholding can be reviewed and updated at an agreed frequency (e.g. five yearly) to reflect changes to the number of connections or earlier, when any council joins or exits as a shareholder.**	Benefit • More reflective of the number of water users that will be required to pay water user charges. • The water CCO will hold accurate data on the number of connections. • Simple to calculate. • Allocation can be updated more frequently than option 1 as connections data will be readily available and up-to-date. Risk • The number of connections may not reflect the extent of water services provided by the water CCO (e.g. one large industrial user vs a one-person household will each be counted equally for the purposes of this option). However, water usage will be relevant to water charges paid by water users to the water CCO, and will be less relevant to the shareholding control of each council as the councils are not directly funding the activities of the water CCO. If desired, greater weighting can be applied to larger users.
Option 3 - Net asset value allocation	**The shares in the water CCO are to be allocated to each council based on the total net value of the council's assets (minus agreed liabilities) transferred to (or assumed by) the water CCO at the time the water CCO is established or when any council joins or exits as a shareholder. For example, one share will be issued for every $500,000 (net value) of water assets (minus agreed liabilities) transferred to (or assumed by) the water CCO.**	Benefit • Recognises the extent of assets (less liabilities) each shareholding council is transferring to the water CCO. Risk • The allocation will need to address potential negative net asset value being transferred to the water CCO. • More complex to calculate, in particular when other councils join as shareholders later. Reallocation of shares may have to address how depreciation and asset value write-offs post establishment of the water CCO are treated, and the benefit that the water CCO has had of the assets transferred earlier, to ensure relative share proportions between councils continue to be fair. • Decisions as to how to allocate new assets built by the water CCO will also need to be made, which could be determined by location (i.e. based on which service area the asset is located in), or by use (i.e. which users benefit from the asset).
Option 4 - Equal proportion allocation	**The shares in the water CCO are to be allocated to each council equally. For example, each of four participating councils is issued 100 shares each.**	Benefit • Provides equal shareholder rights to all councils, which avoid risk of minority shareholder concerns., and facilitates equal participation by all councils. Risk • Does not reflect the relativities of each council's community size or the likely extent of the community's water needs, or the assets and liabilities being transferred by the councils into the water CCO. This means a smaller council will have equal rights despite the smaller population and lower demand for water services. • Smaller councils will have greater influence over the water CCO that is not proportionate to the factors identified in the above point.
Option 5 - Combination	**The shares in the water CCO are to be allocated through a combination of the methods above. For example, 50% of the shares could be allocated based on number of water connections and 50% based on net asset value.**	Benefit • This will be a combination of the benefits of the options selected, though each will have a reduced impact. Risk • This will be a combination of the risks of the options selected, though each will have a reduced impact.

Implications of shareholding levels

Shareholding levels affect:

- voting rights in respect of decisions made by the Shareholder Council of the water CCO or, if there is no Shareholder Council, shareholder decisions generally (e.g. ability to appoint directors, reserved shareholder matters such as major transactions, amendments to the constitution etc);
- rights to approve dividends and the proportion of any dividends received by a shareholder (if any);
- rights to approve the distribution of assets on dissolution of the water CCO, and potentially what assets/the proportion of assets each shareholder may receive on dissolution;
- the amount of uncalled capital to be provided by each shareholder;
- the ability to require the rights of a defaulting shareholder to be suspended until the defaulting issue is addressed;
- the ability to comment and/or approve the water CCO's water services strategy, water services annual budget and other reporting;
- rights to approve the issue of shares and the transfer of shares by other shareholders; and
- rights to approve the remuneration of directors

Other considerations

Initial capital water CCO contribution: Councils establishing a multi-council owned water CCO may be required to contribute initial working capital to the water CCO, while the water CCO builds up its revenue base. The obligation to make such proportionate contribution may be determined by the relative shareholdings between the councils (whether or not such contributions are in the form of equity or repayable shareholder loan).

Upside of early participation: Should councils that join at the establishment of the water CCO be issued relatively more shares than those that join later? Given the expected long tenure of the water CCO, any decision to favour early shareholders over later joiners should be justified reasonably and transparently.

Council guarantees: Shareholders are likely to be required to guarantee any financial liabilities of the water CCO owed to LGFA, which may be by way of having uncalled capital payable in accordance with the water CCO's constitution and shareholders' agreement.

Schedule C: Extracts from NIFFCO presentation March 2025

NATIONAL INFRASTRUCTURE
FUNDING AND FINANCING

Water organisation term sheet

Generalised guidance for councils

March 2025

A: Shareholding allocation

NATIONAL INFRASTRUCTURE
FUNDING AND FINANCING

Shareholding largely drives public perception (and dividends if payable) as we recommend voting mechanism provisions which ensure no single council has positive or negative control

Options	Description	Pros	Cons	NIFF
Split based on connections	Updated periodically to reflect connections by council jurisdiction	✓ Simple measure to apply ✓ Impartial ✓ Broadly consistent with two waters	× Not reflective of asset condition or historical investment × Penalises under-connected councils	◕
Split based on population	Updated periodically to reflect population by council jurisdiction	✓ Simple measure to apply ✓ Impartial	× Not reflective of asset condition or historical investment × Less reflective of business	◔
Split based on recurring revenues	Updated periodically to reflect recurring revenue by council jurisdiction	✓ Directly reflects revenue derived ✓ Relatively simple (need to track revenues by council jurisdiction) ✓ Reliable information	× Not reflective of asset condition or historical investment × Pricing differentials / decisions impact allocation	◑
Split based on free cash flow (FCF)	Updated periodically to reflect free cashflow by council jurisdiction	✓ Cashflow based and broadly consistent with M&A practice ✓ Broadly consistent with fair share of dividends	× Dependent on tracking FCF by council jurisdiction (complex and not regional) × Could change significantly over time × Complex and opaque	○
Split based on asset value	Updated periodically to reflect asset value (or net asset value) by council jurisdiction	✓ Valuation based and broadly consistent with M&A practice ✓ May be considered equitable / fair ✓ Consistent methodology can be agreed	× Dependent on tracking assets by council jurisdiction (complex and not regional) × Complex and opaque – different asset valuation practices	◔
Split equally	If there are four councils, each receives 25%	✓ Simple with no periodic update required ✓ Smaller council's maintain voice	× Perceived to be unfair and not proportional × Any dividends would be disproportionately shared	○

B: Shareholding voting mechanism

Shareholder decisions should be roughly proportional while not being captive to a single council (through positive or negative control) to ensure decision making is in the best interest of the region

Options	Description	Pros	Cons	NIFF
Vote in accordance with shareholding	Shareholders have one vote per share, with majority decision making	✓ Simple ✓ Relatively representative of community interests	× Large councils may have outright control × Small councils have less voice × Negative/positive control issues	
One vote per council	Updated periodically to reflect recurring revenue by council jurisdiction, with majority decision making	✓ Simple ✓ Promotes collective decision making	× Under representation of large council may create perverse incentives	
Vote in accordance with shareholding but no positive control	Shareholders have one vote per share, subject to no single council having outright control[1]	✓ Avoids single council controlling decisions ✓ Ensures small councils are somewhat relevant in decision making	× Large council could still block decisions ("negative control") × Greater risk of impasse / deadlock	
Vote in accordance with shareholding but no negative control	Shareholders have one vote per share, subject to no single council having negative control[1] (ie resolutions can be made if all councils other than the largest agree)	✓ Promotes collective decision making ✓ Avoids single council having positive or negative control ✓ Ensures small councils are relevant in decision making	× Where a single council warrants a super majority, under representation may create perverse incentives	

C: Shareholder decisions

Legislation permits shareholders to approve the Water Services Strategy and Annual Budgets. We believe councils should prohibit this in the constitution to limit shareholder decisions to strategic issues with operational / financial decision making left to the Board (with economic regulation oversight)

Options	Description	Pros	Cons	NIFF
Strategic	Shareholder decisions should be strategic[1] leaving operational and financial decisions to the Board (with economic regulation oversight)	✓ Councils can continue to influence strategic direction (albeit collectively) ✓ Board has clear accountability ✓ Typical structure for economically regulated utilities with diverse shareholders ✓ May have improved credit rating implications (and more consistent with LGFA guidance)	× Dependent on Board (not directly democratically elected) to make decisions in best interest of customers and community	
Operational or financial	Shareholder decisions include strategic but also enable operational and/or financial decision making. For example approval or ability to require changes to Water Services Strategy and/or Water Services Annual Budget	✓ Councils can continue to control (albeit collectively) operational and/or financial decisions ✓ Councils being democratically elected may better represent customer and community perspectives	× Reduces line of accountability and could lead to Board and shareholders blaming each other for outcomes × Reduces impact of expert Board making decisions × Complicates relationship with economic regulation (and priority of decision making) × May have S&P credit rating if shareholders exert significant control	

D: Dividends

Water organisations should either be prohibited from paying dividends or only be permitted to pay dividends once any infrastructure deficit is resolved

Options	Description	Pros	Cons	NIFF
No dividend model	No dividends payable, with any surplus either reinvested or returned to lower water charges	✓ Incentivises reversing infrastructure deficit as fast as possible with efficient prices ✓ Alleviates customer / community concerns regarding price gouging ✓ Consistent with council current practice	× International evidence less clear regarding incentives for effective economic regulation and efficiencies	
Dividends payable	Surpluses (permitted by economic regulator) distributed as dividends with shareholding	✓ Creates additional incentives for effective governance and efficiencies ✓ May improve effectiveness of economic regulation ✓ Councils can reinvest dividends into other services or community needs	× Worsens water affordability × Delays necessary investment ultimately meaning worse health, environmental or growth impacts × May have tax ramifications × Can lead to high debt levels	
Dividends payable after infrastructure deficit resolved	Same as dividends payable above, however dividends are not permitted while there is an infrastructure deficit[1]	✓ Creates additional incentives for effective governance and efficiencies ✓ May improve effectiveness of economic regulation ✓ Councils can reinvest dividends into other services or community needs ✓ May incentivise council's joining multi-council organisations over time	× Customers may be concerned about monopoly pricing gouging (despite economic regulation) × Communities may be concerned that this incentivises deferring investment (even if infrastructure deficit is defined appropriately) × May have tax ramifications	

Fact Sheet: Legislative framework for Councils in respect to Tangata Whenua and the proposed water organisation

Purpose

This factsheet provides an overview of the legislative framework for Councils in respect to Tangata Whenua and the proposed Water Organisation (WO)[1].

This factsheet does not:

- Provide a comprehensive explanation of this framework.
- Set out the legislative responsibilities of the proposed water organisation in respect of Tangata Whenua. Further information will be prepared post April to set these out.
- Set out how existing arrangements between the Councils and Tangata Whenua will transfer at an operational level.

Note: The Councils have undertaken that, in principle, existing arrangements and policies will transfer to the WO, and further work on how this will occur at an operational level is ongoing. Stocktakes of each Councils' arrangements are being completed, and are planned to be presented to the Joint Working Group at the meeting of 23 February. Further work will be carried out through the establishment phase.

Legislative Framework

The legislative framework (in respect of the establishment and operation of a WO) includes the:

- Local Government Act 2002 (LGA)
- Local Government (Water Services) Act 2025 (LGWSA)

This framework is underpinned by the partnership created by the Treaty of Waitangi between the Crown and Maori. The obligations/requirements regarding how local government works with Tangata Whenua/Māori are passed on via legislation to the Council (noting that Council is not a direct Treaty partner).

Local Government Act 2002

s4 Treaty of Waitangi

In order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve

[1] There are additional requirements regarding Councils' responsibilities to Tangata Whenua which do not relate to WOs, however as these are not relevant to the establishment of the proposed WO, they are excluded from this factsheet.

opportunities for Māori to contribute to local government decision-making processes, Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision-making processes.

s14 Principles relating to local authorities

(1) In performing its role, a local authority must act in accordance with the following principles...

(d) a local authority should provide opportunities for Māori to contribute to its decision-making processes

s57 Appointment of directors

(1) A local authority must adopt a policy that sets out an objective and transparent process for:

(a) the identification and consideration of the skills, knowledge, and experience required of directors of a council organisation; and

(b) the appointment of directors to a council organisation; and

(c) the remuneration of directors of a council organisation.

(2) A local authority may appoint a person to be a director of a council organisation only if the person has, in the opinion of the local authority, the skills, knowledge, or experience to—

(a) guide the organisation, given the nature and scope of its activities; and

(b) contribute to the achievement of the objectives of the organisation.

(3) When identifying the skills, knowledge, and experience required of directors of a council-controlled organisation, the local authority must consider whether knowledge of tikanga Māori may be relevant to the governance of that council-controlled organisation.

s60A Significant decisions of CCO affecting land or water

Before a council-controlled organisation makes a decision that may significantly affect land or a body of water, it must take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna, and other taonga.

s64B Statement of expectations

(1) The shareholders in a council-controlled organisation may prepare a statement of expectations that—

(a) specifies how the organisation is to conduct its relationships with—

(i) shareholding local authorities; and

(ii) the communities of those local authorities, including any specified stakeholders within those communities; and

(iii) iwi, hapū, and other Māori organisations; and

(b) requires the organisation to act consistently with—

(i) the statutory obligations of the shareholding local authorities; and

(ii) the shareholders' obligations pursuant to agreements with third parties (including with iwi, hapū, or other Māori organisations).

s75 Outline of Part

This Part—

(a) sets out obligations of local authorities in relation to the making of decisions:

(b) states the obligations of local authorities in relation to the involvement of Māori in decision-making processes:

s81 Contributions to decision-making processes by Māori

(1) A local authority must

(a) establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority; and

(b) consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority; and

(c) provide relevant information to Māori for the purposes of paragraphs (a) and (b).

(2) A local authority, in exercising its responsibility to make judgments about the manner in which subsection (1) is to be complied with, must have regard to—

(a) the role of the local authority, as set out in section 11; and

(b) such other matters as the local authority considers on reasonable grounds to be relevant to those judgments.

s77 Requirements in relation to decisions

(1) A local authority must, in the course of the decision-making process,—

(a) seek to identify all reasonably practicable options for the achievement of the objective of a decision; and

(b) assess the options in terms of their advantages and disadvantages; and

(c) if any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.

(2) This section is subject to section 79.

Local Government (Water Services) Act 2025 (LGWSA)

Section 6 of the LGWSA binds the Crown (with a partial exemption for Development Contributions. In addition, **section 7** sets out that '*All persons performing and exercising functions, duties, and powers under this Act must act in a manner that is consistent with Treaty settlement obligations'.*

s27 Application (for changes to structural arrangements)

Council decisions about structural arrangements (such as the addition of another Council to an existing WO) are required to follow a specific process as set out under *s27 Application*. Part of this process is set out in *s30 Identification and assessment of options* and includes the following:

(3) If any of the options identified under subsection (1) involve a significant decision in relation to land or a body of water, the authority must take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna, and other taonga.

s47 Territorial authorities with existing contracts, etc, relating to water services

(1) This section applies to a territorial authority that

(a) proposes to—

(i) establish a water organisation; or

(ii) become a shareholder in a water organisation; or

(iii) transfer additional responsibilities to a water organisation under section 15; and

(b) has an existing contract, agreement, or arrangement with a third party that relates to providing water services.

(2) The territorial authority and a third party that is a Māori third party must together determine how the contract, agreement, or arrangement will apply to the water organisation.

(3) In all other cases, the territorial authority must consider how each existing contract, agreement, or arrangement will apply to the water organisation.

*(4) In this section, **Māori third party** means a third party that is an iwi, hapū, or other Māori organisation.*

s69 Assessment of communities' access to drinking water

A territorial authority must inform itself about the access that each community in its district has to drinking water services by conducting an assessment of drinking water services in accordance with this section.

A territorial authority must conduct its first assessment by 1 July 2026; and conduct later assessments at least once every 3 years after the completion of the first assessment; or at an earlier date, if the authority is made aware of concerns about a community's access to drinking water services (s69 (3)).

An assessment may be carried out by the territorial authority; or on the authority's behalf by another appropriate organisation in the authority's district, including another water service provider or an iwi, hapū, or other Māori organisation (s69 (5)(c)).

s227 Content of Statement of Expectations

When Councils prepare the Statement of Expectation (SOE) [2] s227 sets out the required content that must be included for example:

- *how the shareholders require the water organisation to conduct its relationships with hapū, iwi, and other Māori organisations*

[2] See Factsheet on Statement of Expectations

- *a requirement that the water organisation act in accordance with an obligation that a shareholder that is a territorial authority may have with a third party (including with hapū, iwi, or other Māori organisations) under a contract or other agreement*

Note that the wording of this section replicates the wording under s64B of the Local Government Act 2002.

Where to Learn More

- Local Government Act 2002

  Local Government Act 2002 No 84 (as at 27 November 2025), Public Act – New Zealand Legislation

- Local Government (Water Services) Act 2025 https://www.legislation.govt.nz/act/public/2025/0042/latest/whole.html

Water Services | Tauranga City | Western Bay of Plenty District Council

AGENDA

LWDW: Joint Working Group Meeting

2 February 2026

Time: 2.30pm – 5.30pm

Location: TCC Council Chambers, 90 Devonport Road

Order of Business

1. OPENING KARAKIA

2. APOLOGIES

3. BUSINESS

#	Item	Comment/Direction
1	Chairperson discussion	• Chairperson Introductory Comments
2	Confirmation of Meeting notes	• Meeting notes of 29 January endorsed
3	Partnership role of Tangata Whenua (continuation of item from 29th January meeting)	• Tangata Whenua overview and presentation of core partnership principles (paper to be distributed separately) • Working Group questions and discussions *Note - direction or feedback will be sought at the 13 February JWG meeting (not this meeting). The outcome of that 13 February meeting will be reflected in the TCC and WBOPDC Reports for decision making*
4	Issues & Options Paper – Board & SRF Memberships and Appointments	• Staff overview of the issue and key considerations • Working Group questions and discussion *Note - direction / feedback will be sought at the 13 February JWG meeting (not this meeting). The outcome of that 13 February meeting will be reflected in the TCC and WBOPDC Reports for decision making*
5	Programme Workplan	• Update on programme workplan
6	General Business	**Matters raised at 29th January meeting:** *Chief Executive Recruitment Update* *Share Allocation* a) Could alternative methods be used to allocate shares to achieve the desired shareholding balance without the accounting issues (potential loss or debt to TCC if shares are not allocated based on net assets), and could similar methods be used for future adjustments or adding new shareholders? b) If shares are initially allocated based on net assets (or some other basis), can the share allocation method be changed later once ring fencing ends, and if so, should this be dealt with through amendments to the Constitution and/or SHA? *Amendments to Constitution and Shareholders Agreement* c) Whether amendments to the SHA should follow the same approval threshold as amendments to the Constitution. d) Is it an option to have a simple Constitution and a more detailed SHA, and what are the implications of this approach, including how to balance shareholder certainty with the need for flexibility to amend the Constitution and/or SHA when required

		Public Consultation Requirements e) Whether shareholder level decisions can be made without prior public consultation, for example when adding a new shareholder or amending the Constitution. *Finance Matters associated with shareholding options*

4. CLOSING KARAKIA

Final: 30 January 2026

Issues and Options Paper
SRF and Board Membership & Appointments

Purpose

1. To obtain direction from the JWG on preferred options for size, make-up and appointment process for the WO's Board and the WO's SRF.

2. Direction sought from this paper:

   a. Issue 1: The size of the SRF.

   b. Issue 2: SRF Membership – Elected Members.

   c. Issue 3: SRF Membership – Tangata Whenua.

   d. Issue 4: SRF Membership – Independent Chair.

   e. Issue 5: Nomination and appointment of members of the SRF.

   f. Issue 6: Number of WO Directors.

   g. Issue 7: Process for Director Appointment.

Background

3. 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.

4. By necessity, this paper assumes that elected members decide to proceed with the establishment of the WO[1] (and we acknowledge that elected members are yet to make that decision).

5. Key questions for the shareholding councils must be decided for the purpose of drafting the WO Constitution and Shareholders' Agreement ("**SHA**"). These include board structure and the appointment of the directors of the WO, as well as the membership of and appointments to the Shareholders' Representative Forum ("**SRF**") (if one is established[2]).

6. This paper will outline the following:

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1 If elected members decide against setting up a WO and instead retain all water services in-house, then the questions of board and SRF appointments are redundant.

2 And if one is established, we acknowledge that the name of the Forum may be something different, such as Stakeholder Representative Forum (particularly if non-shareholders sit on the Forum, such as Tangata Whenua representatives.)

a) Introductory principles relating to the size, make-up and appointment of the SRF, and the size and appointment of the WO's Board.

b) The options available for the seven issues are set out in the table below.

Issue	Options			
Size, make-up and appointment of the SRF				
Issue 1 – Size of the SRF	No options provided (as the outcomes of issues 2, 3 and 4 below will largely determine the size of the SRF.			
Issue 2 – SRF membership – Elected Members	Option A: One or more elected member[s] of each shareholding council.	Option B: At least one elected member, and one or more other person[s] (senior council officer, or an independent expert or specialist) appointed by either individually by each shareholding council, or collectively by all shareholding councils.		
Issue 3, subpart 1: The role of Tangata Whenua on the SRF	Option A: TW has no position on the SRF, and instead TW has an advisory role to the SRF (via an 'Advisory Board' type arrangement which links directly into the SRF).	Option B: TW has a position on the SRF but with no voting rights.	Option C: TW has a position on the SRF but with limited voting rights *(such as no right to vote on financial matters)*.	Option D: TW has a position on the SRF with full voting rights.
Issue 3, subpart 2: The number of Tangata Whenua representatives on the SRF	Option A: One Tangata Whenua representative.	Option B: The same number of representatives as each shareholding council. For example, if each shareholder has two representatives on the SRF, Tangata Whenua will also have two representatives on the SRF.		
Issue 4, subpart 1: Should the SRF have an independent chair?	Option A: SRF has an independent chair.	Option B: SRF has no independent chair.		

Issue	Options			
Issue 4, subpart 2: Should the independent chair have voting rights?	Option A: An independent chair with no voting rights.	Option B: An independent chair with limited voting rights. *For example, only as a casting vote or only a vote on defined topics.*	Option C: An independent chair with full voting rights.	
Issue 5, subpart 1: Nomination of Tangata Whenua representatives to the SRF	Option A: Tangata Whenua representatives are appointed by shareholding councils, following a nomination from Tangata Whenua.	Option B: Tangata Whenua representatives are appointed by shareholding councils, without a nomination from Tangata Whenua.		
Issue 5, subpart 2: Appointment of all members of the SRF	Option A: Each council individually appoints its own representatives to the SRF; and, all shareholders jointly appoint: • Any Tangata Whenua representatives (if approved – see issue 3). • An independent chair (if approved – see issue 4).	Option B: The shareholders jointly appoint all representatives to the SRF, including: • Its own representatives (see issue 2). • Any Tangata Whenua representatives (if approved – see issue 3). • An independent chair (if approved – see issue 4).		
Size and Appointment of the WO's Board				
Issue 6 - Number of WO directors	Option A: Up to 5 directors	Option B: A different number of Directors.		
Issue 7 - Process for director appointment	Option A: Each shareholder will have a right to appoint one or more directors (as specified), with additional directors appointed by agreement[3].	Option B: Shareholders (directly or via SRF) will jointly appoint all Directors.		

[3] We note all directors must be independent once the WO takes on the Water Services obligations.

"Introductory principles" - Membership and Appointments

7. Key points relevant to deciding SRF membership and appointments include:

    a. Membership of the SRF can vary. Depending on the decisions made regarding SRF membership and appointment rights, the representatives on the SRF may include:

        i. Elected Member(s);

        ii. Other councils representative(s), such as senior Council Officers;

        iii. Independent experts, including an independent chair; and

        iv. Tangata Whenua Representative(s).

    b. The standard approach adopted is:

        i. each shareholding council appoints its own representative(s) to the SRF (which would require each council to approve the delegations to its appointed members of the SRF), and

        ii. collectively the councils agree to appoint other SRF members, such as an independent expert, independent chair and Tangata Whenua representatives.

    c. It is possible for certain members of the SRF to have full participation rights, but no voting rights (such as an independent chair, or independent experts or even Tangata Whenua Representatives). Equally, it is possible for such members to have both participation rights and voting rights.

    d. An independent chair of the SRF will promote good governance by providing impartial leadership, reducing the risk of perceived bias between shareholder councils, and streamlining discussions through well-facilitated meetings focused on strategic issues.

8. Key points relevant to deciding WO Board membership and appointments include:

    a. No legislative restrictions on the number of directors on the board of the WO, so this should be led by the councils' views on 'right sizing' the board to ensure a good mix of skills and experience.

    b. While the constitution does not need to specify an exact number, it is considered good practice to include a reference to the maximum number of directors. This provides clarity without creating unnecessary rigidity.

    c. While varying approaches have been taken across the country, it is generally considered that a board of up to 5 directors would enable the appointment of a suitable mix of skills and experience.

    d. Directors must be appointed based on their competency to perform the role[4] and the appointment process should be consistent with the requirements set out in

[4] See section 48 of the Local Government (Water Services) Act 2025.

Schedules A – C, and in line with best practice as outlined in the Institute of Directors competency framework:

i. Schedule A – Skills matrix developed for the WO ("Skills Matrix").[5]

ii. Schedule B – Appointment of Directors TCC Policy.[6]

iii. Schedule C – Appointment of Directors WBOPDC Policy.

e. The board must collectively have an appropriate mix of skills, knowledge and experience in relation to providing water services.[7]

f. Elected members of shareholding councils, employees of shareholders, and employees of the water organisation cannot be appointed as directors.[8]

g. The consistent approach we have seen by other groups is that director appointments are made by the SRF, which applies the Skills Matrix[9] when making those appointments.

9. Elected Members have given clear direction that the arrangements should be future proofed to enable other Councils to join the WO over time. Therefore, when considering the issues in this paper, it is important to keep in mind that long-term picture and look to set up the WO in such a manner that it is an attractive organisation for other councils to join. Key documents like the constitution and the SHA should be drafted in a manner that leaves the door open for other councils to join (with appropriate checks and balances in place). In making decisions about how directors will be appointed to the WO, and members of the SRF will be appointed, the parties should bear in mind a future WO that includes not only TCC and WBOPDC, but other councils also.

10. With the above introductory principles in mind, we have set out below proposed options available for the following seven issues set out in the table above.

11. We note that the options mentioned for each issue are guided by the options included in the "Commercial Term Sheet" that has previously been presented to the JWG for discussion, feedback and approval. In other words, we acknowledge that a very wide range of theoretical options are available for each of the issues, however we have focused on the options presented via the Commercial Term Sheet.

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5 The skills matrix is intended to be used as a guide for selecting directors, and we expect it will be reviewed and updated from time to time. Not all skills as set out in the skills matrix are required to be met at any given time; Not all listed skills need to be met at any time; some may be irrelevant or unavailable. Directors may cover multiple skills, but no single director is expected to possess all or most of them.

6 Ideally, the Constitution would align with each council's policy relating to the appointment and remuneration of a director, as far as practicable, or alternatively new appointment policy could be prepared and adopted for the WO itself based on these policies.

7 See section 48 of the Local Government (Water Services) Act 2025.

8 See section 48 of the Local Government (Water Services) Act 2025.

9 In considering appointment against the Skills Matrix, the SRF may determine that some of the skills may not be relevant (and so may either update the matrix or be comfortable that the specific skillset is not required by the Board at that stage). Equally, the SRF may decide that all skills are relevant, but is not able to identify/recruit a director with the relevant skills at a particular time.

Issue 1: Size of the SRF

12. There is no statutory requirement prescribing the number of representatives on the WO. The councils have discretion to set a number that best supports effective governance. Effective governance groups are generally no more than 7 (see Institute of Directors guidance). The composition should provide flexibility for the future inclusion of further Councils to the WO.

13. In this paper, we have not set out the options, as the JWG's views on issues 2, 3 and 4 below, and what the JWG view as 'right-sizing' to ensure a good mix of skills, experience and representation, will largely determine the size of the SRF.

Issue 2: SRF Membership – Elected Members/Shareholder Representatives

14. The options to appoint members to the SRF include:[10]

    a. One or more elected member[s] appointed by each shareholding council.

    b. At least one elected member appointed by each shareholding council[11], and one or more other person[s] (which could be a senior council officer, or an independent expert or specialist) be appointed either individually by each shareholding council, or collectively by all shareholding councils.

15. The following table outlines the key advantages and disadvantages.

Advantages	**Disadvantages**
(a) One or more elected member(s) of each shareholding council.	
• Ensures direct representation of council decision-makers. • Provides strong alignment with shareholder priorities. • Familiarity with council processes may support effective communication between SRF and shareholding councils.	• Less flexibility to include specialist skills. • Greater risk of politicisation than a mixed membership model. • Elected members may already have heavy workloads, limiting availability and continuity. • The commercial, legal, and financial expertise required for SRF oversight may not always align with the background of all elected members.

[10] An alternative option would be to establish another type of subordinate decision-making body, which can allow for entirely appointed members. However, we anticipate that elected member representation will be preferred.

[11] This option reflects the legal requirements for a joint committee under the Local Government Act 2002, which must involve a representative of each local authority.

Advantages	Disadvantages
(b) At least one elected member, and one or more persons (senior council officer, or an independent expert or specialist) appointed either individually by each shareholding council, or collectively by all shareholding councils.	
• Broader skill set and governance expertise alongside elected representation. • Familiarity with council processes may support effective communication between SRF and shareholding councils. • Can improve decision-making quality through diversity of perspectives. • Appointed members (non-elected member appointees) may provide stability across election cycles.	• Appointment process may be more complex than simply selecting elected members. • Non-elected appointees are not directly accountable to voters, which may reduce transparency. • Shareholding councils may feel less directly connected to SRF governance.

Issue 3: SRF Membership – Tangata Whenua

16. This issue is divided into two sub-parts: [12]

    a. Subpart 1: The role of Tangata Whenua on the SRF.

    b. Subpart 2: The number of Tangata Whenua representatives on the SRF[13].

Issue 3, Subpart 1: The role of Tangata Whenua on the SRF

17. We seek direction from the JWG on the degree of involvement Tangata Whenua will have with the SRF.

18. In the event the JWG give direction to appoint Tangata Whenua representatives to the SRF, then we also seek direction from the JWG on the nomination and appointment process of Tangata Whenua representatives to the SRF. This topic is covered in issue 5 below.

19. The options available for the role of Tangata Whenua on the SRF, include:

    a. Tangata When has no position on the SRF, and instead Tangata Whenua has an advisory role to the SRF via an “Advisory Board” type arrangement which links

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12 The issue analysis is based on staff interpretation of the Tangata Whenua Position Paper. Tangata Whenua views were sought with a very short turnaround time, and were not received in a timeframe that enabled them to be incorporated into this paper.

13 In the event Tangata Whenua has a position sitting on the SRF.

directly into the SRF. The TW Advisory Board could also link to the WO's Board to provide cultural and other advice.

b. Tangata Whenua has a position on the SRF but with no voting rights.

c. Tangata Whenua has a position on the SRF but with limited voting rights (such as no right to vote on financial matters).

d. Tangata Whenua has a position on the SRF with full voting rights.

20. The following table outlines the of key advantages and disadvantages.

Advantages	**Disadvantages**
(a) Tangata When has no position on the SRF, and instead Tangata Whenua has an advisory role to the SRF via an 'Advisory Board' type arrangement which links directly into the SRF.	
• SRF decision-making remains solely with the shareholding councils, which provides a straightforward governance structure and decision-making process. • If the intention is that the SRF is very strictly a forum exclusively for "shareholders", then it would be inconsistent to appoint anyone who is not a shareholder. • It may make the SRF more efficient and streamlined. • It may reduce financial costs. • Still allows the SRF to take advice from Tangata Whenua through an "Advisory Board."	• May be perceived as inconsistent with Treaty principles, local expectations and a true partnership model. • May damage relationships with Tangata Whenua. • The SRF (and by extension, the WO) may miss out on all of the "value-adds" that come with Tangata Whenua input through meeting participation. • Advice from Tangata Whenua though an "Advisory Board" may not hold the same weight as input provided within the SRF itself.
(b) Tangata Whenua has a position on the SRF but with no voting rights.	
• Tangata Whenua representatives can hear discussions directly and can provide feedback and advice in a timely manner. • Demonstrates a commitment to inclusion without altering the voting structure. • Shareholding councils remain the sole decision-makers on matters before the SRF. • May be easier to implement within existing governance arrangements.	• Tangata Whenua may still feel their voice carries limited weight. • A seat without voting rights may not meet expectations for a true partnership model. • Tangata Whenua representatives likely to expect more influence than the non-voting status provides.

Advantages	Disadvantages
(c) Tangata Whenua has a position on the SRF but with limited voting rights (such as no right to vote on financial matters).	
• Tangata Whenua can influence decisions most closely aligned with their interests and responsibilities, such as water stewardship, cultural values etc. • Councils retain authority over core financial and shareholder risk matters, while enabling shared decision making on other matters. • Shows a willingness to embed Te Tiriti informed governance. • Ensures cultural and environmental considerations are embedded in decisions of the SRF.	• Requires the matters that Tangata Whenua may vote on to be clearly defined. • Distinguishing which matters are to be included and excluded for Tangata Whenua voting (eg "financial" versus "non-financial") may cause disagreement. • Tangata Whenua may consider limited voting rights insufficient for a true partnership.
(d) Tangata Whenua has a position on the SRF with full voting rights.	
• Demonstrates a full commitment by shareholding councils to shared governance and alignment with Tangata Whenua's aspirations. • Tangata Whenua perspectives shape all SRF decisions. • May reduce future tensions or renegotiations by having a true partnership model from inception of the WO.	• The shareholding councils would not have exclusive voting control on matters to be decided by the SRF/RF. • May raise questions about decision making authority for representatives not elected by the ratepayers of the shareholding councils.

Issue 3, Subpart 2: The number of Tangata Whenua Representatives on the SRF.

21. This issue of determining the number of Tangata Whenua representatives on the SRF is only relevant in the event TCC and WBOPDC elect to appoint a Tangata Whenua representative(s) to the SRF. i.e., TCC and WBOPDC elect to proceed with option b, c or d under issue 3, subpart 1 above.

22. The options include:

    a. One representative.

    b. The same number of representatives as each shareholding councils. For example, if each shareholder has two representatives on the SRF, Tangata Whenua will also have two representatives on the SRF.

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

Advantages	Disadvantages
(a) Tangata Whenua has one representative on the SRF.	
• A single representative simplifies communication and reduces the risk of internal divergence or competing viewpoints. • Stakeholders know exactly who is speaking on behalf of Tangata Whenua within the SRF. • Limits the total number of participants around the table, helping to ensure the SRF is run and efficiently.	• In the event the shareholding councils have two or more representatives on the SRF, having one Tangata Whenua representative may not meet expectations for a true partnership model. • One person may struggle to fully capture the breadth of iwi and hapū views, especially given the number of groups involved. • A single individual may carry a heavy workload and face unrealistic expectations. • Some iwi/hapū may feel their voice is diluted or not adequately reflected through one representative. • If the representative resigns or is unavailable, continuity of Tangata Whenua input may be disrupted. • Formal appointment of one representative may be challenging in the event the additional councils join the WO as shareholders in the future.
(b) Tangata Whenua has the same number of representatives as each shareholding council on the SRF	
• Having more than one representative allows iwi and hapū to bring multiple viewpoints, ensuring broader cultural, environmental, and governance perspectives are reflected. This may help make the WO more attractive to other councils looking to join the WO in the future. • Absence or turnover of one representative does not interrupt Tangata Whenua participation. • Having equal numbers of representatives as councils may be viewed as more being more consistent with a true partnership model. • Responsibilities can be divided (e.g., environmental, cultural, technical matters), reducing pressure on individuals.	• Increases meeting size, which may reduce efficiency or lengthen decision-making processes. • More representatives may lead to additional remuneration or administrative costs. • Multiple voices may express different iwi/hapū priorities, which could complicate SRF deliberations unless well-coordinated. • The future opportunity to bring in other Councils may see the size of the SRF being unweildy.

Issue 4: SRF Membership – Independent chair

24. This issue is divided into two sub-parts:

    a. Subpart 1: Should the SRF have an independent chair?

    b. Subpart 2: If yes, should the independent chair have voting rights?

Issue 4, Subpart 1: Should the SRF have an independent chair?

25. We seek direction from the JWG on whether an independent chair should be appointed to the SRF.

26. The options available include:

    a. The SRF has an independent chair.

    b. The SRF has no independent chair.

27. The following table outlines the key advantages and disadvantages.

Advantages	**Disadvantages**
(a) The SRF has an independent chair *(The ability to appoint an independent chair could be included in the Shareholders Agreement as an option, with appointment only triggered on unanimous agreement of the shareholding councils).*	
• An independent chair can facilitate balanced discussions and reduce perceptions of council specific bias. • Can enhance credibility and public confidence in governance. • Provides professional governance expertise, which may improve decision-making and efficiency. • A neutral chair can help de-escalate conflict, improve meeting discipline, and enhance confidence across all participants, including Tangata Whenua (if represented). • Facilitate good joint decision making/direction from the SRF.	• Additional cost for remuneration and recruitment. • Requires careful selection to ensure independence and relevant experience. • Without voting rights (see issue 4, subpart 2 below), the chair may struggle to shape consensus or provide strategic input, especially when decisions are contentious.
(b) The SRF has <u>no</u> independent chair.	
• Maintains direct council control over leadership of the forum.	• Risk of perceived or actual bias if chair is from one council.

Advantages	Disadvantages
• Avoids extra cost and complexity associated with appointing an independent person. • Chair may not have a strong understanding of local context and shareholder priorities. • If the intention is that the SRF is a forum exclusively for "shareholders", then it would be inconsistent to appoint anyone who is not a shareholder.	• May lead to less balanced facilitation and potential tension between councils. • Could impact public confidence in governance neutrality.

Issue 4, Subpart 2: If yes, should the independent chair have voting rights?

28. This issue of whether the independent chair should have voting rights is only relevant in the event TCC and WBOPDC elect to appoint an independent chair to the SRF. I.e. TCC and WBOPDC elect to proceed with option a under issue 4, subpart 1 above.

29. The options include:

    a. An independent with no voting rights.

    b. An independent chair with limited voting rights. For example, only as a casting vote or a vote on defined topics.

    c. An independent chair with full voting rights.

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

Advantages	Disadvantages
(a) An Independent Chair with no voting rights.	
• Ensures the chair is focused purely on governance quality, process, and balanced discussion rather than influencing outcomes. • Removes any concern that an independent appointee could sway decisions contrary to shareholder councils' priorities. • Voting power remains fully with shareholder representatives, maintaining transparent democratic accountability. • Encourages members to resolve issues collaboratively rather than relying on the chair for decision outcomes.	• Without a vote, the chair cannot break ties, which may prolong disagreements between councils. • The chair may be seen as less influential, reducing their ability to drive effective governance. • If the group expects the chair to provide leadership on key issues, lack of voting power may diminish their authority.

Advantages	Disadvantages
(b) An Independent Chair with limited voting rights. For example, only as a casting vote or a vote on defined topics.	
• A limited vote (e.g., casting vote only) can reduce the risk of stalemate between councils. • Depending on how the limited voting rights are defined, shareholding councils could retain control of core financial or key shareholder matters, while the chair contributes to procedural or cultural decision areas. Alternatively, voting power could be restricted to matters where impartial judgment is especially valuable. For example, in the event of a conflict between shareholding councils. • Strategic use of voting rights can reinforce good decision-making without undermining shareholder control.	• Requires clear rules defining when the chair may vote, which could increase the risk of disputes. • Even limited voting rights may raise concerns about non-shareholders influencing outcomes. • May not satisfy anyone, in that shareholding councils may feel the chair voting is inappropriate; while others may view limited voting rights for the chair as insufficiently empowering. • Councils might lean on the chair to resolve disagreements rather than negotiating collaboratively. • Potential for chair to influence overall final voting and decision
(c) An Independent Chair with full voting rights	
• The chair has full ability to shape and influence decisions, potentially improving decision quality and consistency. • Decision-making may become more stable as it is less prone to shifting political environments. • Independent chairs often prioritise organisational interests over shareholder-driven ones.	• A non-shareholder could potentially hold the same voting rights as a representative of a shareholding council, which may be difficult to justify democratically. • The chair's perspectives may diverge from shareholding council expectations, creating tension.

Issue 5: Nomination and appointment of members of the SRF

31. This issue is divided into two subparts:

    a. Subpart 1: Nomination of Tangata Whenua Representatives.

    b. Subpart 2: Process for appointing all SRF members.

Issue 5, Subpart 1: Nomination of Tangata Whenua Representatives

32. We seek direction from the JWG on whether Tangata Whenua may nominate their own representatives to the SRF, with final approval to be given by the shareholding councils.

33. This issue is only relevant in the event the shareholding councils elect to appoint a Tangata Whenua representative(s) to the SRF. I.e. TCC and WBOPDC elect to proceed with option b, c or d under issue 3, subpart 1 above.

34. The options include:

    a. Tangata Whenua representatives are appointed by shareholding councils, following a nomination from Tangata Whenua.

    b. Tangata Whenua representatives are appointed by shareholding, without a nomination from Tangata Whenua.

35. The following table outlines the advantages and disadvantages:

Advantages	**Disadvantages**
(a) Tangata Whenua representatives are appointed by shareholding councils following a nomination from Tangata Whenua.	
• Allows Tangata Whenua to participate meaningfully in choosing who represents them, supporting the principles of partnership and rangatiratanga. • Representatives selected through their own processes are more likely to be trusted by iwi/hapū. • Nomination processes can reflect cultural norms and existing governance models within Tangata Whenua entities. • Demonstrates genuine commitment to co-governance and shared decision-making, improving long-term trust with Tangata Whenua. • Ensures appointed representatives genuinely reflect iwi/hapū perspectives rather than being perceived as council-selected.	• Tangata Whenua nomination processes may take longer or require additional coordination and administrative support. • Risk of tension if councils reject Tangata Whenua nominations.
(b) Tangata Whenua representatives are appointed by shareholding councils without a nomination from Tangata Whenua.	
• Councils can appoint representatives directly, which may enable faster decision-making and easier administration. • Councils can ensure appointees meet specific governance, technical, or capability criteria aligned with SRF needs.	• May be perceived as councils deciding ‘on behalf of’ Tangata Whenua, which could impact trust and relationship quality. • Representatives appointed without a nomination may not be seen as authentic or representative by Tangata Whenua. • Council-run appointment processes may not align with cultural protocols or iwi/hapū decision-making structures.

Advantages	Disadvantages
	• Tangata Whenua may feel their role in determining representation has been bypassed, which may create tension or disengagement.

Issue 5, Subpart 2: Process for appointing all SRF members

36. We seek direction from the JWG on the process for appointing all SRF members.

37. The options available include:[14]

a. Each council individually appoints its own representatives to the SRF; and, all shareholders jointly appoint:

i. Any Tangata Whenua representatives (if approved – see issue 3).

ii. An independent chair (if approved - see issue 4).

b. The shareholders jointly appoint all representatives to the SRF, including:

i. Council representatives (issue 2);

ii. Any Tangata Whenua representatives (if approved – see issue 3).

iii. An independent chair (if approved - see issue 4).

38. The following table outlines the key advantages and disadvantages.

Advantages	Disadvantages
(a) Each council appoints their own representative; and jointly appoints any Tangata Whenua representatives (if approved) and an independent chair (if approved).	
• Provides clarity and autonomy for each council in selecting its representatives. • Ensures councils can choose individuals who best reflect their priorities and local context. • Reduces risk of delays caused by inter-council negotiations. • Ensures Tangata Whenua representatives and the chair (positions	• Potential for inconsistency in approach or expectations between councils. • Independently appointed council representatives may have differing priorities or interpretations of the SRF's mandate. • Because councils do not need to align on all appointments, joint strategic cohesion may be harder to build.

[14] An alternative option would be to establish another type of subordinate decision-making body, which can allow for entirely appointed members, but we anticipate that elected member representation will be preferred.

Advantages	Disadvantages
involving the whole region) are jointly agreed.	
(b) Councils jointly appoint all representatives.	
• Encourages collaboration and shared ownership of governance. • Can promote consistency in representation and approach. • SRF seen as a joint regional vehicle rather than two councils operating in parallel. • Councils can jointly agree on a balanced mix of skills across all appointees, including council representatives.	• Appointment process may be slower and more complex, requiring consensus. • Risk of deadlock or disputes if councils have differing priorities.

Issue 6: Number of Board Directors

39. We seek direction from the JWG on the number of directors to be appointed to the WO Board.

40. There is no statutory requirement prescribing the number of directors for the WO. The councils have discretion to set a number that best supports effective governance. It is not unusual to specify a minimum and a maximum number of directors.

41. The options include:

    a. Up to 5 directors; or

    b. A different number of directors. For example, greater than 5 directors.

42. The following table outlines the key advantages and disadvantages. This is a situation where staff recommend option a. set out above.

Advantages	Disadvantages
(a) Up to 5 directors	
• Enables appointment of a balanced mix of skills and experience, aligned with the Skills Matrix • Reduces the risk of governance inefficiencies that can arise with larger boards as well as the additional costs of directors fees.	• It may be more challenging to cover all relevant competencies in the Skills Matrix. The departure of a single director may have a more noticeable impact on capability or institutional knowledge.

Advantages	Disadvantages
• Flexibility to have less than 5 directors if deemed appropriate. • Allows for Board rotation and business continuity	• Each director may need to carry a broader governance portfolio (e.g., committee responsibilities) due to fewer available members.
(b) A different number of directors. For example, greater than 5 directors.	
• A larger board can incorporate a wider range of technical, cultural, environmental, and commercial expertise—valuable in complex, multi-council service organisations • More seats can make it easier to reflect shareholder diversity or incorporate Tangata Whenua perspectives, subject to the final governance model • A larger board may be less affected by individual departures and can share workload more evenly across committees.	• Larger boards often require more discussion time and coordination, which can delay decisions and reduce agility. • Additional directors increase governance expenditure and administrative requirements (remuneration, governance support, induction, etc.) • With more directors, individual responsibility can become blurred, potentially weakening oversight and performance discipline. Larger groups may have more varied views, making consensus harder to achieve and increasing the risk of factional dynamics.

Issue 7: Board Director Appointment

43. We seek direction from the JWG on the process for appointing directors to the WO Board.

44. With respect to appointing the directors to the WO Board[15], the options available include[16]:

    a. Each shareholder appoints one or more directors (as specified), with additional directors appointed by agreement (but noting all directors must be independent once the WO takes on the Water Services obligations).

    b. Shareholders (directly or via SRF) will jointly appoint all directors.

45. The following table outlines the key advantages and disadvantages.

[15] It is common for a director to be appointed to a term of 3 years, which is consistent with TCC's and WBOPDC's existing director appointment polices. In time, the WO can develop its own director appointment policy which can address the duration, renewal and maximum length of an appointment to the WO's Board.

[16] To reiterate, the options covered in this paper are those options that have previously been presented to the JWG within the "Commercial Term Sheet".

Advantages	Disadvantages
(a) Each shareholder has a right to appoint one or more directors.	
• Ensures direct representation for each shareholder, giving councils confidence their interests are reflected. • May be more efficient as each council controls its own process without needing consensus. • Provides flexibility for councils to appoint directors with specific local knowledge or expertise. • Councils may find it easier to follow their own policy for appointing directors if they have their own right to appoint.	• Could discourage collaboration and collective decision making. • Directors may feel aligned to the appointing shareholder rather than acting in the best interests of the WO. • A siloed approach may make it more challenging to ensure all relevant competencies in the Skills Matrix are covered.
(b) The shareholders/representative forum jointly appoint all directors.	
• Promotes collaboration as both councils would participate in a single appointment process (that could be facilitated through the SRF). • Supports independence and impartiality, balanced representation and decision-making. • Appointments may appear less politically influenced and more merit-based. • A unified approach may make it easier to ensure all relevant competencies in the Skills Matrix are covered.	• The appointment process may be more complex, requiring consensus among the councils. • Potential for deadlock if the two councils have differing priorities or expectations.

Next steps

46. In the above sections we have identified the reasonable options for the JWG to consider.

47. At the JWG meeting on 13 February there will be an opportunity for the JWG members to reach a consensus view (or otherwise) on these options.

48. 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.

49. 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.

Schedule A - Skills Matrix for the WO

Schedule 1: Director Skills Matrix

The following is a summary of recommended skills and expertise for the appointment of persons to a Board of directors of a company established to deliver water services under the Local Government (Water Services) Act 2025.

AREA OF EXPERTISE / SKILL	REQUIREMENT
Governance and leadership experience	Significant governance and leadership experience, in either a utility, commercial sector organisation, or in a public body. Direct experience or a close understanding of local government type decision-making processes, and political understanding. Preferably leadership experience in water service delivery, or a similar service delivery industry. At least one director should have the ability and willingness to chair the Board. The ability and willingness to participate fully in the life of the Board and on subcommittees as required. A commitment to ensuring continuity of governance and maintaining the capability and expertise required for effective long-term oversight after establishment.
Diversity / Inclusion	Collectively, the directors should reflect diversity of gender, ethnicity, background, and experience. They should bring a range of cognitive styles, cultural perspectives, and professional expertise to ensure inclusivity, representation, and the ability to respond effectively to the needs and expectations of stakeholders and the Tauranga/Western Bay region.
Mātauranga Māori / tikanga Māori / te ao Māori i	Strong cultural competency, experience and deep understanding of te ao Māori and Te Tiriti o Waitangi. A strong understanding of the existing post-settlement governance arrangements for the Tauranga/Western Bay region, and iwi stakeholders generally. Understanding the significance of water to Māori social, economic and environmental wellbeing. Understanding of iwi governance arrangements and iwi stakeholders generally.
Knowledge of Tauranga and Western Bay / Public Accountability	A deep understanding of the Tauranga/Western Bay region and the local government context within the region, and experience and knowledge of communities and appreciation of public accountability. At least one director should be Tauranga/Western Bay based.

AREA OF EXPERTISE / SKILL	REQUIREMENT
Experience operating within a regulated environment	Experience and understanding of the regulatory environment and compliance requirements specific to the utility / infrastructure sector. This includes familiarity with laws, regulations, and policies that govern that infrastructure industry and legal expertise in interpreting complex legislation, advising on compliance frameworks, and ensuring organisational adherence to statutory and regulatory obligations. Resource and environmental management experience, and a practical understanding of the RMA.
Asset and infrastructure management and planning, and delivery	Understanding of good governance of assets and infrastructure, and experience with managing civil infrastructure assets. At least one director should have experience in governing asset management planning and engineering in an infrastructure or utility environment or consulting to the water sector: • Wide-ranging experience across the operations of a asset management / utility / infrastructure organisation with a strong focus on governance and strategic oversight • Experience and understanding of regulations and laws applicable to regulated utility organisations, including economic regulation, and engaging with regulators. At least one director should have experience in climate adaptation and resilience planning, including an understanding of sustainability frameworks, risk-mitigation strategies, and long-term infrastructure resilience requirements.
Commercial strategic business expertise	Experience working in commercial business environment and overseeing commercial negotiations. Experience with digital systems and IoT for operations and awareness of associated cybersecurity risks. Experience with innovation capability or digital transformation experience, which is critical for modern water service delivery.

AREA OF EXPERTISE / SKILL	REQUIREMENT
Finance and risk	Experience in establishing complex commercial arrangements, including capital structure, debt financing and pricing and charging mechanisms; experience within networked regulated industries; and an ability to bring appropriate pragmatic advice to the Board table. At least one director (ideally two) should have experience in finance and risk within an establishment context: • Experience managing or overseeing large high stakes investment programmes. • Experience evaluating financial plans ensuring the organisation's long term financial sustainability. • Expertise in identifying, assessing, and mitigating financial, operational, and regulatory risks associated with utility operations. • Ability to assess financial strategies to support sustainable and compliant performance.
Transitional change and/or new organisation establishment	Significant senior level experience and success in large-scale sector and/or organisation reform, change and establishment, preferably at a governance level. Prior proven experience in large scale transitions, organisation reform or the establishment of a new entity. Proven experience in contributing to and building a new entity's organisational structures.
Health and Safety	Detailed understanding of health & safety compliance and regulatory requirements.
Stakeholder engagement and relationship management, and customer interface	Experience building and maintaining stakeholder relationships (which may include Central Government) through good communication and understanding of different drivers. Commercial experience in integrating the customer experience into broader business strategies and inspiring a customer focused culture across an organisation starting from Day 1. At least one director should have experience in customer experience: • Developing long-term strategies that recognise customers as a key driver to high performing service delivery • The ability to champion the customer journey with colleagues and stakeholders Prior involvement in public engagement and consultation processes, including experience building and maintaining a social license to operate.

Schedule B – TCC Policy on Appointment of Directors

APPOINTMENT OF DIRECTORS TO COUNCIL ORGANISATIONS POLICY

Policy type	City		
Authorised by	Council		
Last adopted	11 February 2020	**Minute reference**	PO3/20/3
Revisions/amendments	18 November 2025	**Minute references**	CO/25/27/28
Review date	As required		

1. POLICY OBJECTIVE

This policy has been developed to comply with section 57 of the Local Government Act (2002). This requires Council to adopt a policy that sets out an objective and transparent process for

a) the identification and consideration of the skills, knowledge, and experience required of directors of a council organisation; and

b) the appointment of directors to a council organisation; and

c) the remuneration of directors of a council organisation.

2. PRINCIPLES

Council recognises that:

- The appointment of directors should be based on merit.
- Directors should possess the appropriate level of skills, knowledge and/or experience to guide the council organisation and contribute to the achievement of its objectives.
- Directors of council organisations should be appointed:
    - on the basis of the contribution they can make to the organisation, and not on the basis of representation;
    - through a formal, objective and transparent process.
- While the over-riding principle is to appoint on merit, Council encourages diversity of gender, skills, thought and culture on its Council Organisation (CO) boards. Council may consider the appointment of a director with strong connections to and the support of local iwi, subject to the required skills and experience.

3. DEFINITIONS

Term	Definition
Candidate	is a person who has submitted a written application for a director's position or has formally agreed to be considered for such a position.

Council Organisation (CO)	is defined in Section 6 of the Local Government Act 2002. In broad terms, a CO is an organisation in which the Council has a voting interest or the right to appoint a director.
Council Controlled Organisation (CCO)	is defined in Section 6 of the Local Government Act 2002. It is a CO in which one or more local authorities control, directly or indirectly, 50% or more of the votes or has the right, directly or indirectly, to appoint 50% or more of the directors.
Council Controlled Trading Organisation (CCTO)	is defined in Section 6 of the Local Government Act 2002. It is a CCO that operates a trading undertaking for the purposes of making a profit.
Directors	include trustees, managers or office holders (however described in that organisation).

4. POLICY STATEMENT

Part 4A– Council-Controlled Organisations (including Council-Controlled Trading Organisations)

4.1 The Role of a Council Controlled Organisation Director

The role of a council appointed director is to assist the organisation to meet its objectives and any other requirements in its Statement of Intent, in accordance with the requirements of the Tauranga City Council Code of Conduct for Directors Appointed by Council to Council Organisations.

4.2 Identification of Skills, Knowledge and Experience Required

The skills, knowledge, experience and any other attributes required of a Council Controlled Organisation (CCO) director will be identified and documented, prior to the appointment process commencing.

The ability to guide the organisation, given the nature and scope of its activities, and the ability to contribute to the achievement of the objectives of the organisation will form the basis of the skills, knowledge, or experience required.

In general terms, the following skills and attributes are sought in CCO directors:

- intellectual ability coupled with common sense
- strategic vision
- an understanding of governance issues
- business and/or other experience that is relevant to the activities of the organisation
- sound judgment
- a high standard of personal integrity
- the ability to work collaboratively and cooperatively within the team
- an understanding of the wider interests of the publicly-accountable shareholder
- the ability to build and maintain relationships within the Tauranga community.

The mix of skills and experience on the CCO board, as well as the board's diversity will be taken into account. Consideration will be given to complementing and

reinforcing existing skills, reducing known skill gaps and increasing diversity where necessary.

It is required that all appointees to CCO boards will undergo, or already have undergone, formal corporate governance training, or have the requisite experience in this area. It is the role of the CCO Chair to ensure that their boards undertake ongoing professional development throughout their term as director.

4.3 Eligible Candidates

Appropriately qualified external applicants are eligible as candidates for director positions on CCO boards.

- Elected Members of Tauranga City Council are not eligible to be considered as candidates for director positions on CCO boards, other than in exceptional circumstances.
- Employees of Tauranga City Council are not eligible to be considered as candidates for director positions on CCO boards, unless they are appointed in their capacity as an employee of Tauranga City Council.
- Employees of a Tauranga City Council CCO are not eligible to be considered as candidates for director positions on CCO boards, other than in exceptional circumstances.

4.3.1 Mandatory Disclosures

As part of an application a candidate is required to disclose whether he or she:

- is an immediate family member of an elected member, the chief executive, or a second-tier manager of Tauranga City Council or a Council Controlled Organisation, or
- has been convicted of an offence for which the maximum available sentence is imprisonment of two years or more (noting that required disclosures are subject to the provisions of the Criminal Records (Clean Slate) Act 2004), or
- has been declared bankrupt at any point in time or been the director of a company at the time it was placed in receivership or involuntary liquidation.

Any disclosures under the above clause will be taken into consideration by the Appointment Panel and Council but will not automatically preclude the candidate's appointment as a director.

Candidates are also required to disclose any actual or potential conflicts of interest that may arise if they are appointed as a CCO director. Council expects that applicants would not be considered for a director’s position if it is likely that the applicant would, if successfully appointed, have a significant conflict of interest.

4.4 Director Appointment Process

Once a vacancy has been established, the Chief Executive has delegated authority to approve the list of skills, knowledge and experience required for the position.

An Appointment Panel will be established and approved by the Chief Executive, subject to consulting with the Mayor.

4.4.1 Appointment Panel Composition

The Appointment Panel will be made up of:

- two elected members ; and
- the existing Chair of the CCO or their nominee; and
- one independent person who brings particular knowledge or skills that can add value to the process.

Appointment of the Trustees of Tourism Bay of Plenty will be made jointly with Western Bay of Plenty District Council.

The Appointment Panel will appoint its own Chair.

An employee of Council or of the CCO may not be appointed as a member of the Appointment Panel.

A Council employee may be appointed as an advisor to the Appointment Panel as and when necessary.

Members of an Appointment Panel who are not elected members or directors of the CCO may be remunerated for their time and skills.

The Chair does not have a casting vote.

Members of the Appointment Panel will not have a conflict of interest relating to their role on the Appointment Panel.

4.4.2 Appointment Panel Composition for Appointments to Tauranga Art Gallery Trust

An appointment panel will be established. The panel will be made up of:

- two elected members ; and
- the existing Chair or Deputy Chair of the CCO, or their nominee; and
- one independent person who brings particular knowledge or skills that can add value to the process.

All other matters relating to the Appointment Panel composition shall be as outlined in section 4.4.1.

4.4.3 Appointment Panel Responsibilities

The appointment panel will be responsible for:

- approving the criteria against which applications will be assessed;
- approving an independent recruitment consultant to assist the Appointment Panel with the selection process, if it decides it is warranted;
- preparing a recommended short-list of candidates to interview;
- interviewing the short-listed candidates and evaluating them against the approved criteria; and
- reporting on its assessment of each candidate against its criteria and recommending appointments of directors to Council.

4.4.4 Advertisement of a Council Appointed Director's Position

In most instances, Council will seek expressions of interest in the position by way of a public advertisement and nominations from elected members, directors of the CCO or Crown agencies such as the Ministry of Women's Affairs and Te Puni Kokiri.

However, Council may decide not to advertise the position if there is urgency (e.g. a council organisation that is without a quorum and cannot hold board meetings) or any other reason it may consider warrants such a course of action.

Where the Council decides not to advertise a particular position, the Appointment Panel will:

- at the first practical opportunity, publicly notify its intention and reasons for doing so
- prepare a shortlist of prospective candidates whom it considers meets the criteria, subject to Council approval
- ascertain if the prospective candidates are interested in being considered
- apply the same selection process to those who are interested as it would to any other candidate

4.4.5 Appointment

Council will make its final decision in a confidential committee (thus protecting the privacy of natural persons). This will be followed by the resolution being re-stated in open meeting. A public announcement of the appointment will be made as soon as practicable after Council has made its decision and received confirmation of acceptance from the candidate/s.

4.5 Appointment Term and Reappointment

A director to a CCO will normally be appointed for a period of three years. The appointment period will expire on 30 June. If a director has been in office for more than 2½ years at 30 June, then his/her three-year term will be deemed to have expired. If a director has been in office for more than two years but less than 2½ years at 30 June, then he/she will be deemed to have one further year of the three-year term remaining.

Notwithstanding the above, to enable effective succession planning, Council will seek to balance the expiry dates of directors' terms to ensure that approximately one third of directors retire or are required to seek reappointment in any year. This may require appointments to be made for a mix of one, two and three years.

Where a director's term of appointment has expired and that director is offering him/herself for reappointment, Council will consult with the Chair and Deputy Chair. Council will then make a decision on reappointment or replacement based on:

- the director's length of tenure;
- the director's demonstrated ability to work collaboratively and to participate within the team;
- whether the skills of the incumbent add value to the broader skills mix and work of the board;
- whether there are other skills which the board needs, bearing in mind the changing dynamics of the CCO;
- whether there is an opportunity to increase board diversity;
- succession issues

4.5.1 Maximum Terms

Subject to a review of the director's performance after the first three-year period, the normal tenure for a director will be six years.

Following six years of service, a director may be appointed for a further three years, if the benefit of such an extension is considered to outweigh the potential advantages of seeking and appointing a new candidate.

A director cannot be reappointed to the same board after nine years in service.

4.6 Termination of Appointment

Directors appointed to CCOs by Council are in the role at the pleasure of Council. A director's appointment may be terminated at any time by Council or by the director/trustee by way of written notice. There will be no compensation payable to directors for early termination.

4.7 Appointment of a Chairperson

Council will appoint the Chair and Deputy Chair of each CCO board, taking into account the experience and skills of the existing board. Council will seek input from the current board members, as appropriate.

Appointment of the Chair and Deputy Chair of Tourism Bay of Plenty will be made jointly with Western Bay of Plenty District Council.

If a suitable Chair cannot be appointed from the current board for any reason, or if there is more than one suitable candidate on the current board, an appointment process and panel will be established as per the Director Appointment Process in section 4.4.

4.7.1 Appointment of a Chairperson to Tauranga Art Gallery Trust

The Trustees of the Tauranga Art Gallery Trust will elect their own Chair and Deputy Chair, as per their Trust Deed.

All other matters relating to the specific skills and attributes sought in the Appointment of a Chair shall be as outlined in section 4.7.2.

4.7.2 Specific skills and attributes sought

In general terms, the skills and attributes sought for CCO Chairs are the same as those sought for CCO Directors (see 4.2), but in addition would include the following:

- strong leadership skills, with the ability to work collaboratively with the Board and General Manager to create a sustainable enterprise;
- ability to think in a visionary and strategic manner;
- have a strong understanding of and experience in governance; and
- ability to ensure that the organisation is accountable and delivers high quality products, facilities and services.

4.8 Conflict of Interest

Council expects that directors appointed under this policy will avoid situations where

their actions could give rise to a conflict of interest.

4.9 Directors' Professional Standards

Directors appointed by Council will be required to follow the provisions of the New Zealand Institute of Directors' Code of Ethics and of Council's Code of Conduct for Directors Appointed by Council to Council Organisations.

Breach of either code may result in dismissal of a Council-appointed director.

4.10 Remuneration of Council Appointed Directors

4.10.1 Remuneration and Indemnification of Directors

Tauranga City Council will decide whether directors on CCO boards are to be remunerated. The level of remuneration for directors will be set by Council in accordance with the factors outlined in section 4.10.2 below.

In exceptional circumstances, where elected members and Council employees may have been appointed as directors of a CCO, they will not be remunerated for that role unless provided for by specific Council resolution.

The Council supports the payments by CCOs of directors' liability insurance and the indemnification of directors.

Travel costs for meetings are generally not reimbursed, other than in exceptional circumstances approved by the Chair.

4.10.2 Level of Remuneration

Where CCO directors are remunerated, the level of remuneration will be set taking into account the following factors:

- the need to attract and retain appropriately qualified directors
- the levels of remuneration paid by comparable organisations in New Zealand
- any changes in the nature of the CCO's business
- any other relevant factors.

Remuneration of directors of all CCOs will be reviewed at least once per triennium, or whenever the performance of the CCO or the role of the CCO and its board changes significantly.

4.11 CCOs and CCTOs in which Council has a minority interest

Where Council has a minority interest in a CCO or CCTO (i.e. where a CCO or CCTO is controlled by a number of councils and Tauranga City Council does not have a majority stake) then the process for the appointment and remuneration of directors will be agreed with the other shareholders (by whatever name) in the CCO or CCTO.

As far as practicable, Council's involvement in the process will be consistent with this policy as it applies to CCOs or COs, whichever is the more relevant to the circumstances.

Part 4B – Council Organisations that are not CCOs or CCTOs

4.12 Council Organisations – Non-Controlling Interest

Council may have non-controlling interests in Council Organisations. Generally, these are not-for-profit bodies.

Appointments to Council Organisations where Council does not have a controlling interest may occur to:

- provide a means of monitoring where the Council has made a grant to that body enable Council involvement where the CO's activity is relevant to Council;
- satisfy a request from the CO that the Council appoint a representative.

Appointments to a CO are generally for a three-year term and made after the triennial elections. Elected members may be appointed to a CO where Council does not have a controlling interest.

Remuneration of CO directors is at the discretion of that organisation, but Council would ordinarily expect no remuneration to be paid to Council-appointed directors.

Part 4C – CCO Subsidiaries

4.13 CCO Subsidiaries

This part of the policy applies to any current or future subsidiaries of Tauranga City Council's CCOs.

CCOs are generally responsible for making appointments to boards of their subsidiaries but are expected to keep the council fully informed prior to confirming appointments.

CCOs are required to apply the provisions of this policy to the extent practicable and must use objective and transparent processes. Any reference to the Council in this policy means the CCO board in the case of subsidiary appointments.

CCOs may appoint members of their own board to the board of a subsidiary, if this is in the best interests of both organisations, and the board member has the required knowledge and experience. Prior to making such appointments, CCOs should consider whether this would conflict with their responsibility to monitor subsidiary performance.

Additional fees should not be paid to CCO board members or managers appointed to CCO subsidiary boards.

Part 4D – General

4.14 Policy Review

Council will periodically review this policy, in consultation with the CCOs, with a view to continuous improvement.

5. RELEVANT DELEGATIONS

The Appointment Panel has delegated authority to:

- decide whether the position needs to be advertised or not
- conduct the selection process
- recommend suitable people to Council to be appointed as directors to council organisations.

The Chief Executive may delegate authority to assist Council and the Appointment Panel in the process of selection / appointment of directors.

6. REFERENCES AND RELEVANT LEGISLATION

Local Government Act 2002:

- Section 6 : Meaning of council-controlled organisation and council organisation
- Section 57: Appointment of directors

Auditor-General's guidelines as set out in the report "Governance and accountability of council-controlled organisations" dated 2015 and any subsequent reports on a similar theme.

LGNZ Elected Members' Governance Handbook, 2016 – section 10.
New Zealand Institute of Directors Manual.

TAURANGA CITY COUNCIL CODE OF CONDUCT FOR DIRECTORS APPOINTED BY COUNCIL TO COUNCIL ORGANISATIONS

INTRODUCTION AND PRINCIPLES

- The purpose of the Code is to provide guidance to persons appointed by Tauranga City Council as Directors to Council Organisations and to assist them to carry out their duties and responsibilities effectively and in accordance with the highest professional standards. Since Council Organisations include a diverse range of legal structures, the word "Director" where used in this code, refers not only to company Directors, but also to trustees, managers or office holders (however described) in the particular Council Organisation.
- The Code is not intended to be an exhaustive statement of a Director's obligations. It should be read in conjunction with the law applying to Directors, the provisions contained in the constitution or trust deed of the Council Organisation and in the Local Government Act 2002.
- The office of Director carries with it both legal and moral responsibilities. The Code offers guidance more on moral and ethical responsibilities than on those imposed by law. It applies equally to non-executive and executive directors.
- The principles upon which the Code is based include integrity and accountability. These qualities are prerequisites to maintaining confidence and trust in directors.
- The reasons for adhering to the Code are twofold:
    - *First, a clear understanding of moral and ethical responsibilities, and strict observance of obligations will assist Directors in forming and winning support for their strategies. It will also assist to increase public confidence in how public entities are governed and managed.*
    - *Second, if high standards of business conduct are not maintained, a greater degree of imposed regulation may result.*
- The Code has been approved and adopted by the Tauranga City Council.
- It is the intention of Council to regularly review the applicability of the Code and as necessary, to amend or add to it to reflect changes to practice and law.
- In accordance with the provisions of the Tauranga City Council's Appointment of Directors to Council Organisations policy, the Code is binding on all Directors of Council Organisations appointed by the Tauranga City Council. Directors must make themselves familiar with the content of the Code and observe not only its letter, but also its spirit.
- Directors must also make themselves familiar with the content of the Enduring Statement of Expectations and Letter of Expectations for their particular Council Organisation (if applicable).

DEFINITIONS

Accountability means having a duty to answer to another for what is done or not done within an area of responsibility.

Director includes all Directors whether executive directors or non-executive directors, however so named, as defined in Section 6 of the Local Government Act 2002.

Enduring Statement of Expectations refers to a document agreed between the Council as shareholder and the organisation (in the case of Bay Venues Limited, Tauranga Art Gallery Trust and Tourism Bay of Plenty). It is an enduring document that outlines general operating principles and ongoing expectations of the organisation's board.

Executive Director means a Director who is also an employee of the organisation and includes a Managing Director.

Independent is used in the sense of being self-reliant and with objectivity unimpaired by outside interests.

Integrity means consistent honesty, sincerity and uprightness in all dealings.

Letter of Expectations refers to a document agreed on an annual basis between the Council as shareholder and the organisation (in the case of Bay Venues Limited, Tauranga Art Gallery Trust and Tourism Bay of Plenty). It is intended to provide direction on issues that are important to Tauranga City Council, with the expectation that the focus areas and deliverables contained in the Letter of Expectation are reflected and incorporated into the Statement of Intent.

Non-executive Director means a Director who is not an executive director.

Organisation refers to Council Organisations, including Council Controlled Organisations and Council Controlled Trading Organisations, as defined in Section 6 of the Local Government Act 2002.

FUNDAMENTAL OBLIGATIONS

- Directors must act honestly and in good faith in what the Director believes to be in the best interest of the Organisation.
- Directors must ensure that all shareholders, stakeholders or classes of shareholder or stakeholder are treated fairly according to their different rights.
- Directors must carry out their duties in a lawful manner and use all reasonable endeavours to ensure that the Organisation conducts its business in accordance with the law and with a high standard of commercial morality. Directors should refer to the Institute of Directors' statements of best practice as part of their decision-making process.
- Directors must avoid conflicts of interest. Where a conflict or potential conflict arises, as a minimum, they must adhere scrupulously to the procedures provided by law and/or the constitution / trust deed of the Organisation for dealing with conflicts and with the position of Directors having an interest in a particular contract or issue. A Director who has a continuing conflict of interest of a material nature should consider resigning as a Director of the Organisation and should also consider the effects of that resignation on the remaining Directors and on shareholders or other stakeholders.

- Directors must be diligent, attend Directors' meetings and devote sufficient time to make and keep themselves familiar with the nature of the Organisation's business and environments (including political, legal and social environments) in which it operates. Directors should be aware of all statutory and regulatory requirements affecting their organisation including the content of its constitution and see that such requirements are observed.
- Directors must observe the confidentiality of non-public information acquired by them as Directors and not disclose it to any other person without the authority of the Organisation.
- A Director who is nominated by, or has a special allegiance to, a particular shareholder or group of shareholders or other stakeholder, may only disclose confidential information to the nominated shareholder or other stakeholder with the authority of the Organisation and in strict compliance with any procedures prescribed by law of the constitution / trust deed of the Organisation.
- Directors must act in accordance with their fiduciary duties. They must comply with the spirit as well as the letter of the law and remember that in addition to purely legal requirements, the proper discharge of the duties of a Director requires high ethical and moral standards of behaviour.
- Directors must be mindful that Council is accountable to a wider audience and that the affairs of Council Organisations, positive and negative, can impact on Council.
- Directors should ensure the Organisation acts consistently with the "no surprises" approach outlined in the Enduring Statement of Expectations.
- Directors considering retirement outside their term expiry date should discuss it with the Board Chair as soon as possible. A resignation date suitable for both the retiring Director and the Board should be agreed with the Chair and approved by Council. Consideration to the number of remaining Directors (in case of quorum issues) and the time required to recruit a replacement Director.
- The Chair is expected to advise Council of the impending resignation of a Director as soon as possible. This will allow the process for appointing a replacement Director to be undertaken in a timeframe that minimises disruption to the Board.

MEETINGS OF DIRECTORS

- The Directors must meet regularly to monitor and control the performance of management, to measure achievement of budget, policy and strategic objectives. Appropriate reporting systems must be put in place, and maintained, to provide adequate and timely information to the Directors.
- There must be clearly accepted divisions of responsibility to ensure a balance of power and authority so that no one individual has unfettered powers of decision.
- The Directors must ensure that the views of independent Directors are given full and proper consideration and weight.
- The Directors must have a formal schedule of matters and authorities reserved to them for decision making to ensure that the direction and control of the Organisation is in their hands and in alignment with the Organisation's Statement of Intent or equivalent document.

REPORTING

- The Directors must present to shareholders or other stakeholders, a balanced and understandable assessment of the Organisation's performance and position. Often this will involve the provision of information in addition to the minimum required by law. In case of doubt, substance and content should prevail over legal form. The need for reports and accounts to be understood readily means that a coherent narrative is necessary as well as figures.

CHAIRPERSON

- The Chairperson is responsible for the efficient functioning of the Directors as a Board. The Chairperson must ensure that all Directors are able, and encouraged, to play their full part at meetings of Directors and have adequate opportunities to express their views.
- The Chairperson has primary responsibility for ensuring that all Directors receive enough timely information to enable them to discharge their duties effectively.
- The Chairperson is the link between the Directors and the management of the Organisation. The Chairperson must, however, maintain a proper balance between any executive and independent views among the Directors.

NON-EXECUTIVE DIRECTORS

- Non-executive Directors must provide independent judgement and outside experience and objectivity, not subordinated to operational considerations, on all issues which come before them.
- Non-executive Directors must acquire and maintain a sufficiently detailed knowledge of the Organisation's activities and ongoing performance to enable them to make informed decisions on the issues before them. At the same time, they should recognise the division between the Directors and management and ordinarily not become involved in management issues or in managing the implementation of policy.

EXECUTIVE DIRECTORS (WHERE APPOINTED)

Executive Directors have a dual role as employees of the organisation and as Directors. As Directors they have responsibilities additional to, and must retain a degree of independence from, their executive position to enable them to carry out those responsibilities effectively. Executive Directors should be appointed as individuals and not because of any position they hold. They must always be alert to the potential for conflicts between their management interests and the fiduciary duties of a Director.

COMMITTEES

- In appropriate circumstances, Council Organisations may have an Audit Committee, or other committees of Directors to assist with such issues as remuneration. When a committee is established by the Directors of that Organisation, its terms of reference and its powers, duties, reporting procedures, membership and duration of office must be clearly recorded. Committee service must be rotational.
- Any non-executive Director may attend meetings of any committee of Directors provided the Director is not specifically excluded for reasons of conflicts of interest, even if the Director is not an appointed member of the committee. An Executive Director must attend a committee meeting when requested to do so by the committee.

Schedule C – WBOPDC Policy on Appointment of Directors

Relevant Legislation and References

- Local Government Act (2002):
  - Section 6: Meaning of council controlled organisation and council organisation
  - Section 57: Appointment of directors
- Auditor-General's Guidelines as set out in the "Report of The Controller and Auditor-General on Governance of Local Authority Trading Activities" dated June 1994
- LGNZ Know How Guide, February 2003, Guide to Governance, Appointment of Directors, Appendix G
- New Zealand Institute of Directors Manual

1. Policy Objective

1.1 To ensure an objective and transparent selection and appointment process for the:

- Identification and consideration of the skills, knowledge and experience required of directors of a council organisation, and
- Selection and appointment of directors of a council organisation, and
- The remuneration of directors of a council controlled organisation.

2. Principles

2.1 Council recognises that:

- Appointment of directors should be based on merit
- Directors must possess the appropriate level of skills, knowledge and experience to objectively and constructively guide the council organisation towards the achievement of its visions, values and objectives.
- Directors of council controlled organisations should be appointed:
  - on the basis of the contribution they can make to the organisation and not on the basis of representation;
  - through a formal, objective and transparent process.

3. Definitions

Candidate is a person who has submitted a written application for a director's position or has formally agreed to be considered for such a position.

Council Organisation (CO) is defined in Section 6 of the Local Government Act (2002). In broad terms, a CO is an organisation in which the Council has a voting interest or the right to appoint a director.

Council Controlled Organisation (CCO) is defined in Section 6 of the Local Government Act (2002). It is a CO in which one or more local authorities control, directly or indirectly, 50% or more of the votes or has the right, directly or indirectly, to appoint 50% or more of the directors.

Council Controlled Trading Organisation (CCTO) is defined in Section 6 of the Local Government Act 2002. It is a CCO that operates a trading undertaking for the purposes of making a profit.

Directors includes trustees, managers or office holders (however described in that organisation).

4. Background

Section 57 of the Local Government Act (2002) requires Council to adopt a policy that sets out an objective and transparent process for:

(a) the identification and consideration of the skills, knowledge, and experience required of directors of a council organisation; and

(b) the appointment of directors to a council organisation; and

(c) the remuneration of directors of a council organisation.

5. Policy Variation

This policy can be varied to meet the needs of each new Council Controlled Organisation as it is established.

6. Policy Statement

Part 6A – Council-Controlled Organisations (including Council-Controlled Trading Organisations)

6.1 The Role of a Council Controlled Organisation Director

The role of a council appointed director is to assist the organisation to meet its objectives and any other requirements in its statement of intent, in accordance with the requirements of the Western Bay of Plenty District

Council Code of Conduct for Directors Appointed by Council to Council Organisations.

6.2 Identification of Skills, Knowledge and Experience Required

The skills, knowledge, experience and any other attributes required of a director of a CCO will be identified and documented, prior to the appointment process commencing.

The ability to guide the organisation, given the nature and scope of its activities, and the ability to contribute to the achievement of the objectives of the organisation will form the basis of the skills, knowledge, or experience required.

In general terms, the following skills and attributes are the minimum requirements that the Western Bay of Plenty District Council will be looking for in the directors it appoints to council controlled organisations:

- Intellectual ability coupled with common sense, and
- Strategic vision and leadership, and
- Thorough understanding of governance issues, and
- Either business experience or other experience that is relevant to the activities of the organisation (or both) and the skills set that is required for each board, and
- Sound judgement, and
- A high standard of personal integrity, and
- The ability to work collaboratively and cooperatively within the team, and
- Understanding of the wider interests of the publicly-accountable shareholder.

The mix of skills and experience on the CCO board will be taken into account, and consideration given to complementing and reinforcing existing skills and reducing known weaknesses where necessary.

It is expected that all appointees to CCO boards will undergo, or already have undergone, formal corporate governance training, or have the requisite experience in this area.

6.3 Eligible Candidates

Western Bay of Plenty District Council elected members and appropriately qualified external applicants are eligible as candidates for director positions to CCO boards.

Western Bay of Plenty District Council employees are not eligible to be considered as candidates for director positions to CCO boards unless they are appointed in their capacity as an employee of Western Bay of Plenty District Council.

6.3.1 Mandatory disclosures

As part of an application a candidate is required to disclose whether he or she:

- Is an immediate family member of an elected member, the Chief Executive, or a second-tier manager of Western Bay of Plenty District Council, or
- Has been convicted of an offence for which the maximum available sentence is imprisonment of two years or more (noting that required disclosures are subject to the provisions of the Criminal Records (Clean Slate) Act 2004), or
- Has been declared bankrupt at any point in time or been the director of a company at the time it was placed in receivership or involuntary liquidation.

Any disclosures under the above clause will be taken into consideration by the Appointment Panel and Council but will not automatically preclude the candidate's appointment as a director.

6.4 Director Appointment Process

6.4.1 Appointment Panel Composition

An Appointment Panel will be established. The panel will be made up of:

- One elected member appointed by Council resolution; and
- The existing Chair of the CCO (if remaining on the board) or their nominee; and
- One independent person who brings particular knowledge or skills that can add value to the process, approved jointly by the Chief Executive, Mayor and the existing Chair of the CCO (if remaining on the board); and

The Appointment Panel will appoint its own Chair.

An employee of Council or of the CCO may not be appointed as a member of the Appointment Panel.

A Council employee may be appointed as an advisor to the Appointment Panel as and when necessary.

Members of an Appointment Panel who are not elected members or members of the CCO may be remunerated for their time and skills.
The Chair does not have a casting vote.

Jointly owned CCOs

On Joint Council Controlled Organisations at least one member of the appointment panel is to be an elected member of the Western Bay of Plenty District Council.

6.4.2 Appointment Panel composition for appointments to Tourism Bay of Plenty

An appointment panel will be established. The panel will be made up of:

- One person appointed by TCC by Council resolution; and
- One person appointed by Western Bay of Plenty District Council; and
- The existing Chair of the CCO (if remaining on the Board) or their nominee.

All other matters relating to the Appointment Panel composition shall be as outlined in section 6.4.1.

6.4.3 Appointment Panel Responsibilities

The appointment panel will be responsible for:

- Approving an independent recruitment consultant to assist the sub-committee with the selection process, if it decides it is warranted, and
- Interviewing the short-listed candidates and evaluating them against the approved criteria, and
- Prior to making a final decision the Appointment Panel will consult with the Chairperson of the CCO requiring a new director to obtain their input as to the suitability of the likely appointee, and
- Reporting on its assessment of each candidate against its criteria and recommending appointments of directors to Council
- Informing unsuccessful candidates.

6.4.4 Advertisement of a Council-Appointed Director's Position

In most instances Council will seek expressions of interest in the position by way of a public advertisement. However, the Appointment Panel may decide not to advertise the position if there is urgency (e.g. a council organisation that is without a quorum and cannot hold board meetings) or any other reason it may consider warrants such a course of action.

Where the Appointment Panel decides not to advertise a particular position, the panel will:

- At the first practical opportunity, publicly notify its intention and reasons for doing so, and
- Identify a shortlist of prospective candidates whom it considers meets its criteria, and
- Ascertain if the prospective candidates are interested in being considered, and
- Apply the same selection process to those who are interested as it would to any other candidate.

6.4.5 Appointment

Council is to make its final decision in confidential committee (thus protecting the privacy of natural persons). A public announcement of the appointment will be made as soon as practicable after Council has made its decision and received confirmation of acceptance from the candidate(s).

6.4.6 Conflict of Interest

Council will not consider any applicant that it believes is likely to have a significant conflict of interest.

Members of the Appointment Panel will not have a conflict of interest.

6.5 Appointment Term and Reappointment

A director to a CCO will normally be appointed for a period of 3 years. The appointment period will expire on 30 April. If a director has been in office for more than 2 ½ years at 30 April, then their 3-year term will be deemed to have expired. If a director has been in office for more than 2 years but less than 2 ½ years at 30 April, then they will be deemed to have one further year of the 3-year term remaining.

Notwithstanding the above, Council will seek to balance the expiry dates of directors' terms to ensure that approximately one third of directors retire or

are required to seek reappointment in any year. This may require appointments to be made for a mix of one, two and three years.

Where a director's term of appointment has expired and that director is offering themselves for reappointment, the Western Bay of Plenty District Council Chief Executive will together with a board member of either that board or board of the parent CCO where one exists (as determined by the Council CEO), consult on reappointment issues with members of the relevant board.

The consultation will have regard to:

- Whether the skills of the incumbent add value to the work of the board
- Whether there are other skills which the board needs
- Succession issues.

The Western Bay of Plenty District Council Chief Executive will report to Council to enable a decision on reappointment or replacement appointment to be made based on the:

- Information arising from the consultation, and
- Director's length of tenure.

Where a Council employee is appointed as a director, the appointment is deemed to be part of the staff member's normal duties and will lapse upon the completion of the individual's tenure of employment with the Council or earlier if specified by Council.

6.5.1 Maximum terms

Subject to a review of the director's performance after the first three-year period, the normal tenure for a director will be six years.

Following six years of service, a director may be appointed for a further three years if the benefit of such an extension is considered to outweigh the potential advantages of seeking and appointing a new candidate.

A director cannot be re-appointed to the same board after nine years in service.

6.6 Termination of Appointment

Directors appointed to CCOs by Council are in the role at the pleasure of Council. A director's appointment may be terminated at any time by Council

by way of written notice. There will be no compensation payable to directors for early termination.

6.7 Appointment of a Chairperson

It is the responsibility of the board of each Council Organisation to appoint its own Chairperson. However, normally the board will consult with the Western Bay of Plenty District's Mayor and Chief Executive on the person to be so appointed.

6.8 Conflict of Interest

Council expects that directors appointed under this policy will avoid situations where their actions could give rise to a conflict of interest.

6.8 Conflict of Interest

Council expects that directors appointed under this policy will avoid situations where their actions could give rise to a conflict of interest.

6.9 Directors' professional standards

To minimise these situations directors appointed by Council will be required to follow the provisions of the New Zealand Institute of Directors' Code of Ethics and of Council's Code of Conduct for Directors Appointed by Council to Council Organisations.

Breach of either code may result in dismissal of a Council-appointed director.

6.10 Remuneration of Council Appointed Directors

6.10.1 Remuneration and Indemnification of Directors

Western Bay of Plenty District Council will decide whether directors on boards of Council Controlled Organisations are to be remunerated. The level of remuneration for directors will be established by the Chief Executive and Mayor and will be subject to approval by Council.

Elected members and Council employees appointed as directors of a CCO will not be remunerated for that role unless provided for by specific Council resolution.

The Council supports the payments by CCOs of directors' liability insurance and the indemnification of directors.

6.10.2 Level of Remuneration

Where directors are remunerated the level of remuneration will be set taking into account the following factors:

- The need to attract and retain appropriately qualified directors
- The levels of remuneration paid by comparable organisations in New Zealand
- The performance of the Council Controlled Organisation and any changes in the nature of its business
- Any other relevant factors.

6.11 CCOs and CCTOs in which Council has a minority interest

Where Council has a minority interest in a CCO or CCTO (i.e. where a CCO or CCTO is controlled by a number of councils and this Council does not have a majority stake) then the process for the appointment and remuneration of directors will be agreed with the other shareholders (by whatever name) in the CCO or CCTO.

As far as practicable, Council's involvement in the process will be consistent with this policy as it applies to CCOs or COs, whichever is the more relevant to the circumstances.

Part 6B – Council Organisations that are not CCOs or CCTOs

6.12 Council Organisations – Non-Controlling Interest

Council may have non-controlling interests in Council Organisations. Generally these are not-for-profit bodies.

Appointments to Council Organisations where Council does not have a controlling interest may occur to:

- Provide a means of monitoring where the Council has made a grant to that body
- Enable Council involvement where the CO's activity is relevant to Council
- Satisfy a request from the CO that the Council appoint a representative.

Appointments to a CO are generally for a three year term and made after the triennial elections. Elected members who have the required skills set

may be appointed to a CO where Council does not have a controlling interest.

Remuneration of the directors of a CO is at the discretion of that organisation but Council would ordinarily expect no remuneration to be paid to Council-appointed directors.

Part 6C – General

6.13 Policy Review

Council will periodically review this policy with a view to continuous improvement in consultation with the CCOs.

7. Relevant Delegations

The Appointment Panel has delegated authority to:

- Decide whether the position needs to be advertised or not, and
- Conduct the selection process, and
- Recommend suitable people to Council to be appointed as directors to council organisations.

Group	Financial Services		**Contact (3rd Tier Manager)**		CFO
Supersedes	N/A				
Creation Date	3 November 2011	**Resolution Reference**		[STP12.2]	
Last Review Date	8 February 2018	**Resolution Reference**		[PP10.4]	
Review Cycle	Three yearly/legislative revisions, not later than			**Date**	February 2021
Authorised by	Policy Committee			**Date**	8 February 2018

Western Bay of Plenty District Council

Code of Conduct for Directors Appointed by Council to Council Organisations

Introduction and Principles

The purpose of the Code is to:

- provide guidance to persons appointed by Western Bay of Plenty District Council as Directors to Council Organisations, and
- assist them to carry out their duties and responsibilities effectively and in accordance with the highest professional standards.

Since Council Organisations include a diverse range of legal structures, the word "Director" is used in the widest sense.

The Code is not intended to be an exhaustive statement of a Director's obligations. It should be read in conjunction with the law applying to Directors and the provisions contained in the constitution of the Council Organisation and in the Local Government Act 2002.

The office of Director carries with it fiduciary, legal and moral responsibilities. The Code offers guidance more on moral and ethical responsibilities than on those imposed by law. It applies equally to non-executive and executive directors.

The principles upon which the Code is based include integrity and accountability. These qualities are prerequisites to maintaining confidence and trust in directors.

The reasons for adhering to the Code are twofold:

- *First, a clear understanding of moral and ethical responsibilities, and strict observance of obligations will assist Directors in forming and winning support for their strategies. It will also assist to increase public confidence in how public entities are governed and managed.*

- *Second, if high standards of business conduct are not maintained, a greater degree of imposed regulation may result.*

The Code has been approved and adopted by the Western Bay of Plenty District Council.

It is the intention of Council to regularly review the applicability of the Code and as necessary, to amend or add to it to reflect changes to practice and law.

In accordance with the provisions of the Western Bay of Plenty District Council's policy in appointment and remuneration of Directors of Council Organisations, the Code is binding on all Directors of Council Organisations appointed by the Western Bay of Plenty District Council. Directors must make themselves familiar with the content of the Code and observe not only its letter, but also its spirit.

Definitions

Accountability means having a duty to answer to another for what is done or not done within an area of responsibility.

Chairman is used in a gender-neutral sense.

Director includes all Directors whether executive directors of non-executive directors, however so named, as defined in Section 6 of the Local Government Act 2002.

Executive Director means a Director who is also an employee of the organisation and includes a Managing Director.

Independent is used in the sense of being self reliant and with objectivity unimpaired by outside interests.

Integrity means consistent honesty, sincerity and uprightness in all dealings.

Non-executive Director means a Director who is not an executive director.

Organisation refers to Council Organisations including Council Controlled Organisations and Council Controlled Trading Organisations as defined in Section 6 of the Local Government Act 2002.

Fundamental Obligations

Directors must act honestly and in good faith and in the best interests of the organisation.

Directors must ensure that all shareholders, stakeholders or classes of shareholder or stakeholder are treated fairly according to their different rights.

Directors must carry out their duties in a lawful manner and use all reasonable endeavours to ensure that the Organisation conducts its business in accordance with the law and with a high standard of commercial morality. Directors should refer to the Institute of Directors' statements of best practice as part of their decision-making process.

Directors must avoid conflicts of interest. Where a conflict or potential conflict arises, as a minimum, they must adhere scrupulously to the procedures provided by law and/or the constitution of the organisation for dealing with conflicts and with the position of Directors having an interest in a particular contract or issue. A Director who has a continuing conflict of interest of a material nature should resign as a Director of the Organisation.

Directors must be diligent, attend Directors' meetings fully prepared and devote sufficient time to make and keep themselves familiar with the nature of the Organisation's business and environments (including political, legal and social environments) in which it operates. Directors should be aware of all statutory and regulatory requirements affecting their organisation including the content of its constitution, and see that such requirements are observed.

Directors must observe the confidentiality of non-public information acquired by them as Directors and not disclose it to any other person without the authority of the Organisation.

A Director who is nominated by, or has a special allegiance to, a particular shareholder or group of shareholders or other stakeholder, may only disclose confidential information to the nominated shareholder or other stakeholder with the authority of the Organisation and in strict compliance with any procedures prescribed by law of the constitution of the Organisation.

Directors must act in accordance with their fiduciary duties at all times. They must comply with the spirit as well as the letter of the law and remember that in addition to purely legal requirements, the proper discharge of the duties of a Director requires high ethical and moral standards of behaviour.

Meetings of Directors

The Directors must meet regularly to monitor and control the performance of management, to measure achievement of budget, policy and strategic objectives. Appropriate reporting systems must be put in place, and maintained to provide adequate and timely information to the Directors.

There must be clearly accepted divisions of responsibility to ensure a balance of power and authority so that no one individual has unfettered powers of decision.

The Directors must ensure that the views of independent Directors are given full and proper consideration and weight.

The Directors must have a formal schedule of matters and authorities reserved to them for decision making to ensure that the direction and control of the Organisation is in their hands and in alignment with the Organisation's Statement of Intent or equivalent document.

Reporting

The Directors must present to shareholders or other stakeholders, a balanced and understandable assessment of the organisation's performance and position. Often this will involve the provision of information in addition to the minimum required by law. In case of doubt, substance and content should prevail over legal form. The need for reports and accounts to be understood readily means that a coherent narrative is necessary as well as figures.

Chairperson

The Chairperson is responsible for the efficient functioning of the Directors as a Board. The Chairperson must ensure that all Directors are able, and encouraged, to play their full part at meetings of Directors and have adequate opportunities to express their views.

The Chairperson has primary responsibility for ensuring that all Directors receive sufficient timely information to enable them to discharge their duties effectively.

The Chairperson is the link between the Directors and the management of the Organisation. The Chairperson must, however, maintain a proper balance between any executive and independent views among the Directors.

Non-executive Directors

Non-executive Directors must provide independent judgement and outside experience and objectivity on all issues which come before them.

Non-executive Directors must acquire and maintain a sufficiently detailed knowledge of the Organisation's activities and ongoing performance to enable them to make informed decisions on the issues before them. At the same time, they should recognise the division between the Directors and management and ordinarily not become involved in management issues or in managing the implementation of policy.

Executive Directors (where appointed)

Executive Directors have a dual role as employees of the organisation and as Directors. As Directors they have responsibilities additional to and must retain a degree of independence from, their executive position to enable them to carry out those responsibilities effectively. Executive Directors should be appointed as individuals and not because of any position they hold. They must always be alert to the potential for conflicts between their management interests and the fiduciary duties of a Director.

Committees

In appropriate circumstances, Council Organisations may have an Audit Committee, or other committees of Directors to assist with such issues as remuneration. When a committee is established by the Directors of that Organisation, its terms of reference and its powers, duties, reporting procedures, membership and duration of office must be clearly recorded. Committee service must be rotational.

Any non-executive Director may attend meetings of any committee of Directors provided the Director is not specifically excluded for reasons of conflicts of interest, even if the Director is not an appointed member of the committee. The Executive Director must attend a committee meeting when requested to do so by the committee.

SRF & Board Membership & Appointments

LWDW: Joint Working Group

2 February 2026

Water Services | Tauranga City | Western Bay of Plenty District Council

Purpose of Today

- Outline key decisions required to shape the proposed Water Organisation.
- Provide advice to facilitate a discussion on:
  - Size, make-up and appointment of the SRF.
  - Size and appointment of the WO Board.
- We will seek your direction on these matters via written feedback on 9 February, and further discuss these matters at the JWG meeting on 13 February.
- This direction will inform the drafting of the Constitution and Shareholders' Agreement.

Water Services | Tauranga City | Western Bay of Plenty District Council

Issue 1: Size of the SRF

- No statutory requirement.
- Councils can choose a size that best supports effective governance.
- Size should allow flexibility for other councils to join the WO in the future.
- The size of the SRF will likely be informed by the JWG's views on
  - Issue 2 (Elected Member Representatives);
  - Issue 3 (Tangata Whenua Representative);
  - Issue 4 (Independent Chair); and,
  - 'Right-sizing' for the SRF.

Issue 2: SRF Membership – Elected members / Shareholder Representatives

Option A: One or more elected members of each council:

- *Pros:* Clear democratic accountability; alignment with shareholder priorities.
- *Cons:* May limit specialist expertise; risk of politicisation; workload constraints.

Option B: At least one elected member, and one or more appointed representatives (senior council officers, experts, specialists etc.)

- *Pros:* Broader skillsets; may improve governance capability; continuity across election cycles.
- *Cons:* More complex process; appointees not accountable to voters.

Issue 3(a): Role of Tangata Whenua on the SRF

Option A: No position on SRF, instead TW has an advisory role to the SRF, via an Advisory Board type arrangement.

- *Pros:* Decision making stays with councils; lower cost, fewer participants; Still allows TW advice via Advisory Board.
- *Cons:* Inconsistent with Treaty principles, partnership model; may damage relationship with TW; SRF/WO may miss out on full value of direct TW participation; advisory input may carry less weight.

Option B: TW has position on SRF, but with no voting rights.

- *Pros:* TW can hear discussions directly and give timely advice; shows commitment to inclusion; voting control remains with councils.
- *Cons:* TW may feel influence is limited; may fall short of partnership expectations; TW likely to expect more influence.

Issue 3(a): Role of Tangata Whenua on the SRF

Option C: TW has position on SRF with limited voting rights.

- *Pros:* TW can vote on matters aligned with cultural/environmental issues; councils retain control over core financial/shareholder issues; supports Te Tiriti informed governance; helps embed cultural considerations in SRF decisions.
- *Cons:* Requires clear definition of what TW can/cannot vote on; distinctions (financial vs non-financial) could cause disagreement; limited voting could still be seen as insufficient.

Option D: TW has position on SRF with full voting rights.

- *Pros:* Shared governance and partnership; TW influence embedded across all SRF decisions; may reduce tensions by adopting partnership model from the outset.
- *Cons:* Councils do not retain exclusive voting control; raises questions about democratic mandate for non-elected representatives.

Issue 3(b): Number of TW reps on the SRF

Only relevant if you elect option B, C or D on issue 3(a).

- Option A: One TW representative
  - *Pros:* Simplifies communication and reduces internal divergence; clear single point of contact; keeps SRF smaller and more efficient.
  - *Cons:* May not meet expectations of a true partnership model; one person may not be able to represent all TW views; high workload for one person; risk of loss of continuity if rep steps down; harder to manage if new councils join WO.
- Option B: Same number of representatives as each shareholder
  - *Pros:* Enables broader TW perspectives; more consistent with partnership expectations; ability to divide responsibilities (cultural, environmental, technical).
  - *Cons:* Larger SRF may be less efficient; higher admin and remuneration cost; multiple TW voices may complicate consensus; SRF could become unwieldy as more councils join the WO.

Issue 4(a): Should the SRF have an independent chair?

- Option A: SRF has an independent chair
  - *Pros:* Supports balanced, impartial discussions; may strengthen credibility and public confidence; brings professional governance expertise; may help de-escalate conflict and improve meeting discipline; can enhance joint decision making across councils.
  - *Cons:* Additional cost and recruitment; needs careful selection to ensure true independence; if non-voting, may have limited influence.

- Option B: SRF has no independent chair
  - *Pros*: Councils retain direct leadership and voting control; no additional cost or recruitment; aligns with the view the SRF is a “shareholder only” forum.
  - *Cons:* Higher risk of perceived or actual bias; may reduce balanced facilitation and increase tension; could weaken public confidence in governance neutrality.

Issue 4(b): Should the independent chair have voting rights?

Only relevant if elect option A on issue 4(a).

- Option A: No voting rights
  - *Pros:* Chair focuses on governance quality and balanced discussion; no risk of chair influencing outcomes against shareholder priorities; voting power stays with councils.
  - *Cons:* Chair cannot break deadlocks; reduced influence may limit effectiveness; authority may be weakened in contentious decisions.

Issue 4(b): Should the independent chair have voting rights?

- Option B: Limited voting rights (casting vote, or defined topics)
  - *Pros:* Helps prevent stalemate; councils retain control over core financial matters; allows impartial judgment on specific issues; may support better decision making, without undermining shareholder control.
  - *Cons:* Requires clear rules on when voting applies; may create concerns about non-shareholder influence; middle ground may not satisfy anyone; shareholders may rely on the chair to resolve disagreements.

- Option C: Full voting rights
  - *Pros:* Chair can fully shape decisions, improving stability and consistency; may provide more neutral, organisation focused decision making; less exposure to shifting political dynamics.
  - *Cons:* A non-shareholder holding equal voting rights may be hard to justify; chair's decisions may diverge from shareholder expectations.

Issue 5(a): Nomination of TW Reps to SRF

Only relevant if you elect option B, C or D on issue 3(a).

- Option A: Appointed by shareholder councils following a nomination from TW
  - *Pros:* Supports partnership; puts greater trust in TW; reflects cultural process in governance models; ensures representatives genuinely reflect TW perspectives.
  - *Cons:* Nomination process may take longer and require greater coordination; potential tensions if councils decline a nomination.

- Option B: Appointed by shareholder councils without a nomination from TW
  - *Pros:* Faster, simpler administration; councils may select based on specific skills needed for SRF.
  - *Cons:* May be perceived as choosing for TW; risk representatives are viewed as less authentic; may not align with TW protocols; could create mistrust or disengagement.

Issue 5(b): Appointment of all members of the SRF

- Option A: Each Council appoints its own reps; joint appointment of TW (if approved) & independent chair (if approved)
  - *Pros:* Clear autonomy for reach council; council can choose reps aligned with their priorities; faster process; joint agreement still achieved for region-wide roles (TW reps, chair).
  - *Cons:* Potential inconsistency between councils; different expectations or priorities may emerge; may be harder to build unified strategic direction.

- Option B: Joint appointment of all members
  - *Pros:* Strengthens collaboration; ensures consistent approach to appointments; positions SRF as a genuine joint regional forum; enables balanced skills mix across appointees.
  - *Cons:* Slower more complex process; higher risk of deadlock if priorities diverge.

Issue 6: Size of Board

Key points:

- There is no statutory requirement.
- Councils have full discretion to choose a Board size that best supports effective governance.
- It is common to specify a minimum and maximum number of Directors, to provide clarity while maintaining flexibility.
- It is generally accepted that a Board of up to 5 Directors would enable the appointment of a suitable mix of skills and experience, in accordance with the Skills Matrix.

Issue 6: Size of Board

- Option A: Up to 5 Directors
  - *Pros:* Supports a balanced mix of skills aligned with Skills Matrix; flexibility to operate with fewer than 5 directors if needed (especially initially); easier Board rotation and continuity.
  - *Cons:* Harder to cover all specialist competencies; loss of one director has greater impact on capability; directors may need to take on broader portfolios.
- Option B: A different number of Directors – greater than 5 Directors
  - *Pros:* Allows for broader skillsets; may make it easier to reflect shareholder diversity include TW perspectives; more resilience to turnover; workload spread more evenly.
  - *Cons:* Larger board may slow decision making and reduce agility; higher governance costs and administrative effort; risk of blurred accountability and more difficult consensus building.

Issue 7: Process for Director Appointment

Key points:

- Directors must be appointed based on their competency to perform the role – s48 Local Government (Water Services) Act 2025.
- Once appointed, all Directors must act independently and must make decisions in the best interests of the WO, rather than representing interests of any individual shareholder.
- Common for director appointments to be made by SRF, which applies the Skills Matrix when making those appointments.

Issue 7: Process for Director Appointment

- Option A: Each shareholder will appoint one or more directors, with additional directors appointed by agreement
  - *Pros:* Direct representation for each shareholder; faster and more efficient (no need for consensus); councils can select directors with local knowledge or specific expertise; may find it easier to align with each council's existing appointment policies.
  - *Cons:* May discourage collaboration and collective decision making; risk directors feel aligned to their appointing councils, not the WO; harder to ensure full Skills Matrix coverage across the Board.
- Option B: The shareholders jointly appoint all directors
  - *Pros:* Strengthens collaboration; supports impartial, merit-based appointments; balanced representation and independence; easier to ensure full Skills Matrix competencies are covered.
  - *Cons:* Slower and more complex process requiring consensus; higher risk of deadlock if councils' priorities differ.

Direction Needed on 13 Feb

We need your guidance on:

1. Size of the SRF
2. SRF Membership – Elected Members
3. SRF Membership – Tangata Whenua
4. SRF Membership – Independent Cahir
5. Nomination and appointment of members of the SRF
6. Size of the WO Board
7. Board Director Appointment

Next Steps

- 9 February 2026: TCC, WBOPDC and TW complete written feedback.

- 13 February 2026: JWG Meeting to seek guidance on:
  - Shareholdings, Share Rights, and Shareholder Approval matters.
  - Board and SRF membership and appointments.
  - If consensus – recommendation put to Councils.
  - If no consensus – escalated to Councils with options and rationale

Water Services | Tauranga City | Western Bay of Plenty District Council

Water Services | Tauranga City | Western Bay of Plenty District Council

AGENDA

LWDW: Joint Working Group Meeting

13 February 2026

Time: 9.00am – 12.00pm

Location: Athenree Room, Western Bays District Council Offices, 1484 Cameron Road, Greerton

Order of Business

1. OPENING KARAKIA

2. APOLOGIES

3. BUSINESS

#	Item	Comment/Direction
1	Chairperson discussion	• Chairperson Introductory Comments
2	Confirmation of Meeting notes	• Meeting notes of 29 January & 2 February endorsed
3	Review on feedback from papers received 29 January & 2 February	• Discussion on the feedback received on Shareholding, Voting Rights, SRF and Board. • The purpose of the discussion is to confirm areas of alignment, clarify any outstanding issues and identify recommended positions. *The outcome of the meeting will be reflected in the TCC and WBOPDC Reports for decision making*
4	Programme Workplan	• Update on Programme Workplan
5	General Business	

4. CLOSING KARAKIA

LWDW Joint Working Group Meeting

Tauranga City Council & Western Bay of Plenty District Council

Tauranga City Council Chambers

Date: 29 January 2026

Attendance

Independent Chair: Lyall Thurston

Tauranga City Council:

Members: Cr Marten Rozenboom, Cr Glen Crowther, Cr Kevin Schuler, Cr Hautapu Baker

Western Bay of Plenty District Council:

Members: Mayor James Denyer, Cr Darlene Dinsdale, Cr Grant Dally, Cr Graeme Elvin, Cr Rodney Joyce

Tangata Whenua:

Members: Shadrach Rolleston, Rohario Murray, Roana Bennett, Hakopa Tapiata.

Non-members: Matire Duncan

Supporting Staff: Christine Jones, Stephen Burton, Charles Lane, Cathy Davidson, Reneke van Soest, Kathryn Sharplin, Frazer Smith, Adele Henderson, Ariell King

Apologies: Mayor Mahé Drysdale. Kiri Allan, Kylie Smallman

Opening Karakia

Key Discussion Items

Meeting Notes – 22 December 2025

- Endorsed

3. Shareholding & Shares – Summary of Discussion

The meeting received an overview of the key governance and structural settings required to shape the proposed Water Organisation (WO). Discussion focused on share allocation, voting rights, unanimous and special resolution matters, and expectations for shareholder involvement going forward.

Key Governance Points:

- Shareholder decisions relate only to a small set of high-level matters, with most governance activity occurring at the SRF and Board levels.
- Shareholder decisions may require unanimous approval, special resolutions (75%+), or ordinary resolutions (50%+).
- Share allocations do not need to align with voting rights, as dividend payments are unlikely to be a core feature of the WO financial model.

Share Allocation Methodology:

- Various methodologies were discussed (net assets, population, connections, or hybrid).
- Regardless of method, Tauranga City Council would remain the majority shareholder.
- A non-asset-based allocation may result in an accounting loss or debt position for TCC.

Ongoing Review of Shares:

- Option A: Review shareholding periodically (annually or bi-annually) to reflect changes such as population or connections.
- Option B: Do not review shareholding regularly, providing greater certainty but less adaptability.

Voting Rights:

- Voting rights do not need to match shareholding.
- Option A: Voting based on shareholding, which may create positive control for the majority shareholder.
- Option B: Equal votes per shareholder, which may risk negative control by smaller shareholders.

Unanimous Decision Matters:

- Potential additional matters include adding new shareholders, liquidation, constitutional changes, amalgamations, and future additions to the unanimous-approval list.

Special Resolution Matters:

- Additional matters may include changes to share rights, major changes to business nature, shareholder funding, and financial assistance for share purchases.
- Option A: Retain the Companies Act 75% threshold.
- Option B: Increase to either 75% or the shareholding of the largest shareholder, whichever is higher.

Summary of Decisions Required for 13 February Meeting:

- Preferred share allocation methodology
- Whether shareholdings should be reviewed periodically
- Preferred voting rights model
- Matters requiring unanimous approval
- Additional special-resolution matters
- Whether the special-resolution threshold should exceed 75%

4 Tangata Whenua Related Matters

- Topic introduced but deferred to the 2 February meeting due to key representatives being unavailable.

Action: to add to next agenda.

5 Legal Framework – Tangata Whenua

- A legislative factsheet was provided outlining council obligations related to Tangata Whenua within the context of the Water Organisation.

6 Programme Workplan

- An updated programme workplan was distributed.

Closing

- Meeting closed with karakia.
- Next meeting: 2 February 2026 at TCC Offices

LWDW Joint Working Group Meeting

Tauranga City Council & Western Bay of Plenty District Council

Tauranga City Council Chambers

Date: 2 February 2026

Attendance

Independent Chair: Lyall Thurston

Tauranga City Council:

Members: Mayor Mahé Drysdale, Cr Marten Rozenboom, Cr Glen Crowther, Cr Kevin Schuler, Cr Hautapu Baker,

Western Bay of Plenty District Council:

Members: Mayor James Denyer, Cr Darlene Dinsdale, Cr Grant Dally, Cr Graeme Elvin, Cr Rodney Joyce

Tangata Whenua:

Members: Kylie Smallman, Shadrach Rolleston, Kiri Allan, Rohario Murray, Roana Bennett, Hakopa Tapiata.

Non-members: Matire Duncan & Spencer Webster

Supporting Staff: Christine Jones, Stephen Burton, Charles Lane, Tyler Buckley, Cathy Davidson, Reneke van Soest, Kathryn Sharplin, Frazer Smith, Craig Rice, Adele Henderson, Ariell King, Keren Paekau

Apologies: None

Opening Karakia

Key Discussion Items

Meeting Notes – 29 January 2026

Endorsement deferred to next meeting.

3 Partnerships Role of Tangata Whenua (continuation of item of 29 January meeting)

The Tangata Whenua Partnership paper outlines the legal, governance, and operational foundations for embedding tangata whenua partnership into the establishment and ongoing oversight of the Water Organisation (WO).

4 Issues & Options Paper – Board & SRF Memberships and Appointments

The paper sets out structural choices to shape the proposed Water Organisation (WO) and the Shareholder Representative Forum (SRF), including SRF size and composition, Tangata Whenua representation and voting rights, the role and authority of an independent SRF chair, nomination and appointment pathways, Board size, and director appointment processes. It aims to balance Treaty partnership obligations, governance effectiveness, democratic accountability, and operational agility.

Options span from advisory-only participation to full voting partnership for Tangata Whenua; elected-only SRF membership to mixed elected and appointed expertise; and chair arrangements ranging from no independent chair to an independent chair with limited or full voting rights. For the WO Board, guidance suggests a compact board (up to five directors) for agility, with the alternative of a larger board to broaden capability. Director appointments must be competency-based and may be executed by each shareholder individually or by joint agreement across shareholders.

Decisions Required (to be confirmed 13 February 2026):

- Confirm preferred SRF size and future scalability approach.
- Decide SRF membership model: elected-only vs mixed elected/appointed.
- Select Tangata Whenua participation model on SRF: advisory-only, non-voting, limited voting, or full voting; and confirm number of TW representatives.
- Determine whether to appoint an independent SRF chair and, if so, define voting rights: none, limited (e.g., casting vote/specified topics), or full.
- Agree the nomination pathway for TW representatives (TW-led nomination with council appointment vs council-selected).
- Agree the appointment method for all SRF members (each council vs joint appointments).
- Set the WO Board size (e.g., up to five directors vs a larger board).
- Confirm the director appointment process (individual shareholder appointments vs joint appointments) and application of the Skills Matrix.

Next Steps:

- By 9 February 2026: TCC, WBOPDC, and Tangata Whenua to provide written feedback on Item 4 options and preferences.
- 13 February 2026 (JWG meeting): Seek guidance and, where possible, agreement on SRF structure, membership (including TW), chair arrangements, Board size, and director appointments.
- If consensus is reached: Prepare formal recommendations for each Council for resolution.
- If no consensus: Escalate to Councils with documented options, rationale, and trade-offs for decision.

5 Programme Workplan

- An updated programme workplan was distributed.

6 General Business

- Chief Executive recruitment update provided.
- Governance queries from 29 January meeting addressed regarding share allocation, constitutional considerations, consultation requirements, and finance matters.

Closing

- Meeting closed with karakia.
- Next meeting: 13 February 2026 at Western Bay offices.

Water Services | Tauranga City | Western Bay of Plenty District Council

Consensus on the following:

PART 1 – Issues from 29 January JWG Meeting

- Issue 2 – Voting Rights: How They Are Determined
- Issue 3 – Matters Requiring Unanimous Shareholder Approval
- Issue 4 – Matters Requiring Special Resolution (≥75%)

PART 2 – Issues from 2 February JWG Meeting

- Issue 2 – SRF Membership: Elected Members / Shareholder Representatives
- Issue 4 – Independent Chair of the SRF
- Issue 6 – Number of WO Directors

Further discussion on the following:

PART 1 – Issues from 29 January JWG Meeting

- Issue 1(a) – Initial Shareholdings: Methodology for Allocating Shares
- Issue 1(b) – Ongoing Review and Adjustment of Shareholdings

PART 2 – Issues from 2 February JWG Meeting

- Issue 1 – Size of the SRF
- Issue 3 – Role of Tangata Whenua on the SRF
- Issue 5 – Nomination and appointment of members of the SRF
- Issue 7 – WO Director Appointment Process

Combined JWG Report – 29 January + 2 February Meetings

29 January Meeting

Issue 1(a) – Initial Shareholdings: Methodology for Allocating Shares

Option	Summary	TCC	WBoPDC	TW Rep	Consensus?
A	Allocate shares based on net assets transferred to the WO	—	—	—	No
B	Allocate based on population or water connections	—	—	—	No
C	Hybrid allocation using multiple metrics	—	✅	—	No
D	Two-tier shareholding (Class A voting / Class B ownership)	✅	—	✅	No

Comments:

TCC: Each Councils water assets ownership and control must be maintained by the ratepayers. Prefer not to use the word, dividends. Any surplus will be used to bring forward a capital project or retire debt. (Second option: A, Third option: C)

WBoPDC: Option C preferred. It needs to be a negotiated but defensible outcome and the hybrid option allows for this. WBOPDC are doing further investigations into other WSO to find out how they are managing the financial considerations and gains/losses as a result of taking on an option other than on a purely Net Assets basis. Our WSO advisors are of the opinion that assets should not be the key consideration when assessing share allocation.

Regarding Option D, the split of voting vs shareholding rights is a different issue and does not need to be achieved via different classes of shares.

TW Reps: Consistent with the partnership principles outlined in the paper from tangata whenua representatives, option D would permit class A shares to be held by tangata whenua with class B shares addressing ownership and other matters. Second option: C.

Issue 1(b) – Ongoing Review and Adjustment of Shareholdings

Option	Summary	TCC	WBoPDC	TW Rep	Consensus?
A	Regular review and adjustment (e.g., bi-annually)	—	✅	—	No
B	No adjustment after initial allocation	✅	—	✅	No

Comments:

TCC: Review shareholding (based on full valuation) on a three-year cycle or when a new council joins the Waters Organisation.

WBoPDC: This will depend on the methodology chosen. For example, growth Councils will move considerably on net assets as a basis for shareholding compared to non growth Councils. The allocation should be reviewed when any new Council joins the WSO and ensure that the allocation and application is agreed by all parties. If for example we were to join up with IAWAI, they have gone with a 50/50 split. Partnership with new Councils will need to be open to the methodology that works best for all. We have flexibility regarding the regularity of reviewing the shareholding. Reviewing and adjusting after certain trigger points may be preferred than at arbitrary intervals.

TW Reps: : Preferred: Option B except for the addition of further council shareholders.

Issue 2 – Voting Rights: How They Are Determined

Option	Summary	TCC	WBoPDC	TW Rep	Consensus?
A	Voting proportional to shares held	—	—	—	
B	Equal voting rights per shareholder	✅	✅	✅	Yes

Comments:

TCC: Subject to Option D, above being successful.

WBoPDC: We have a bottom line that the WSO cannot simply be controlled by TCC because they are the biggest partner. Equal voting rights is the simplest and fairest way to achieve this that is also durable if and when the WSO expands, noting the various matters that need unanimous or 75% support. We note that equity was a key guiding principle in our commitment agreement. Voting as part of a WSO should be in the best interest of the sub region at all times.

TW Reps: Preferred: Option B. To encourage the entity's strategic direction is set through partnership, not majority control, enabling stronger, more durable decisions through shared alignment.

Issue 3 – Matters Requiring Unanimous Shareholder Approval

Issue 3(a) – Should any matters require unanimous approval?

Option	Summary	TCC	WBoPDC	TW Rep	Consensus?
A	Yes—some matters should require unanimous approval	✅	✅	✅	Yes
B	No unanimous approval required	—	—	—	

Issue 3(b) – If YES, which matters?

Matter	TCC	WBoPDC	TWRep	Consensus?
Adding new shareholders	✅	✅	✅	Yes
Liquidation or winding-up	✅	✅	✅	Yes
Constitution or SHA changes	✅	✅	✅	Yes
Amalgamation / merger / major restructure	✅	✅	✅	Yes
Adding further matters requiring unanimity. **TCC:** Potential change in legislation	✅	✅	✅	Yes
Additional matters to be specified: **WBoPDC:** Changes to shareholding and voting matters (which is probably covered in the Constitution/Share Holders Agreement.	✅	✅	✅	

Comments:

TCC:

WBoPDC: Sale of the company could be included, though noting that this is currently prohibited under legislation anyway

TW Reps: Unanimity required for all matters listed.

Issue 4 – Matters Requiring Special Resolution (≥75%)

Issue 4(a) – Add matters beyond the statutory list (see section 106, Companies Act 1993)?

Option	Summary	TCC	WBoPDC	TW Rep	Consensus?
A	Yes—add additional matters	✅	✅	✅	Yes
B	No additional matters	—	—	—	

Issue 4(b) – If YES, which matters?

Matter	TCC	WBoPDC	TWRep	Consensus?
Issue/change rights / share buy-back	✅	✅	✅	Yes
Material change to WO business	✅	✅	✅	Yes
Shareholder funding or guarantees	✅	✅	✅	Yes
Financial assistance for share purchases. **TCC:** subject to each council approval, example please.	✅	✅	✅	Yes
Add future matters requiring special resolution. **TCC:** Potential change in legislation	✅	✅	✅	Yes
Additional specified matters: Additional matters to be specified: **WBoPDC:** The >75% requirement will depend on where we land with shareholding allocation. If WBOPDC hold 14% of the shares, then there may be a desire to push some of these matters into the unanimous requirement.	✅	✅	✅	?

Comments:

TCC:

WBoPDC:

TW Reps: Approve all additional matters listed as requiring a special resolution.

Issue 4(c) – Increase special-resolution threshold above 75%?

Option	Summary	TCC	WBoPDC	TW Rep	Consensus?
A	Keep at 75%	✅	✅	✅	Yes
B	Increase above 75%	—	—	—	

Comments:

TCC:

WBoPDC: If the basis of voting is one vote each, Option A. Any other option would need a careful evaluation subsequent to the allocation of voting rights and an increase in the threshold above 75% and likely further amendments as any new councils join the WSO. Query whether this 75% refers to voting rights or shareholding?

TW Reps: Nil

2 February Meeting

Issue 1 – Size of the SRF

Option	Summary	TCC	WBoPDC	TW Rep	Consensus?
Preferred SEF size	(this could be a precise number, or a prescribed range such as "No less than X and no more than Y")	2 to 4 council members and Tangata Whenua	3 or 4 council members and 2 Tangata Whenua	Minimum of 6 and maximum of 9	No

Comments:

TCC: When a new council joins the Waters Organisation, a review of the SRF can/will be conducted.

WBoPDC: We would like to understand from Tangata Whenua how representation might change as the WSO expands

TW Reps: Minimum of 6 and maximum of 9 SRF representatives comprising an equal number of representatives for tangata whenua and councils (i.e. Council x 4 and tangata whenua x 2 or Councils x 6 and tangata whenua x 3). No less than 2 and no more than 3 per party

Issue 2 – SRF Membership: Elected Members / Shareholder Representatives

Option	Summary	TCC	WBoPDC	TW Rep	Consensus?
A	One or more elected members from each shareholder	✅	✅	✅	Yes
B	Mixed membership including experts/senior staff	—	—	—	

Comments:

TCC: SRF will reserve the right to request independent advice when required. This can be from respective council staff or independent experts.

WBoPDC: As shareholders, the representatives should be there in that capacity. We do not see any expert needing to be representing those needs. Councils should have the choice of bringing in expertise as and when required to support further information. Council officers may be present to support process, and to provide ongoing continuity between trienniums. Preference for 3 or 4 elected members, but this will need to be reviewed via the SHA if the WSO expands.

TW Reps: Preferred: Option A. Tangata whenua consider the SRF to be more of a political forum and are opposed to Council staff being on the SRF.

Issue 3 – Role of Tangata Whenua on the SRF

Issue 3(a) – Role on SRF

Option	Summary	TCC	WBoPDC	TW Rep	Consensus?
A	No position on SRF, Tangata Whenua Advisory Board arrangement which links directly to SRF	—	✅	—	No
B	TW on SRF with no voting rights	✅	—	—	No
C	TW on SRF with limited voting rights	—	—	—	No
D	TW on SRF with full voting rights	—	—	✅	No
E	TW on SRF with full voting rights on specified decisions	—	—	—	No

Comments:

TCC: Option 2: A

WBoPDC: Preference for Option A, but we would also accept Option B.

Our recommendation is that we remove the delegations to the SRF and replace the TOR to be a recommendatory group. Decisions such as the draft SOE and Strategy, Director appointments for example should go back to Council for approval. This would be desirable as we transition, and confidence in process is well understood by Council. The SRF would still be valuable in preparing to get to the draft position on matters such as noted above. There may be areas such as Board reviews that could be carried out by the SRF without recourse to the councils. Further work could be undertaken on this to close this out to the satisfaction of the Working Group

TW Reps: Tangata Whenua do not consider alternative options to be justified and therefore do not provide fallback.

Issue 3(b) – Number of Tangata Whenua Representatives (Only applicable if option B, C or D is selected for issue 3(a))

Option	Summary	TCC	WBoPDC	TW Rep	Consensus?
A	One representative	—	—	—	No
B	Same number as each shareholder	✅	—	✅	No

Comments:

TCC:

WBoPDC: Propose an Option C: 2 tangata whenua reps, but able to be reviewed should the CCO expand.

TW Reps: This model ensures balanced decision-making between the two councils and tangata whenua and creates a stable governance structure where long-term water outcomes must be agreed collectively rather than imposed by majority rule.

Issue 4 – Independent Chair of the SRF

Issue 4(a) – Should the SRF have an independent chair?

Option	Summary	TCC	WBoPDC	TW Rep	Consensus?
A	Appoint independent chair immediately and permanently	—	—	—	
B	SRF may appoint/remove an independent chair in future	✅	✅	✅	Yes
C	No independent chair now or in future	—	—	—	

Issue 4(b) – Should the independent chair have voting rights? (Only applicable if option A is selected for issued 4(a))

Option	Summary	TCC	WBoPDC	TW Rep	Consensus?
A	Chair has no voting rights	✅	✅	✅	Yes
B	Limited voting rights	—	—	—	
C	Full voting rights	—	—	—	

Comments:

TCC:

WBoPDC: Not recommended, however, if one was required, they would be there in a facilitation role only and not required to vote

TW Reps: Preferred Option A (If an independent chair is preferred option in issue 4(a). To ensure the chair remains neutral and decisions stay with the mandated parties.

Issue 5 – Nomination and appointment of members of the SRF

Issue 5(a) – Nomination of Tangata Whenua Representatives

Option	Summary	TCC	WBoPDC	TW Rep	Consensus?
A	TW nominate reps; councils appoint	✅	✅	—	No
B	TW reps appointed by council without nomination	—	—	—	No
C	Nominated by TWPG and endorsed by Councils **(NEW)**			✅	No

Comments:

TCC:

WBoPDC:

TW Reps: Neither option A nor B are acceptable to tangata whenua. We propose a third Option C whereby tangata whenua will appoint their representatives.

Issue 5(b) – Process for appointing all SRF Members

Option	Summary	TCC	WBoPDC	TW Rep	Consensus?
A	Each council appoints own reps; TW reps & chair appointed jointly	☑	☑	—	No
B	All SRF members jointly appointed by both councils	—	—	—	No

Comments:

TCC:

WBoPDC: We have a level of comfort for tangata whenua to nominate and appoint their reps, but acknowledge that councils may need to at least endorse that choice.

TW Reps: Consistent with the response to issue 5(a), we propose that each party (councils and tangata whenua) should appoint their own representatives. Tangata whenua will appoint their representatives through a transparent and robust process.

Issue 6 – Number of WO Directors

Option	Summary	TCC	WBoPDC	TW Rep	Consensus?
A	Up to 5 directors	☑	☑	☑	Yes
B	Other number:				

Comments:

TCC: Do have some support for a 7 member Board

WBoPDC: This would allow the Board to bring in additional Directors to potentially fill a skill gap for a period of time. A lower number initially (e.g. three) might allow for a staggered board rotation.

TW Reps: Preferred: Option A. This option is small enough to be efficient, but large enough to provide balanced capability and independent oversight (including an independent chair) without becoming unwieldy or politicised.

Issue 7 – WO Director Appointment Process

Option	Summary	TCC	WBoPDC	TW Rep	Consensus?
A	Each shareholder appoints one or more directors; remaining jointly appointed	—	—	—	
B	All directors jointly appointed by shareholders	✅	✅	—	No

Comments:

TCC:

WBoPDC: Recommendation from the SRF to Council for approval as is the current process for most other CCO's.

TW Reps: Neither option A nor B is acceptable. Tangata Whenua prefers that the SRF appoints directors. A fallback is Option B whereby the appointment is made by the SRF and endorsed by the shareholders.

Water Services | Tauranga City | Western Bay of Plenty District Council

AGENDA

LWDW: Joint Working Group Meeting

16 February 2026

Time: 2.30pm – 5.30pm

Location: Athenree Room, Western Bays District Council Offices, 1484 Cameron Road, Greerton

Order of Business

1. OPENING KARAKIA

2. APOLOGIES

3. BUSINESS

#	Item	Comment/Direction
1	Chairperson discussion	• Chairperson Introductory Comments
2	Issues & Options Paper – Board of Directors Matters	• Staff overview of the issue and key considerations • Working Group discuss and provide direction or feedback which can be reflected in TCC Report for decision making
5	General Business	

4. CLOSING KARAKIA

Issues & Options Paper: Board of Directors matters (Paper for 16 February JWG Meeting)

Purpose

1. To obtain direction from the JWG (to inform a decision report to both TCC and WBOPDC) on the following issues (in blue are the political decisions that include a list of advantages and disadvantages, while in green are the more commercial decisions that are limited to a recommendation only):

    a. Issue 1: Director Term of appointment

    b. Issue 2: Director Remuneration

    c. Issue 3: Should interested Directors be allowed to vote on related or other matters?

    d. Issue 4: Whether dividends permitted

    e. Issue 5: Additional reporting obligations of the Water Organisation to each Council

    f. Issue 6: Frequency of Board meetings

    g. Issue 7: Will the Chair of the Board of Directors have a casting vote?

    h. Issue 8: Additional protection against privatisation

    i. Issue 9: Dispute resolution regime

Background

2. 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.

3. By necessity, this paper assumes that elected members decide to proceed with the establishment of the WO (and we acknowledge that elected members are yet to make that decision).

4. This paper touches on nine issues that are relevant to the drafting of the WO's foundation documents, being the shareholders' agreement and the company constitution. In considering this paper, it is worth bearing in mind that:

    a. Except where indicated in the body of this paper, the issues set out below are not constrained by legislation.

    b. While a very wide range of theoretical options are available for each of the issues, we have focused on the options included within the Commercial Term Sheet that has previously been presented to the JWG.

c. When considering the issues set out in this paper, it is important to keep in mind a long-term picture and look to set up the WO in such a manner that it is an attractive organisation for other Councils to join in the future.

5. As a snap-shot, we have set out below a summary of the proposed options available for each issue, along with staff recommendations. More detailed information on each option and the rationale for the staff recommendation is outlined from paragraph 6 onwards.

Issue	Options			Staff recommendation (if any)
Issue 1 – Director Term of appointment	Option A: 3 year term, and a maximum of 3 terms (if re-elected). Provides a 9 year maximum total duration	Option B: Unspecified appointment term, with no requirement to retire unless removed/replaced		Option A
Issue 2 – Director Remuneration	Option A: Determined by shareholders by ordinary resolution (>50% vote)	Option B: Determined by shareholders by unanimous resolution	Option C: Determined by the SRF	Option C
Issue 3 – Should interested Directors be allowed to vote on remuneration or other matters?	Option A: Yes – Allow interested Directors to vote on matters where they have an interest	Option B: No – Prohibit interested Directors from voting where they have an interest	Option C: No, except for the following specified circumstances (being, any payment or other benefit under s 161 of the Companies Act; and the entry into an indemnity or insurance arrangement).	Option C
Issue 4 – Whether dividends permitted	Option A: No dividends permitted.	Option B: Dividend permitted with approval form the WO's Board of Directors (by ordinary Board resolution) subject to meeting any solvency and statutory tests (as per Companies Act).	Option C: Dividend permitted with unanimous shareholder approval plus approval from the WO's Board of Directors (by ordinary Board resolution) subject to meeting any solvency and statutory tests (as per Companies Act).	Option C
Issue 5 – Additional reporting obligations of the Water Organisation to each Council	Option A: Include explicit additional reporting requirements upfront.	Option B: Do not specify additional reporting requirements and instead rely on the flexibility of section 249 and require additional documents as and when the Councils see fit.		Option B
Issue 6 - Frequency of Board meetings	Option A: Strict: "Monthly".	Option B: Flexible: "As determined by the Board".	Option C: Hybrid: "Monthly or as otherwise determined by the Board".	Option C

Issue	Options			Staff recommendation (if any)
Issue 7 - Will the Chair of the Board of Directors have a casting vote?	Option A: Yes – Chair has a casting vote.	Option B: No – Chair does not have a casting vote.		Option B
Issue 8 – Additional protection against privatisation	Option A: Include additional anti-privatisation clauses within the foundation documents (over and above what is provided in the Act), and require unanimous shareholder approval before such clauses can be amended.	Option B: Do not include anti-privatisation clauses within the foundation documents over and above what is provided in the Act		Option A
Issue 9 - Dispute resolution regime	Option A: Escalation process comprising: Negotiation → Mediation → Arbitration.	Option B: Mediation then Court		Option A

Issue 1: Director Term of appointment

[Non-political decision, recommendation only]

6. This issue considers how long Directors of the WO serve per term, and any overall tenure limits. Good governance practice is to have a fixed length appointment term (often around three years) with the possibility of reappointment for a limited number of additional terms, up to a maximum tenure. A balanced approach to rotating Directors helps to ensure fresh perspectives over time, while retaining institutional knowledge (timing of rotation is also important to ensure all Directors are not required to depart at the same time). A common (and recommendable) approach is to appoint Directors for 3-year terms, often renewable for up to a total of around 9 years (3 terms) barring exceptional circumstances.

7. The options are:

    a. Specified appointment term of 3 years, with an option to be re-elected for an additional 2 terms (i.e. up to a 3 terms x 3 years = 9 year maximum total duration).

    b. Unspecified appointment term, with no requirement to retire unless removed/replaced.

8. Staff **recommend option (a**) above, comprising an initial 3-yearar term, with a maximum of 3 terms (i.e. up to 9 years) would be suitable.

Issue 2: Director Remuneration

[Political decision – explanation of advantages and disadvantages]

9. Please note that the issue here is to determine a mechanism/responsibility for setting remuneration, rather than setting the amount of remuneration.

10. The Act does not prescribe a process for setting Director remuneration, so it falls to the WO's foundation documents to address this point. As shareholders, TCC and WBOPDC must decide who will bear the task of approving or setting remuneration for the WO's Board. The options available include:

    a) Determined by shareholders by ordinary resolution (>50% vote).

    b) Determined by shareholders by either unanimous or special resolution (as the Councils see fit).

    c) Determined by the SRF.

11. Whichever option is chosen, in order to ensure the Director fees are transparent and justifiable to the public, it will be important to account for:

    - Each Council's Appointment and Remuneration Policy for Directors of Council organisations[1]; and
    - Market benchmarking data when setting the actual dollar amounts.

12. **Staff recommend option (c),** while requiring the SRF (in its terms of reference, for example) to comply with each Council's appointment and remuneration policy and independent market data. At a very high level, the following table outlines the key advantages and disadvantages of each option.

Advantages	Disadvantages
Option A – Determined by shareholders by ordinary resolution (ie >50% vote)	
• Common corporate governance approach. This approach mirrors standard Companies Act 1993 ("Companies Act") processes, so will be familiar to governance advisors and legal teams. • Only requires simple majority, enabling timely changes to remuneration without creating governance bottlenecks. • Easier to adjust remuneration over time as the organisation grows or expectations on Directors evolve.	• Could be seen as an inefficient use of elected member time and inefficient use of Council (i.e. ratepayer) resource, when compared with delegating this to an SRF. • Depending on make-up of shareholding, the majority holder may be able to set remuneration without genuine consensus from the minority Council. • Elected members or the public may view a majority vote approach as insufficiently collaborative for a joint water entity designed to reflect partnership.

[1] Which were attached to the Issues and Options Paper for the JWG Meeting on 2 February 2026.

Advantages	Disadvantages
Option B - Determined by shareholders by unanimous resolution	
• Ensures both Councils agree, reinforcing the collaborative nature of the joint WO. • Neither party can unilaterally impose remuneration settings. • Decisions that are unanimous are easier to defend publicly. • Encourages Councils to thoroughly discuss impacts and align expectations.	• Could be seen as an inefficient use of elected member time and inefficient use of Council (i.e. ratepayer) resource, when compared with delegating this task could be delegated to an SRF. • If Councils disagree, remuneration might not be updated when needed, potentially affecting Director recruitment or retention. • Achieving unanimity may require additional political, staff, and governance time. • Remuneration decisions may trend toward the most conservative position, which could reduce the WO's ability to offer remuneration at a level needed to attract suitably skilled Directors • A requirement for unanimity might be considered disproportionate where the decision is somewhat operational rather than strategic.
Option C - Determined by the SRF	
• Simplifies and streamlines Council workloads and avoids repeatedly bringing remuneration matters back to full elected governing bodies. • Increases agility as SRF can meet and decide more quickly than two full Councils coordinating through formal meeting cycles. • The SRF may be better equipped to consider benchmarking, market data, and governance norms. • Retains political involvement with elected members sitting on SRF.	• Councils formally step back from a somewhat sensitive area involving public funds. • SRF decisions may be perceived as differing from political or community expectations unless guidance documents are strong. • Councils must ensure the SRF has clear terms of reference and accountability mechanisms.

Issue 3: Should interested Directors be allowed to vote on remuneration or other matters?

[Non-political decision, recommendation only]

13. This topic addresses whether or not Directors who have a personal interest in a matter can participate in Board decisions on that matter. An "interested Director" typically means a Director who stands to gain (or is otherwise conflicted) in a transaction or decision.

14. Under the Companies Act, Directors must disclose their personal interests, and generally they should not vote on matters in which they are interested unless the company's constitution expressly permits it. Good governance (and common practice in NZ) is to prevent conflicts of interest from influencing decisions: Directors should refrain from voting on matters where they have a conflict, to maintain integrity in decision-making. However, there are some specific transactions (like approving Directors' remuneration or indemnity / insurance arrangements for Directors) where having all Directors abstain might not be practical, and the law provides mechanisms for those.

15. These are the available options:

    a. Yes – Allow interested Directors to vote on matters where they have an interest

    b. No – Prohibit interested Directors from voting where they have an interest.

    c. No, except for the following specified circumstances: any payment or other benefit under s 161 of the Companies Act[2], and the entry into a director indemnity arrangement or director insurance arrangement[3]).

16. **Staff recommend option (c).** This middle ground means generally Directors cannot vote on matters where they are interested, except in strictly defined situations that are deemed acceptable.

Issue 4: Whether dividends permitted

[Political decision – explanation of advantages and disadvantages]

17. This topic is about the WO's approach to dividends – specifically, whether the WO can distribute profits / dividends to its shareholding Councils (TCC, WBOPDC and any future Councils that may join), and (if so) under what conditions.

18. It is worth noting upfront that:

    a. The Act prevents the WO from paying any dividends that could compromise its ability to fund long-term investment and meet its regulatory requirements.[4] So

[2] Section 161 is about directors' pay and benefits. It says that when a company gives a director any sort of payment (e.g. fees, bonuses); extra reward; benefit (e.g. use of a car, special allowance); or compensation (e.g. a payout when they leave), the other directors must formally approve it. The other directors must decide that the payment or benefit is fair and reasonable; and the reasons for approving it are properly recorded in the company's documents.
[3] Indemnity and insurance arrangements may be treated differently because they benefit all directors in the same way and are considered essential for good governance.
[4] See section 18 of the Local Government (Water Services) Act 2025.

any approach toward dividends must be secondary to infrastructure investment needs.

b. The WO's financial operating model will be subject to strict regulatory oversight (including oversight from the Department of Internal Affairs, the Commerce Commission and the Auditor General). We do not expect regulators to look favourably on a WO financial model that generates so much profit that it can both meet long-term investment goals and also pay out regular and substantial shareholder dividends.

19. With these points in mind, we consider it unlikely that the WO's financial operating model will support regular, substantial dividends to Council shareholders. Nonetheless, there remains some possibility under the Act for the WO to pay dividends in some shape or form, and the foundation documents will need to address this topic.

20. These are the options available:

    a. No dividends permitted.

    b. Dividends permitted only with approval from the WO's Board of Directors (by ordinary Board resolution) subject to meeting any solvency and statutory tests (as per Companies Act).

    c. Dividend permitted with unanimous shareholder approval plus approval from the WO's Board of Directors (by ordinary Board resolution) subject to meeting any solvency and statutory tests (as per Companies Act).

21. **Staff recommend option (c)** as it gives the WO some flexibility while ensuring that a decision not to invest all surplus funds into maintaining and improving infrastructure and services is subject to a suitably robust approval threshold. We consider this approach to be consistent with the purpose, objectives and financial principles of the Act.

22. However, at a very high level, the following table outlines the key advantages and disadvantages of each option.

Advantages	**Disadvantages**
Option A – No dividend permitted	
• Promotes reinvestment. All surpluses would be retained for reinvestment or held as reserves for the WO's operation. • Reinforces that the WO exists to deliver water services efficiently and sustainably rather than to generate profit for Councils. • Councils cannot use the WO as a revenue source to support general rates or other activities, reducing risk of political pressure.	• It could be considered imprudent to remove a potentially useful tool (i.e. the ability to pay dividends if the right circumstances arise) when one cannot predict what the future may necessitate. • Councils cannot access surpluses even if the WO is in a strong financial position. • Without dividend considerations, Councils may pay less attention to financial performance or capital structure oversight. • There is a risk that the WO may accumulate significant retained earnings.

Advantages	Disadvantages
• Simplifies governance, with no need for dividend policies, approvals, or disputes between Councils regarding distribution versus reinvestment.	• If the WO is expected to be commercially efficient, a no-dividend model may be perceived as overly restrictive. • Without the incentive of profitability associated with dividends, the Board may be less focussed on efficiency or invest in assets that add little value to the organisation. • The inability to pay dividends may disincentivise future potential partners.
Option B - Dividend permitted with Board approval	
• This is similar to how a private company might operate, where the Board decides on dividends, within the Companies Act parameters. • It encourages commercial acumen and efficiency. It also encourages Directors with these skills to be part of the Board. • The Board can approve dividends based on financial conditions, asset lifecycle needs, and long-term sustainability. -term sustainability. • Councils can receive income when appropriate, adding financial flexibility and potentially helping offset Council funding pressures. • Avoids the need for Councils to coordinate formal approvals every time a dividend is proposed.	• Councils may feel uncomfortable delegating a financially significant decision to the Board, especially given public accountability for water charges. • WO customers may question why a monopoly water organisation is paying dividends rather than investing in infrastructure (or lowering charges). • Could incentivise overly commercial behaviour, where Directors may prioritise financial performance ahead of service or community considerations. • May not meet the Commerce Commission regulatory outcomes and pricing requirements if surplus funds are available for dividends.
Option C – Dividend permitted with unanimous shareholder approval plus approval from the WO's Board of Directors	
• The Councils (shareholders) could unanimously choose to approve a dividend distribution, but it would first require approval from the WO's Board. This sets a high bar, ensuring that no dividend is paid unless all three parties (i.e. the WO's Board, TCC and WBOPDC) concur that it's financially prudent and desirable. • This approach provides a measure of flexibility – dividends are possible – but ensures the strongest safeguard that such a decision is not taken lightly.	• Even when a dividend is financially appropriate and agreed by the Board, the requirement for unanimous shareholder approval could see one Council block the dividend for political or budgetary reasons. • Slower and more resource-intensive decision-making. Requires coordination of both Councils' meeting cycles and agendas. • Potentially creates uncertainty for financial planning.

Advantages	Disadvantages
• Both Councils would have to be convinced that a dividend is warranted and responsible (meeting the Act's principle that it shouldn't impair the entity's ability to maintain services). • Requires both professional judgement (Board) and democratic oversight (shareholders), ensuring dividends are both financially sound and politically acceptable. • Unanimity ensures both Councils jointly support the dividend decision, making it easier to defend publicly.	• Dividends may become a bargaining chip between Councils or within broader political negotiations. • Particularly when there is no price harmonisation it may be appropriate for one Council to receive a dividend. This should not be able to be blocked by another Council. • May discourage future potential partners. • Could be *perceived* by the public as a "money-go-round" where charges taken from the public by the WO make their way to the Councils (via a decision made by the Councils).

Issue 5: Additional reporting obligations of the Water Organisation to each Council

[Non-political decision, recommendation only]

23. This topic addresses whether the shareholders wish to impose specific reporting obligations on the WO over and above what is prescribed within the Act. The Act provides some strict reporting requirements, and some flexibility for Councils to require additional reporting as and when required. In particular:

    a. WO's must provide shareholding Councils with certain reporting documents (e.g. water service strategy[5], water services annual report[6], water services half-yearly report[7] etc).

    b. In addition, section 249 of the Act gives shareholders the right to require the WO to provide additional plans or reports by written notice as/when the shareholders might see fit (such as quarterly reports, a climate resilience plan or an asset management plan, as examples).

    c. Note also that the Statement of Expectations will provide a further opportunity for the shareholding Councils to prescribe reporting requirements, and frequency of reporting.

24. The above structure provides a broad and flexible reporting regime. Beyond the above, the Councils could choose to impose additional reporting requirements on the WO within the foundation documents. For example, instead of relying on the flexibility of s 249 to require additional quarterly reports or a climate resilience plan as and when the Councils see fit, the Councils could require that the WO must provide these documents at set frequencies. So, the question for TCC and WBOPDC is whether to "bake in" specific

[5] Section 230 of the Act.
[6] Section 243 of the Act.
[7] Section 248 of the Act.

additional reporting obligations into the foundation documents now, or simply to rely on the Act's mechanism to request information when needed.

25. These are the options available:

    a. Include explicit additional reporting requirements. That is, proactively specify in the foundation documents certain extra reports the WO must deliver.

    b. Do not specify additional reporting requirements in the foundation documents and instead rely on the flexibility of section 249 and require additional documents as and when the Councils see fit. This approach defers specifics until the Councils determine a need.

26. **Staff recommend option (b)** because it gives the parties the flexibility to develop the reporting requirements over time rather than having to prescribe them from the outset. The water services landscape will evolve, and early in the WO's life it might not be clear which specific additional reports are truly necessary. Section 249 provides a built-in tool for the Councils to ask for additional reports, allowing for a more adaptive approach.

Issue 6: Frequency of Board meetings (CTS 19)

[Non-political decision, recommendation only]

27. The WO's foundation documents can (if the shareholders wish) stipulate how often the WO's Board should meet. Traditionally, many Boards meet monthly. Some may meet bi-monthly or quarterly if that suffices.

28. Given the likely scale and start-up nature of this joint entity, we consider monthly meetings to be a prudent default. Also, stating "or as otherwise determined by the Board" provides flexibility – the Board can always meet more often, or adjust over time.

29. Options available include:

    a. Strict: "Monthly".

    b. Flexible: "As determined by the Board".

    c. Hybrid: "Monthly or as otherwise determined by the Board".

30. **Staff recommend option (c).** The wording "or as otherwise determined" gives the Board the ability to modify its meeting frequency by a Board decision if circumstances warrant (for example, after a year or two (or ten) of operation, they might decide to meet every two months if that's sufficient, or conversely, more frequently during critical periods).

Issue 7: Will the Chair of the Board of Directors have a casting vote?

[Political decision – explanation of advantages and disadvantages]

31. A "casting vote" for the Chair means that if the Board's votes on a resolution are tied (equal for and against), the Chairperson has the ability to cast a second vote (in addition to their own ordinary vote) to break the tie. This effectively allows the Chair to decide an outcome when the Board is deadlocked.

32. The Board composition should ideally be structured to reduce the likelihood of ties (for example, consider appointing an odd number of total Directors). But even when there is an odd number of Directors, there may be instances where certain Directors are unable to vote (for example, where they are conflicted) and in such instances the risk of a tie will remain.

33. Standard company practice in NZ is that the Chair does not have a casting vote unless provided for in the constitution. Some entities choose to include a casting vote to ensure decisions can be made without deadlock, especially if Boards might have an even number of members.

34. These are the options available:

    a. Yes – Chair has a casting vote.

    b. No – Chair does not have a casting vote.

35. **Staff recommend option b. "No – Chair does not have a casting vote".** This is the standard approach. However, at a very high level, the following table outlines the key advantages and disadvantages of each option.

Advantages	Disadvantages
Option A – Yes: Chair of a Board will have a casting vote	
• Provides a clear mechanism to resolve deadlocks. • Ensures the Board can still make decisions even when opinions are evenly split, avoiding operational delays or governance paralysis. • Supports efficient, timely decision-making. Particularly useful for a WO where infrastructure, compliance, and operational decisions may be time-critical. •	• Concentrates power in a single individual. • A casting vote gives the Chair disproportionate influence, which may be uncomfortable for a publicly owned, high-trust entity. • Directors may rely on the Chair to "break the tie" rather than work collaboratively toward a shared solution. • Risk of perceived bias of the Chair. • For major decisions, allowing one person to determine the outcome may not align with the public-good nature of water services governance.
Option B – No: Chair of a Board will not have a casting vote	
• Promotes genuine consensus-building. The Board must work through issues collaboratively, reducing adversarial dynamics and fostering shared responsibility. • Avoids concentrating authority in one Director.	• With no mechanism to break ties, the Board may be unable to act, which can slow or halt decision-making. • Operational inefficiency. • Escalation to SRF or shareholders can introduce delays and may be viewed through political, rather than commercial or service-delivery, lenses.

Advantages	Disadvantages
• When a matter truly cannot be resolved, the status quo would remain in place until the matter is either: ○ Referred down back to WO staff (for consideration or presentation at another Board meeting); or ○ Referred up to the SRF or to the shareholders (if the subject matter is clearly defined and is politically sensitive or high impact).-impact	

Issue 8: Additional protection against privatisation

[Political decision – explanation of advantages and disadvantages]

36. First, it is important to understand that under the Act, no portion of a WO (or its assets) may be sold off to private interests.[8] So this issue must not be misinterpreted as "*whether the parties should enable privatisation*" (because it cannot be enabled under the Act). Instead, the issue is whether the parties wish to go over and above the anti-privatisation provisions within the Act, and include explicit anti-privatisation provisions within the WO's foundation documents.

37. Specifically, clauses can be drafted into the Shareholders' Agreement and the Constitution to protect against any future privatisation of the WO or any of the WO's assets. And then further protection can be added by specifying that those clauses can only be amended by unanimous agreement of all shareholders.[9] The scope of these clauses could include:

    a. An express prohibition on privatisation.

    b. Restrictions on transfers of shares.

    c. Prohibiting the divestment of any interests in assets or other right relating to water services, including franchising or concessions.

38. For completeness, we note that a future amendment to the Act, or any new government legislation, could operate to supersede the anti-privatisation provisions of both the Constitution and the Shareholders' Agreement.

[8] The only ownership structures allowed under the Act are public (council) ownership or community trust ownership, both of which firmly anchor water services in the public domain. Any involvement of private entities under the Act is confined to service delivery contracts and does not include any ownership rights in the organisations. All relevant provisions of the Act work together to safeguard against even partial privatisation, resulting in a system where water services remain wholly publicly owned and operated in the public interest. See section 20 and 45 of the Act, for example.
[9] Regardless of whether or not amendment of the balance of the Shareholders' Agreement and Constitution will require unanimous agreement or special resolution threshold.

39. These are the options available:

    a. Yes – Include additional anti-privatisation clauses within the foundation documents (over and above what is provided in the Act), and require unanimous shareholder approval before such clauses can be amended.

    b. No – Do not include anti-privatisation clauses within the foundation documents over and above what is provided in the Act

40. **Staff recommend option a**. At a very high level, the following table outlines the key advantages and disadvantages of each option.

Advantages	Disadvantages
Option A – Yes: Include additional anti-privatisation clauses within the foundation documents	
• These clauses can serve as a political signal, telling everyone from the start that privatisation is off the table. • These clauses can be a reassuring message to the public and Councillors that this WO will always remain owned by the Councils/community. • Aligns with the prevailing public expectation that water entities remain publicly owned. • Provides an extra layer of assurance to elected members and the community that privatisation cannot occur without both Councils explicitly agreeing. • If Parliament amends or repeals current statutory anti-privatisation provisions, the WO would still be contractually and constitutionally protected. • Unanimous approval requirements prevent one Council from unilaterally weakening ownership protections, reinforcing the joint ownership model.	• Embedding detailed anti-privatisation clauses may duplicate legislation or create legal complexity if statutory provisions change and become inconsistent. • Even if both Councils later agree that some adjustment is prudent, the unanimity requirement means either Council can block change for political or timing reasons. • Overly strong protections may make the WO less agile, including in attracting capital or entering partnerships that are operationally beneficial but require ownership-related flexibility. • May lead to a public perception that privatisation will never occur under any circumstances, when in reality future legislation could supersede the anti-privatisation provisions of both the Constitution and the Shareholders' Agreement.
Option B – No: Do not include clauses within the foundation documents	
• Keeps foundation documents simple and avoids duplication of statutory requirements. • If the Act is amended in future, the WO's Constitution and Shareholders' Agreement will not become misaligned.	• If future governments amend or relax statutory protections, the WO will have no internal safeguards to prevent privatisation (unless Councils act rapidly to amend documents). • Elected members or the public may expect to see explicit public-ownership

Advantages	Disadvantages
• Councils retain the possibility of reconsidering ownership arrangements without the constraints of unanimous amendment mechanisms.	protections in foundational documents for the WO. • Leaving out protections may be seen as a missed opportunity to embed shared values and intent at the outset. • Relying solely on legislation may provide less clarity to Directors about the Councils' expectations regarding ownership stability.

Issue 9: Dispute resolution regime (CTS 29)

[Non-political decision, recommendation only]

41. While all parties will aim for co-operation, disagreements between the parties can arise out of the WO's foundation documents. For example, over strategic decisions, funding obligations, interpretation of the Shareholders' Agreement, or performance issues. A dispute resolution clause lays out the steps the parties commit to follow to resolve issues without immediately resorting to legal action. This is typically an "escalation ladder": start with good faith negotiation at a senior level; then mediation facilitated by an independent mediator; and if still unresolved a binding arbitration process (which is a private dispute resolution process, and is typically faster and more efficient than Court litigation, which is a public dispute resolution process). However, an escalation process is not a strict necessity.

42. The options available include:

    a. Negotiation → Mediation → Arbitration: If an issue arises, first senior representatives of the parties try to negotiate a settlement. If that fails, a professional mediator is engaged to facilitate a resolution. If mediation fails, the dispute is referred to arbitration, where an independent arbitrator makes a binding decision. This keeps the dispute out of the courts entirely (arbitration awards are enforceable like a court judgment).

    b. Just Mediation then Court: Some agreements go straight to mediation and if that doesn't resolve it, they proceed to normal legal action.

43. **Staff recommend option (a)** which reflects normal and best practice.

Next Steps

- In the above sections we have identified the reasonable options for the JWG to consider.
- We are seeking to have the JWG members reach a consensus view (or otherwise) on these options. The consensus view can be recorded on the summary table at Schedule A.

- 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.

Schedule A: Summary Table Recording JWG Consensus View

Issue	Options			Staff recommendation (if any)	JWG consensus view (if any)	Notes
Issue 1 – Director Term of appointment (paras 6-8)	Option A: 3 year term, and a maximum of 3 terms (if re-elected). Provides a 9 year maximum total duration	Option B: Unspecified appointment term, with no requirement to retire unless removed/replaced		Option A		
Issue 2 – Director Remuneration (paras 9-12)	Option A: Determined by shareholders by ordinary resolution (>50% vote)	Option B: Determined by shareholders by unanimous resolution	Option C: Determined by the SRF	Option C		
Issue 3 – Should interested Directors be allowed to vote on remuneration or other matters? (paras 13-16)	Option A: Yes – Allow interested Directors to vote on matters where they have an interest	Option B: No – Prohibit interested Directors from voting where they have an interest	Option C: No, except for the following specified circumstances (being, any payment or other benefit under s 161 of the Companies Act; and the entry into an indemnity or insurance arrangement).	Option C		
Issue 4 – Whether dividends permitted (paras 17-22)	Option A: No dividends permitted.	Option B: Dividend permitted with approval form the WO's Board of Directors (by ordinary Board resolution) subject to meeting any solvency and statutory tests (as per Companies Act).	Option C: Dividend permitted with unanimous shareholder approval plus approval from the WO's Board of Directors (by ordinary Board resolution) subject to meeting any solvency and statutory tests (as per Companies Act).	Option C		
Issue 5 – Additional reporting obligations of the Water Organisation to each Council	Option A: Include explicit additional reporting requirements upfront.	Option B: Do not specify additional reporting requirements and instead rely on the flexibility of section 249 and require additional documents as		Option B		

Issue	Options			Staff recommendation (if any)	JWG consensus view (if any)	Notes
(paras 23-26)		and when the Councils see fit.				
Issue 6 - Frequency of Board meetings (paras 27-30)	Option A: Strict: "Monthly".	Option B: Flexible: "As determined by the Board".	Option C: Hybrid: "Monthly or as otherwise determined by the Board".	Option C		
Issue 7 - Will the Chair of the Board of Directors have a casting vote? (paras 31-35)	Option A: Yes – Chair has a casting vote.	Option B: No – Chair does not have a casting vote.		Option B		
Issue 8 – Additional protection against privatisation (paras 36-40)	Option A: Include additional anti-privatisation clauses within the foundation documents (over and above what is provided in the Act), and require unanimous shareholder approval before such clauses can be amended.	Option B: Do not include anti-privatisation clauses within the foundation documents over and above what is provided in the Act		Option A		
Issue 9 - Dispute resolution regime (paras 41-43)	Option A: Escalation process comprising: Negotiation → Mediation → Arbitration.	Option B: Mediation then Court		Option A		

Board of Directors & Related Matters

LWDW: Joint Working Group

16 February 2026

Water Services | Tauranga City | Western Bay of Plenty District Council

Purpose of Today

- Outline key decisions required to shape the proposed Water Organisation.
- Provide advice to facilitate a discussion on:
  - Board of Directors: Directors Terms; Director remuneration; Conflict of interest voting rules; Frequency of Board Meetings; Chair casting vote question.
  - Shareholder controls and organisational safeguards: Dividend permissions; Additional reporting obligations to council; Protections against privatisation.
  - Approach to dispute resolution.
- We seek your direction on these matters today.
- This direction will inform the drafting of the Constitution and Shareholders' Agreement.

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Issue 1: Director Term of Appointment

Key points:

- Non-political decision, recommendation only.
- Good governance practice supports fixed 3-year terms, renewable up to a maximum of 9 years.
- Balances fresh perspectives with retention of institutional knowledge.

The Options:

- *Option A: 3-year terms, up to three terms (max 9 years).*
- Option B: No fixed term; directors serve until removed/replaced.

Staff recommend Option A.

Issue 2: Director Remuneration

Key points:

- Political decision, with advantages and disadvantages.
- The issue is who should set director remuneration, not the dollar amount.
- The Act is silent so the Constitution/SHA must allocate this responsibility.

The Options:

- Option A: Determinised by shareholders by ordinary resolution (>50%).
- Option B: Determined by shareholders by either special resolution (75%) or unanimous approval.
- Option C: Determined by SRF.

Issue 2: Director Remuneration

Option A: Determined by shareholders by ordinary resolution:

- *Pros:* Common corporate governance approach; Simple majority enables timely updates; Easier to adjust fees over time.
- *Cons:* May be inefficient use of EM and Council time; Majority shareholder could set remuneration without genuine consensus; May be perceived as insufficiently collaborative.

Option B: Determined by shareholders by special resolution or unanimity:

- *Pros:* Ensures both Councils agree; No unilateral decisions; Unanimous decisions easier to defend publicly; Encourages discussion and alignment.
- *Cons:* May be inefficient use of EM and Council time; Deadlock risk; Unanimity requires more political and governance effort; Need for unanimity may lead to an overly conservative decision, reducing ability to attract skilled directors.

Option C: Determined by SRF:

- *Pros:* Streamlines Council workload; More agile decisions making; May be better equipped to assess bench marking; Retains political involvement through EMs on SRF
- *Cons:* Councils one step removed from decision on public funds; SRF decision may diverge from political or community expectations; Requires clear terms of reference for SRF.

Issue 3: Should interested Directors be allowed to vote?

Key points:

- Non-political decision, recommendation only.
- .Good governance practice (and Companies Act) requires disclosure of interests and generally no voting unless the Constitution permits it.
- s161 Companies Act allows Board to vote on certain matters where the directors have an interest, such as payments or benefits.

The Options:

- Option A: Allow interested directors to vote.
- Option B: Prohibit interested directors from voting.
- *Option C: Prohibit interested directors from voting except for legally defined situations (s161 Companies Act payments or benefits; Director indemnity etc.).*

Staff recommend Option C.

Issue 4: Whether dividends permitted

Key points:

- Political decision, with advantages and disadvantages.
- .Under the Act, dividends must not compromise long term investment or regulatory obligations.
- Strict regulatory oversight (DIA, Commerce Commission, Auditor-General) makes regular or substantial dividends unlikely.
- Subject to solvency test, meaning the WO must be able to pay its debts as they become due; and, the value of the WO's assets must exceed the value of its liabilities (including contingent liabilities).

The Options:

- Option A: No dividends permitted.
- Option B: Dividends allowed with Board approval (subject to solvency test).
- Option C: Dividends allowed only with unanimous shareholder approval and Board approval (subject to solvency test).

Issue 4: Whether dividends permitted

- Option A: No dividends permitted:
  - *Pros:* Ensures all surpluses are reinvested; Reinforces WO's purpose as a service focused, not for profit focused entity; Removes political pressure to use WO surplus for other Council business.
  - *Cons:* Removes a potentially useful future tool; Councils cannot access surpluses; Risk of excess retained earnings and reduced oversight on financial performance; May be seen as overly restrictive.
- Option B: Dividends allowed with Board approval (subject to solvency test).
  - *Pros:* Similar to private sector governance; Board can make decision based on financial conditions and long-term sustainability; Allows for surpluses to be paid to Councils; Avoids need for formal Council approvals.
  - *Cons:* Councils may be uncomfortable delegating a financial decision of this nature; Customers may question dividends from a monopoly water provider; Could drive overly commercial behaviour; Might not align with expectations from regulators.
- Option C: Dividends allowed only with unanimous shareholder approval and Board approval (subject to solvency test).
  - *Pros:* High safeguard, dividend only paid if both Councils and Board agree; Balances flexibility (dividends possible) with strong protection; Ensures decisions are financially sound and politically acceptable.
  - *Cons:* One shareholder can block; Slower, more complex decision making; Risk dividends becomes a bargaining tool; Perception of "money-go-round"; May discourage future partners for the WO.

Issue 5: Additional Reporting Obligations

Key Points:

- Non-political decision, recommendation only.
- The Act already requires reporting (WSS, annual report; Half-yearly report), and allows Councils to request additional reports when needed (s 249).
- Further reporting obligations can be set out in the Statement of Expectations.

The Options:

- Option A: Bake in extra reporting requirements now.
- *Option B: Rely on the Act's flexibility to request additional reporting as required (s 249).*

Staff recommend Option B:

- Flexible and adaptive as the WO and regulatory environment evolve.
- Avoids locking in unnecessary or premature reporting.
- Allows Councils to request additional reporting only when a clear need arises.

Issue 6: Frequency of Board Meetings

Key points:

- Non-political decision, recommendation only.
- Foundation documents can set Board meeting frequency.
- Regular oversight (especially during transition and start-up) is prudent.

The Options:

- Option A: Monthly.
- Option B: As determined by the Board.
- *Option C: Monthly or as otherwise determined by the Board.*

Staff recommend Option C:

- Provides strong and regular governance, especially during establishment.
- Allows the Board to increase or reduce frequency as circumstances evolve.

Issue 7: Should the Chair of the Board of Directors have a casting vote?

Key points:

- Political decision, with advantages and disadvantages.
- Allows the Chair to cast a second vote to break a tie.
- Board can be structured to reduce the risk of a tie (odd number of Directors).
- Standard practice in NZ is that Chairs do not have a casting vote, unless the constitution expressly provides for it.

The Options:

- Option A: Chair has casting vote.
- Option B: Chair has no casting vote.

Issue 7: Should the Chair of the Board of Directors have a casting vote?

- Option A: Chair has a casting vote
  - *Pros:* Provides a clear way to break deadlocks; Ensures the Board can make timely decisions; Avoids governance paralysis, especially for urgent matters.
  - *Cons:* Concentrates power in one individual; Risk of perceived bias or reduced trust; May discourage consensus building.

- Option B: Chair does not have a casting vote
  - *Pros:* Encourages consensus building; Avoids concentration of power; Supports collective responsibility and public interest governance.
  - *Cons:* Deadlocks may delay decisions; Risk of operational inefficiency in time critical matters; Unresolved issues may need further escalation.

Issue 8: Additional Protection against Privatisation

Key points:

- Political decision, with advantages and disadvantages.
- Privatisation is already prohibited by the Act.
- Additional anti-privatisation clauses can include: An express prohibition on privatisation; Restrictions on the transfer of shares; Prohibiting the divestment of any interests in assets or other right relating to water services, including franchising or concessions.
- Extra Protection: Can record the clauses above can only be amended by the unanimous approval of all shareholders.
- Important to note any future legislation changes could override anti-privatisation clauses in the foundation documents.

The Options:

- Option A: Yes, include additional anti-privatisation clauses in the foundation documents.
- Option B: No, do not include additional anti-privatisation clauses in the foundation documents.

Water Services | Tauranga City | Western Bay of Plenty District Council

Issue 8: Additional Protection against Privatisation

- Option A: Yes, include additional anti-privatisation clauses in the foundation documents.
  - *Pros:* Strong public signal that privatisation is off the table; Reassures Councils, community, and stakeholders; Extra safeguard if legislation changes.
  - *Cons:* May be unnecessary, as duplicating legislation; Reduces flexibility; Risk of false public expectation that clauses override future legislative change.

- Option B: No, do not include additional anti-privatisation clauses in the foundation documents.
  - *Pros:* Simpler documents; Avoid duplications; Greater flexibility if circumstances change; Less risk of misalignment with future legislation.
  - *Cons:* No internal safeguard if statutory protections weaken; May be seen as missing an opportunity to embed shared values; Less clarity about Councils' long-term ownership expectations.

Issue 9: Dispute Resolution Regime

Key points:

- Non-political decision, recommendation only.
- Disputes may arise from time to time.
- A clear dispute resolution process helps resolve disputes efficiently and avoids the need for public court actions.

The Options:

- *Option A: Negotiation; Mediation; Arbitration.*
- Option B: Mediation; Court.

Staff recommend Option A:

- Encourages early resolution.
- Keeps dispute resolution private, faster and more cost effective.
- Avoids public court proceedings, unless absolutely necessary.

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Next Steps

- JWG to consider and discuss options, with the aim of reaching a consensus view on each issue identified in this paper.
- Where consensus is reached, it proceeds as a recommendation to both Councils.
- Where consensus is not reached, the issue is escalated to full Councils, with positions and rationale clearly set out.
- Next JWG meeting is on 23 February 2026.

Water Services | Tauranga City | Western Bay of Plenty District Council

AGENDA

LWDW: Joint Working Group Meeting

23 February 2026

Time: 2.30pm – 5.30pm

Location: WBoPDC Council Chambers,
1484 Cameron Road, Greerton

Order of Business

1. OPENING KARAKIA

2. APOLOGIES

3. BUSINESS

#	Item	Comment/Direction
1	Chairperson discussion	• Chairperson Introductory Comments
2	Confirmation of Meeting notes	• Meeting notes of 13 February & 16 February endorsed
3	Issues & Options Paper – SRF & Other Matters	• Staff overview of the issue and key considerations • Working Group questions and discussion *Note - direction / feedback will be sought & the outcome of the meeting will be reflected in the TCC and WBOPDC Reports for decision making*
4	Stocktake of Tangata Whenua arrangements	• Staff overview of the issue and key considerations • Working Group questions and discussion *Note - direction / feedback will be sought & the outcome of the meeting will be reflected in the TCC and WBOPDC Reports for decision making*
5	Programme Workplan	• Update on programme workplan
6	General Business	

4. CLOSING KARAKIA

LWDW Joint Working Group Meeting

Tauranga City Council & Western Bay of Plenty District Council

Western Bay of Plenty Council Chambers

Date: 13 February 2026

Attendance

Independent Chair: Lyall Thurston

Tauranga City Council:

Members: Cr Marten Rozenboom, Cr Glen Crowther, Cr Kevin Schuler, Cr Hautapu Baker,

Western Bay of Plenty District Council:

Members: Mayor James Denyer, Cr Darlene Dinsdale, Cr Grant Dally, Cr Rodney Joyce

Tangata Whenua:

Members: Kylie Smallman, Shadrach Rolleston, Kiri Allan, Rohario Murray, Roana Bennett, Hakopa Tapiata.

Non-members: Matire Duncan & Spencer Webster

Supporting Staff: Christine Jones, Stephen Burton, Charles Lane, Tyler Buckley, Reneke van Soest, Craig Rice, Adele Henderson, Ariell King

Apologies: Cr Graeme Elvin

Opening Karakia

Key Discussion Items

Meeting Notes – 29 January & 2 February 2026

Endorsed.

3 Review of feedback from papers received 29 January and 2 February

Consensus was reached by all on the following:

29 January Meeting

Issue 1(a) – Initial Shareholdings: Methodology for Allocating Shares

- Option D - Two-tier shareholding (Class A voting / Class B ownership)

Issue 1(b) – Ongoing Review and Adjustment of Shareholdings

- Option A - Regular review and adjustment (e.g., bi-annually)

Issue 2 – Voting Rights: How They Are Determined

- Option B - Equal voting rights per shareholder

Issue 3 – Matters Requiring Unanimous Shareholder Approval

Issue 3(a) – Should any matters require unanimous approval?

- Option A - Yes—some matters should require unanimous approval

Issue 3(b) – If YES, which matters?

- All listed

Issue 4 – Matters Requiring Special Resolution (≥75%)

Issue 4(a) – Add matters beyond the statutory list (see section 106, Companies Act 1993)?

- Option A - Yes—add additional matters

Issue 4(b) – If YES, which matters?

- All listed

Issue 4(c) – Increase special-resolution threshold above 75%?

Option A - Keep at 75%

2 February Meeting

Issue 1 – Size of the SRF

- Three members from each council and Tangata Whenua

Issue 2 – SRF Membership: Elected Members / Shareholder Representatives

- Option A - One or more elected members from each shareholder

Issue 3 – Role of Tangata Whenua on the SRF

Issue 3(a) – Role on SRF

- Option B - TW on SRF with no voting rights

Also agreed to a name change: Stakeholder Representative Forum.

Issue 3(b) – Number of Tangata Whenua Representatives (Only applicable if option B, C or D is selected for issue 3(a))

- Option B - Same number as each shareholder

Issue 4 – Independent Chair of the SRF

Issue 4(a) – Should the SRF have an independent chair?

- Option B - SRF may appoint/remove an independent chair in future

Issue 4(b) – Should the independent chair have voting rights? (Only applicable if option A is selected for issued 4(a))

- Option A - Chair has no voting rights

Issue 5 – Nomination and appointment of members of the SRF

Issue 5(a) – Nomination of Tangata Whenua Representatives

- Agreed TW Reps nominated by TW, Councils endorsed or appointed – wording to be confirmed.

Issue 5(b) – Process for appointing all SRF Members

- Option A - Each council appoints own reps; TW reps & chair appointed jointly

Issue 6 – Number of WO Directors

- Option A - Up to 5 directors

Issue 7 – WO Director Appointment Process

- Option B - All directors jointly appointed by shareholders

Outstanding issues:

- Can TW be shareholders?
- Methodology of allocation of Class B shares
- Further information on SRF being a joint committee of council or some other forum

4 Programme Workplan

- An updated programme workplan was distributed.

5 General Business

- None

Closing

- Meeting closed with karakia.
- Next meeting: 16 February 2026 at Western Bay offices.

LWDW Joint Working Group Meeting

Tauranga City Council & Western Bay of Plenty District Council

Western Bay of Plenty Council Chambers

Date: 16 February 2026

Attendance

Independent Chair: Lyall Thurston

Tauranga City Council:

Members: Cr Marten Rozenboom, Cr Glen Crowther, Cr Kevin Schuler, Cr Hautapu Baker

Western Bay of Plenty District Council:

Members: Mayor James Denyer, Cr Darlene Dinsdale, Cr Grant Dally, Cr Rodney Joyce, Cr Graeme Elvin

Tangata Whenua:

Members: Kylie Smallman, Shadrach Rolleston, Roana Bennett, Hakopa Tapiata.

Non-members: Matire Duncan & Spencer Webster

Supporting Staff: Christine Jones, Stephen Burton, Charles Lane, Tyler Buckley, Reneke van Soest, Craig Rice, Adele Henderson, Ariell King

Apologies: Kiri Allan, Rohario Murray

Opening Karakia

Key Discussion Items

2 Issues and Options Paper – Board of Directors Matters

Consensus was reached by all on the following:

Issue 1 – Director Term of appointment

- Option A: 3 year term, and a maximum of 3 terms (if re-elected)

Issue 2 – Director Remuneration

- Option C: Determined by the SRF

Issue 3 – Should interested Directors be allowed to vote on remuneration or other matters?

- Option C: Dividend permitted with unanimous shareholder approval plus approval from the WO's Board of Directors (by ordinary Board resolution) subject to meeting any solvency and statutory tests (as per Companies Act).

Issue 4 – Whether dividends permitted

- New Option C with the following change in wording:
  Dividends not permitted unless there is unanimous shareholder approval plus approval from the WO's Board of Directors (by ordinary Board resolution) subject to meeting any solvency and statutory tests (as per Companies Act).

Staff are also instructed to reiterate this point in the Statement of Expectations, emphasising that exceptional circumstances would need to be in place before any dividends would be permitted.

Issue 5 – Additional reporting obligations of the Water Organisation to each Council

- Option B: Do not specify additional reporting requirements and instead rely on the flexibility of section 249 and require additional documents as and when the Councils see fit

Tangata Whenua have emphasised that the WO should be reporting against Treaty of Waitangi obligations (with a particular emphasis on Treaty Settlements) and that this will be a consideration when preparing and finalising the SOE.

Issue 6 - Frequency of Board meetings

- Option C: Hybrid: Monthly or as otherwise determined by the Board.

Issue 7 - Will the Chair of the Board of Directors have a casting vote?

- Option B: No – Chair does not have a casting vote

Issue 8 – Additional protection against privatisation

- Option A: Include additional anti-privatisation clauses within the foundation documents (over and above what is provided in the Act), and require unanimous shareholder approval before such clauses can be amended.

Staff are instructed to bring back options for additional anti-privatisation clauses/mechanisms (including referendum, poll, special consultative process options) for consideration

Issue 9 - Dispute resolution regime

- Option A: Escalation process comprising: Negotiation → Mediation → Arbitration.

General Business:
All councillors: Consider whether current forum structure is working well and what it should look like after April 2nd, provide feedback to respective councils

3 General Business

- All councillors to consider whether current forum structure is working well and what it should look like after April 2nd, provide feedback to respective councils

Closing

- Meeting closed with karakia.
- Next meeting: 23 February 2026 at Western Bay offices.

Issues & Options Paper #7: Miscellaneous matters re: Stakeholder Representative Forum ("SRF"), Board of Directors and Governance (Paper for 23 February JWG Meeting)

Purpose

1. To obtain direction from the JWG (to inform a decision report to both TCC and WBOPDC) on the following issues (in blue are the political decisions that include a list of advantages and disadvantages, while in green are the more commercial decisions that are limited to a recommendation only):

    a. Issue 1: Responsibilities of Stakeholder Representative Forum ("SRF").

    b. Issue 2: Decision-making of the SRF.

    c. Issue 3: Frequency of SRF meetings.

    d. Issue 4: Frequency of re-visiting SRF's functions.

    e. Issue 5: Frequency of shareholder meetings.

    f. Issue 6: What constitutes a quorum at a shareholders meeting.

    g. Issue 7: Period of time before topic of ring-fencing is revisited.

    h. Issue 8: Selection of Chair of Board of Directors.

2. 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.

3. By necessity, this paper assumes that elected members decide to proceed with the establishment of the WO (and we acknowledge that elected members are yet to make that decision).

4. This paper touches on eight issues that are relevant to the drafting of the WO's foundation documents, being the shareholders' agreement and the company constitution. In considering this paper, it is worth bearing in mind that:

    a. Except where indicated in the body of this paper, the issues set out below are not constrained by legislation.

    b. While a very wide range of theoretical options are available for each of the issues, we have focused on the options included within the Commercial Term Sheet that has previously been presented to the JWG.

    c. It is important to keep in mind a long-term picture and look to set up the WO in such a manner that it is an attractive organisation for other Councils to join in the future.

5. As a snap-shot, we have set out below a summary of the proposed options available for each issue, along with staff recommendations. More detailed information on each

option and the rationale for the staff recommendation is outlined from paragraph 6 onwards.

Issue	Options			Staff recommendation (if any)
Issue 1: What subject matter should be assigned to the SRF to form recommendations?	Option A: Specify a list of subject matter to reflect the list (with any amendments the Councils may choose to make)	Option B: Do not specify a list of subject matter, and instead wait for issues to arise that the Councils feel ought to be tasked to the SRF, and have both Councils issue resolutions assigning the issues to the SRF as and when they arise		Option A
Issue 2 – Decision-making of SRF	Option A: Simple majority	Option B: Consensus		Option A
Issue 3 – Frequency of SRF meetings	Option A: Strict: "Bi-monthly".	Option B: Flexible: "As determined by the SRF".	Option C: Hybrid: "Bi-monthly or as otherwise determined by the SRF".	Option C
Issue 4 – Frequency of re-visiting SRF functions	Option A: Do not specify a frequency for revisiting the SRF's function, and instead rely on the ability to vary the Shareholders' Agreement (if all shareholders agree) to amend the SRF's function.	Option B: Revisit only towards the end of the triennium with a recommendary report to be considered by the incoming Councils.	Option C: Revisit at the earlier of either: i. another shareholder joining the WO; or, ii. towards the end of the triennium with a recommendary report to be considered by the incoming Councils; or, iii. otherwise as determined by a majority of the WO's shareholders.	Option C
Issue 5 – Frequency of shareholder meetings	Option A: "Annually".	Option B: Annually, with a right for either shareholder to call a meeting at any time.	Option C: Every 6 months, with a right for any shareholder to call a meeting at any time	Option B
Issue 6 – What constitutes a quorum at a shareholders meeting	Option A: One representative from each shareholding Council.	Option B: Two representatives from each shareholding Council.	Option C: More than two representatives from each shareholding Council (please specify number).	Option B
Issue 7 - Period of time before topic of ring-fencing is revisited	Option A: No later than three years after the incorporation of the WO.	Option B: No later than six years after the incorporation of the WO.		Option B
Issue 8 – Selection of Chair of Board of Directors	Option A: Board selects and appoints the Chair	Option B: Councils select and appoint the Chair		Option A

Issue 1: What subject matter should be assigned to the SRF to form recommendations

[Political decision – explanation of advantages and disadvantages]

6. The parties have formed a consensus view that, at least for an initial period of time, the SRF will not be delegated any decision-making authority on behalf of the shareholding Councils and will instead only serve an advisory / recommendatory role.

7. Notwithstanding this consensus, it remains necessary to clarify the subject matter that will be tasked to the SRF, for the SRF to provide such recommendations and advice back to the shareholders. We would propose that in due course a list of subject matter – which can be amended as the Councils see fit – could be captured within a schedule to the SRF's Terms of Reference, and then remain subject to review at periodic intervals.

8. For the parties to consider, we propose that the shareholders task the SRF with providing advice and recommendations to the shareholders on the following matters. The exact nature and extent of the SRF's functions (including its interactions with the WO in finalising documents for recommendation to the shareholders) is further detailed at Schedule A. (To reiterate, we are not suggesting that the SRF will be delegated any authority to finalise or execute documents on behalf of the Councils, only that the SRF will be tasked with certain matters to advise the Councils about and provided recommendations upon):

    a. Statement of Expectations.

    b. Director remuneration.

    c. Service Level Agreements.[1]

    d. Significant contracts.[2]

    e. Appointment of Board of Directors.

    f. Any WO policies that require shareholder input (such as significance and engagement policy or director appointment policy).

    g. Director Skills Matrix.

    h. WO's Water Services Strategy ("WSS").

    i. Annual review of the WO in accordance with s 250 of the Act.[3]

    j. WO's Water services annual report.

    k. WO's half-yearly water services report.[4]

    l. WO's annual budget.

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[1] That is, those agreements between the WO and the relevant Council that address the management of mixed use assets, or services shared across both organisations (as examples).
[2] As captured by sections 23 and 24 of the Local Government (Water Services) Act 2025.
[3] Section 250 requires shareholders to "regularly monitor the performance of the water organisation [including] an annual review of the organisation's performance in giving effect to" the SOE and WSS.
[4] Section 248 Local Government (Water Services) Act 2025.

m. Any other plans or reports that the shareholders require from the WO under section 249 of the Act.

n. Any other functions (and responsibilities related to such functions) assigned to the SRF by the shareholders in writing over time (whether those functions are initially raised by the Councils, or initially raised by the SRF for recommendation and approved by the Councils).

9. We emphasise that, in forming its consensus view, the JWG could extend the above list to include additional matters (or reduce the number of matters) if they see appropriate, staff will just require clarity upfront.

10. The options are:

a. Specify a list of subject matter to reflect the list above (with any amendments the Councils may choose to make).

b. Do not specify a list of subject matter, and instead wait for issues to arise that the Councils feel ought to be tasked to the SRF, and have both Councils issue resolutions assigning the issues to the SRF as and when they arise.

11. At a very high level, the following table outlines the key advantages and disadvantages of each option.

Advantages	**Disadvantages**
Option A: Specify a list of subject matter to reflect the list above (with any amendments the Councils may choose to make)	
• Provides clarity and certainty about the SRF's role and remit from the outset. • Manages stakeholder expectations regarding what issues the SRF will consider. • Supports consistent and efficient use of the SRF. • Reduces the risk of scope creep over time. • Easier to communicate and justify to Councils, the Board, and stakeholders. • Avoids any requirement to get further Council resolutions to define SRF's role.	• Requires periodic review if the SRF's role needs to evolve.
Option B: Do not specify a list of subject matter, and instead wait for issues to arise that the Councils feel ought to be tasked to the SRF, and have both Councils issue resolutions assigning the issues to the SRF as and when they arise	
• Allows greater degree of flexibility to set SRF's functions over time (subject to getting Councils resolutions)	• Creates uncertainty about the purpose and value of the SRF. • Increases administrative and governance effort through repeated resolutions.

Advantages	Disadvantages
• Allows particular Councils to retain close control over when and how the SRF is engaged. • Avoids prematurely constraining the SRF's potential contribution.	• Risk of inconsistent or reactive use of the SRF. • May undermine the SRF's credibility if engaged only intermittently. • Harder to clearly communicate the SRF's role to stakeholders.

Issue 2: Decision-making of SRF

[Non-political decision, recommendation only]

12. We are mindful that the parties have agreed:

    a. Initially, the SRF will not be delegated any decision-making authority on behalf of the shareholders.

    b. Instead, the SRF will serve as an advisory forum that will bring recommendations back to the shareholders who will make all decisions.

    c. At some point (or points) in the future (see issue 4 below), the shareholders will re-visit the SRF's function, and may decide to retain the SRF's advisory-only function, or may instead decide to expand the SRF's function and delegate some decision-making authority.

13. Bearing in mind the above (specifically points (a) and (b)), at face value it may not seem necessary to establish a decision-making process for the SRF. However, even while the SRF serves a recommendation-only function, the SRF will still need to make decisions amongst its own members.

14. Specifically, how will the SRF decide what recommendations it does / does not bring back to the shareholders when there are differences of opinion among the SRF members? That is the context of this Issue 2.

15. The options are:

    a. Simple majority.

    b. Consensus.

16. **Staff recommend option (a) above**. The intention is that the SRF will be a relatively agile forum, capable of forming views quickly and efficiently. While it will be ideal for the SRF to always form a consensus, we are mindful that the SRF should represent a wide range of perspectives and we would not want its decision-making processes to create "road-blocks".

Issue 3: Frequency of SRF meetings

[Non-political decision, recommendation only]

17. The WO's foundation documents can (if the shareholders wish) stipulate how often the SRF should meet. Many representative forums meet quarterly. Some may meet bi-monthly or even monthly if circumstances require.

18. Given the likely scale and start-up nature of this joint entity, we consider the SRF will require a regular cadence initially (i.e. bi-monthly meetings), and may then be on a more as-required basis except for specific annual activities or during critical periods. So, we do encourage a degree of flexibility.

19. The options are:

    a. Strict: "Bi-monthly".

    b. Flexible: "As determined by the SRF".

    c. Hybrid: "Bi-monthly or as otherwise determined by the SRF".

20. **Staff recommend option (c).** The wording "or as otherwise determined" gives the SRF the ability to modify its meeting frequency by an SRF decision if circumstances warrant.

Issue 4: Frequency of re-visiting SRF's functions

[Non-political decision, recommendation only]

21. As touched on above, the parties have agreed the following regarding the function of the SRF:

    a. Initially, the SRF will not be delegated any decision-making authority on behalf of the shareholders and will instead serve an advisory-only role.

    b. However, at some point(s) in the future, the shareholders will re-visit the function of the SRF. On the occasion(s) that the SRF function is re-visited, it will be up to the shareholders to decide whether to retain the SRF's "advisory-only" role, or whether to expand its role to include some decision-making authority.

22. We suggest it will be important for the shareholders to have some ability to allow the SRF's functions to evolve over time (as determined by the shareholders). The shareholders may decide that, after a period of time they are content with the SRF continuing to serve an advisory-only role. Alternatively, the shareholders may decide that efficiencies could be gained by granting the SRF some decision-making authority.

23. This particular issue is concerned with the frequency of re-visiting the SRF's function.

24. The options are:

    a. Do not specify a frequency for revisiting the SRF's function, and instead rely on the ability to vary the Shareholders' Agreement (if all shareholders agree) to amend the SRF's function.

b. Revisit only towards the end of the triennium[5] with a recommendary report to be considered by the incoming Councils.

c. Revisit at the earlier of either:

- another shareholder joining the WO; or,
- towards the end of the triennium with a recommendary report to be considered by the incoming Councils; or,
- otherwise as determined by a majority of the WO's shareholders.

25. **Staff recommend option (c).** This approach would set a regular frequency (every three years) but also enable some flexibility for the shareholders to request that the task is undertaken more / less frequently plus a review when other shareholders join.

Issue 5: Frequency of shareholder meetings

[Non-political decision, recommendation only]

26. While the Act does not explicitly specify the frequency of shareholder meetings, it does require shareholders to "regularly monitor the performance of the water organisation", [6] including conducting an "annual review of the organisation's performance in giving effect to the statement of expectations provided by the shareholders and …water services strategy".[7] In addition, the Companies Act 1993 ("Companies Act") mandates an Annual General Meeting ("AGM") of shareholders at least once every calendar year.[8]

27. We are mindful that the shareholders will be establishing the Stakeholder Representative Forum to regularly and closely monitor the WO's performance, and to act as somewhat of an intermediary between the WO and the shareholders. With that in mind, we consider the starting point of "annual" shareholder meetings may suffice. Those annual meetings could fulfil the AGM function under the Companies Act and also fulfil the "annual review" function under the Act.

28. However, aside from AGMs and annual reviews, the Companies Act enables any shareholders (with greater than 5% of voting rights) to request that the Board of Directors calls a special meeting of shareholders[9]. We consider it appropriate to reflect this ability within the WO's foundation documents.

29. The options are:

a. Strict: "Annually".

b. Hybrid: "Annually, with a right for any shareholder to call a meeting at any time".

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[5] For clarity, the first triennium will come to an end circa November 2028 (and we note this is only circa 12 months from the WO's "go-live" date in July 2027) but thereafter the trienniums will reflect a full 36 month period.
[6] Section 250(1) Local Government (Water Services) Act 2025
[7] Section 250(2) Local Government (Water Services) Act 2025
[8] Section 120 Companies Act 1993.
[9999] Section 121 Companies Act 1993.

c. Hybrid: “Every 6 months, with a right for any shareholder to call a meeting at any time”.

30. **Staff recommend option (b)** as the standard approach, which we consider to be consistent with the Act and the Companies Act.

Issue 6: What constitutes a quorum at a shareholders meeting

[Non-political decision, recommendation only]

31. For background, a quorum is the minimum number of shareholders (or their proxies) required to be present at a meeting to legally conduct business. The Companies Act provides that, unless the company's constitution specifies otherwise, a quorum for a shareholders' meeting is achieved if the shareholders present (including proxies and postal votes) collectively hold a majority of the votes that can be cast on the matters to be addressed at the meeting. If a quorum is not present within 30 minutes of the scheduled start time, the meeting may either be dissolved or adjourned, depending on the circumstances

32. The options are:

    a. 1 representative from each shareholding council will comprise a quorum.

    b. 2 representatives from each shareholding council will comprise a quorum.

    c. More than 2 representatives from each shareholding council will comprise a quorum (please specify number).

33. **Staff recommend option (b)** as an appropriate middle ground.

Issue 7: Period of time before topic of ring-fencing is re-visited

[Political decision – explanation of advantages and disadvantages]

34. TCC and WBOPDC have agreed that, upon forming the WO, each party’s finances will be “ring-fenced” for an initial period of time. This point is reflected in each party’s Water Services Delivery Plan[10] and also reflected in the Commitment Agreement between the parties dated 1 September 2025.

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[10] For reference, this is one extract from TCC’s WSDP on the topic of ring-fencing:

> This WSDP covers the financial position for TCC, noting that financials in the multi-WO will be ring-fenced. This ring fencing was a key assumption provided in TCC’s community consultation, where it was proposed that ring fencing in the short to medium term (5-10 years), would underpin the approach to partnering with other councils, and would be in place until such time as there was an explicit decision of Council to transition to a form of pricing alignment. **In a nutshell - Tauranga revenue and debt will stay with Tauranga.**

And this is one extract from WBOPDC’s WSDP:

> As part of the establishment of the WO, water services revenues and expenses will be separated from other council financials. The WO will be responsible for preparing all key accountability documents, including the Water Services Strategy, Annual Budgets, Annual Reports and financial and non-financial performance measures. Separate financial management systems and financial reporting will be undertaken for the WO, and any shared services arrangements that exist between the WO and Shareholding Councils will be on arm’s length, commercial terms.

35. For clarity, this issue does not seek to establish the date on which ring-fencing will come to an end. Instead, the task is merely to set a timeframe for the shareholders to put the topic of ring-fencing under the microscope. And when the ring-fencing topic is re-visited, all options will remain on the table for the shareholders to consider – on one hand they may decide to set a fixed date for harmonisation of finances (and commence the transitional process from ring-fencing to harmonisation), but on the other hand they may decide to retain ring-fencing and simply set another duration of time before re-visiting the issue again.

36. As a reminder, the shareholders need to issue a fresh Statement of Expectations ("SOE") once every three years. We consider it sensible to have some alignment between (i) the three yearly SOE cycles and (ii) the point at which ring-fencing will be re-visited.

37. The options are:

    a. No later than three years after the incorporation of the WO. This approach would see ring-fencing being revisited during the first SOE cycle (with scope to introduce any changes in the second SOE cycle if the parties see fit).

    b. No later than six years after the incorporation of the WO. This approach anticipates that ring-fencing will be revisited during the second SOE cycle (with scope to introduce any changes in the third SOE cycle if the parties see fit). However, the wording "No later than…" does leave scope to re-visit the topic earlier if the parties identify a need.

38. **Staff recommend option (b).**

39. At a very high level, the following table outlines the key advantages and disadvantages of each option.

Advantages	**Disadvantages**
Option A: Revisit no later than three years after incorporation of the WO	
• Enables early shareholder review within the first SOE cycle. • Maintains strong initial shareholder oversight and accountability. • Provides flexibility to respond quickly to unforeseen financial, regulatory, or operational issues. • Avoids locking Councils into longer-term assumptions before the WO's performance is tested. • Allows for a review once the board and the organisation is operational, and expectations are transitioning.	• Introduces early uncertainty for the WO during its establishment phase. • Limited financial and operational evidence available to inform a meaningful decision. • May be perceived as inconsistent with WSDP consultation signals, particularly for TCC's 5–10 year ring-fencing assumption. • Risk of diverting focus from bedding in governance, systems, and service delivery.
Option B: Revisit no later than six years after incorporation of the WO	
• Balances financial certainty with future flexibility.	• Defers potential benefits of any future financial or pricing alignment.

Advantages	Disadvantages
• Aligns with the "short to medium term (5–10 years)" ring-fencing period signalled through consultation. • Allows decisions to be informed by a more mature financial and operational track record. • Supports organisational stability while retaining the ability to revisit earlier if required. • Provides the ability to be completed sooner by direction of the Councils, with or without a recommendation from the Board.	• May entrench community and political expectations that ring-fencing will continue beyond the review point.

Issue 8: Selection of Chair of Board of Directors

[Political decision – explanation of advantages and disadvantages]

40. The parties have previously reached a consensus that the size of the Board of directors will be "up to 5 directors".[11]

41. The chair of the Board of directors is the director appointed to lead the Board, set the agenda, and ensure the Board functions effectively and lawfully. For a multi-Council WO established under the Act, the chair plays a key governance role by facilitating collective decision-making among up to five directors and acting as the primary point of leadership between the board and management. The chair does not have greater legal authority than other directors (a reminder that the parties formed a consensus on 16 February that the chair will not have a casing vote) but is responsible for promoting good governance, orderly meetings, and compliance with both directors' duties and the WO's statutory purpose

42. The options are:

    a. The Board itself is left to select and appoint the Chair of the Board of directors.

    b. The Councils (as shareholders) will select and appoint the Chair of the Board of directors.

43. **Staff recommend option (a) above**. The shareholders will already have been heavily involved in appointing the Board itself (and approving the Director Skills Matrix) and those directors themselves could be left to select and appoint a Chair.

44. At a very high level, the following table outlines the key advantages and disadvantages of each option.

[11] In the event that a particular skill is not possessed across the Board of directors, that skill can be fulfilled through other means (such as external consultancy or the skillset of WO's executive staff).

Advantages	Disadvantages
Option A: Board itself is left to select and appoint the Chair of the Board of directors	
• Reinforces Board independence and collective responsibility. • Aligns with standard commercial governance practice. • Enables the Chair to be chosen based on Board dynamics, skills, and leadership capability. • Reduces perception of shareholder involvement in day-to-day governance. • Supports a clear separation between governance and ownership roles.	• Limits direct shareholder influence over a key WO leadership role. • Councils may have reduced ability to shape governance tone through the Chair appointment.
Option B: Councils (as shareholders) will select and appoint the Chair of the Board of directors	
• Provides shareholders with direct influence over Board leadership (above and beyond the influence that already exists in preparing the Director Skills Matrix and appointing the directors). • Enables alignment between shareholder expectations and governance leadership.	• Potential perception of reduced Board independence (which may in turn dissuade good Director candidates). • Risk of politicisation of the Chair role. • May complicate Board dynamics if Chair is seen as accountable primarily to shareholders. • Can blur the boundary between ownership and governance. • Appointment process may be slower due to need for inter-council agreement. • Chair may not be perceived as providing the best leadership to the Board, had they been able to appoint within themselves

Next Steps

- In the above sections we have identified the reasonable options for the JWG to consider.
- We are seeking to have the JWG members reach a consensus view (or otherwise) on these options. The consensus view can be recorded on the summary table at Schedule A.
- 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.

Schedule A: Proposed role of SRF with respect to each function

1. For the parties to consider, we propose that the shareholders assign the following subject matters to the SRF (and that in due course the following list – amended as the Councils see fit – could be captured within a schedule the SRF's Terms of Reference):

    a. Statement of Expectations ("SOE"). Responsibilities to include:

        i. Review draft SOE prepared by staff.

        ii. Provide feedback and comments on draft documents to staff and require amendments to achieve a version of the SOE that the SRF is content to endorse to the Councils.

        iii. Present SOE to both Councils for recommendation.

    b. Director remuneration. Responsibilities to include:

        i. Review remuneration policies.

        ii. Review market data benchmarking information.

        iii. Prepare recommendations and present to both Councils for recommendation.

    c. Service Level Agreements.[12] Responsibilities to include:

        i. Review draft agreements prepared by staff (and potentially negotiated with the WO).

        ii. Provide feedback and comments on draft documents to staff and request negotiated changes to draft documents to achieve a version of each agreements that the SRF is content to endorse to the Councils.

        iii. Present agreements to Councils for recommendation.

    d. Significant contracts.[13] Responsibilities to include:

        i. Review WO's proposal for a significant contract, and WO's assessment of options.

        ii. Form a recommendation for the Councils to consider, and present to Councils.

    e. Appointment of Board of Directors. Responsibilities to include:

        i. Review candidates against Director Skills Matrix and any policies of the respective Councils.

[12] That is, those agreements between the WO and the relevant Council that address the management of mixed use assets, or services shared across both organisations (as examples).
[13] As captured by sections 23 and 24 of the Local Government (Water Services) Act 2025. This will capture public-private partnerships as defined within the Act.

ii. Form a view on proposed Director appointment roles that the SRF is content to endorse to the Councils.

iii. Consideration of succession planning, rotation and future skill requirements.

iv. Oversee Board performance review.

v. Present recommendation to both Councils.

f. Any WO policies that require shareholder input (such as significance and engagement policy or director appointment policy). Responsibilities to include:

i. Review draft policy prepared by WO (or prepared by Council staff if relevant).

ii. Provide feedback and comments on draft documents to WO / to staff and require amendments to achieve a version of the relevant policy that the SRF is content to endorse to the Councils.

iii. Present policies to Council(s) for recommendation.

g. Director Skills Matrix. Responsibilities to include:

i. Review Director Skills Matrix periodically to align term of appointment to Board.

ii. As the SRF sees fit, prepare amendments of the Matrix and present to both Councils for recommendation.

h. WO's Water Services Strategy ("WSS"). Responsibilities to include:

i. Review draft WSS provided by WO.

ii. Prepare proposed comments on the WSS for the Councils to raise with the WO.

iii. Present the proposed comments to Councils for recommendation.

i. Annual review of the WO in accordance with s 250 of the Act.[14] Responsibilities to include:

i. Prepare an annual report with the SRF's perspective on the performance of the WO including the WO's performance in giving effect to the SOE and WSS.

ii. Present annual report to both Councils for recommendation.

j. WO's Water services annual report. Responsibilities to include:

i. Review WO's annual report.

ii. Prepare comments on the WO's annual report

[14] Section 250 requires shareholders to "regularly monitor the performance of the water organisation [including] an annual review of the organisation's performance in giving effect to" the SOE and WSS.

iii. Provide comments to Councils for recommendation.

k. WO's half-yearly water services report.[15] Responsibilities to include:

i. Review WO's half-yearly report.

ii. Prepare comments on the report

iii. Provide comments to Councils for recommendation.

l. WO's annual budget. Responsibilities to include:

i. Review WO's annual budget.

ii. Prepare comments the WO's annual report

iii. Provide comments to Councils for recommendation.

m. Any other plans or reports that the shareholders require from the WO under section 249 of the Act. Responsibilities to include:

i. Review WO's plans or reports.

ii. Prepare comments and provide to Councils for recommendation.

n. Any other functions (and responsibilities related to such functions) assigned to the SRF by the shareholders in writing over time (whether those functions are initially raised by the Councils, or initially raised by the SRF for recommendation and approved by the Councils).

[15] Section 248 Local Government (Water Services) Act 2025.

Schedule B: Summary Table Recording JWG Consensus View

Issue	Options			Staff recommendation (if any)	JWG consensus view (if any)	Notes
Issue 1: What subject matter should be assigned to the SRF to form recommendations?	Option A: Specify a list of subject matter to reflect the list above (with any amendments the Councils may choose to make)	Option B: Do not specify a list of subject matter, and instead wait for issues to arise that the Councils feel ought to be tasked to the SRF, and have both Councils issue resolutions assigning the issues to the SRF as and when they arise		Option A		
Issue 2 – Decision-making of SRF	Option A: Simple majority	Option B: Consensus		Option A		
Issue 3 – Frequency of SRF meetings	Option A: Strict: "Bi-monthly".	Option B: Flexible: "As determined by the SRF".	Option C: Hybrid: "Bi-monthly or as otherwise determined by the SRF".	Option C		
Issue 4 – Frequency of re-visiting SRF functions	Option A: Do not specify a frequency for revisiting the SRF's function, and instead rely on the ability to vary the Shareholders' Agreement (if all shareholders agree) to amend the SRF's function.	Option B: Revisit only towards the end of the triennium with a recommendary report to be considered by the incoming Councils.	Option C: Revisit at the earlier of either: i. another shareholder joining the WO; or, ii. towards the end of the triennium with a recommendary report to be considered by the incoming Councils; or, iii. otherwise as determined by a majority of the WO's shareholders.	Option C		

Issue	Options			Staff recommendation (if any)	JWG consensus view (if any)	Notes
Issue 5 – Frequency of shareholder meetings	Option A: "Annually".	Option B: Annually, with a right for any shareholder to call a meeting at any time.	Option C: "Every 6 months, with a right for any shareholder to call a meeting at any time.	Option B		
Issue 6 – What constitutes a quorum at a shareholders meeting	Option A: One representative from each shareholding Council.	Option B: Two representatives from each shareholding Council	Option C: More than two representatives from each shareholding Council (please specify number)	Option B		
Issue 7 - Period of time before topic of ring-fencing is revisited	Option A: No later than three years after the incorporation of the WO.	Option B: No later than six years after the incorporation of the WO.		Option B		
Issue 8 – Selection of Chair of Board of Directors	Option A: Board selects and appoints the Chair	Option B: Councils select and appoint the Chair		Option A		

Information requested from Joint Working Group Meeting on 13 February 2026

CAN TANGATA WHENUA BE A CLASS A (VOTING) SHAREHOLDER?

Summary

Although the Local Government (Water Services) Act 2025 (**Act**) does not expressly prohibit Tangata Whenua holding a voting class of shares, the Act clearly requires a Water Organisation (**WO**) to be wholly owned by councils or consumer trusts. Both DIA and Simpson Grierson advise that Tangata Whenua representation is likely better addressed through non-shareholding governance mechanisms, such as a Stakeholder Representative Forum.-shareholding governance mechanisms, such as a Stakeholder Representative Forum.

Local Government (Water Services) Act 2025

Section 45 of the Act forms part of a statutory ownership model that limits shareholding control of WOs to territorial authorities (and trustees of consumer trusts). The Act's focus is on who holds the shares, rather than the rights attaching to different share classes. The legislative intent is to ensure democratic accountability for water services remains with local authorities.

DIA advice

DIA advises that:

- Only councils (and consumer trusts) can be shareholders in a water organisation company.
- The exemptions in section 64 of the Act do not enable shared ownership arrangements (other than the co-operative company model, which is not proposed).
- DIA recommends alternative mechanisms, including use of the Statement of Expectations, and a forum with a strong recommendatory role for Tangata Whenua.

Simpson Grierson advice

Simpson Grierson advises that:

- Although granting Tangata Whenua a voting class of shares is not expressly prohibited, the Act requires the WO to be wholly owned by councils or consumer trusts.
- Any alternative approach would be unorthodox and is not seen elsewhere.
- Tangata Whenua representation is best addressed through the Stakeholder Representative Forum, rather than voting shareholding.

SRF, Miscellaneous Matters & Ring Fencing

LWDW: Joint Working Group

23 February 2026

Water Services | Tauranga City | Western Bay of Plenty District Council

Purpose of Today

- Outline key decisions required to shape the proposed Water Organisation.
- Provide advice to facilitate a discussion on:
  - SRF matters: Responsibilities of SRF; Decision making of SRF; Frequency of SRF meetings; Frequency of revisiting SRF functions.
  - Shareholder matters: Frequency of shareholder meetings; What constitutes a quorum at a shareholder meeting.
  - WO Board matters: Selection of the Chair of the Board.
  - Ring fencing: Period before ring-fencing revisited.
- We seek your direction on these matters today.
- This direction will inform the drafting of the Constitution and Shareholders' Agreement.

Water Services | Tauranga City | Western Bay of Plenty District Council

Issue 1: Responsibilities of the SRF

Key points:

- The JWG has given direction that the SRF will not initially have any final decision-making authority. It will be an advisory / recommendatory body to allow the shareholding Councils to make final decisions.
- Notwithstanding the direction above, we still require direction on what subject matter the SRF will advise on, and the scope of the SRF's role, to ensure the SRF's role and functions are clear.
- Proposed approach is to set out the specified subject matter, and the role of the SRF in respect of each subject matter, in a schedule to the SRF's Terms of Reference.

Proposed Subject Matters:

- Statement of Expectations; Director Remuneration & Appointment; Service Level Agreements; Significant Contracts; Shareholder Relevant WO Polices (S&E Policy); Director Skills Matrix; WSS; Annual Performance Review; Annual, Half-Yearly and other statutory reports; Annual Budget; Other matters assigned by SRF.
- Councils can add or strike matters from the list above (please advise).

Issue 1: Responsibilities of SRF

Option A: Specify subject matter now, based on proposed list *(Recommended)*

- *Pros:* Provides clarity of the SRF's role from the outset; Manages stakeholder expectations; Supports consistent and efficient use of the SRF; Reduces risk of scope creep; Easier to communicate and justify to Councils, WO Board and stakeholders; Avoids the need for repeated resolutions assigning matters to SRF.
- *Cons:* Requires periodic review if the SRF's role evolves.

Option B: Do not specify subject matter now; Assign matters as they arise.

- *Pros:* Greater flexibility over time; Allows Councils to retain close control over SRF engagement; Avoids prematurely constraining the role of the SRF.
- *Cons:* Creates uncertainty about the SRF's purpose and value; Increases administrative and governance effort; Risk of inconsistent and reactive use; SRF's credibility may be undermined if engaged intermittently; Harder to clearly communicate the role of SRF to stakeholders.

Issue 2: Decision making of SRF

Key points:

- The JWG has given direction that the SRF will not initially have any final decision-making authority. It will be an advisory / recommendatory body to allow the shareholding Councils to make final decisions.
- The issue that we require direction on is how the SRF will determine which recommendations to submit to the shareholding Councils for a final decision.

The Options:

- Option A: Simple Majority.
- Option B: Consensus.

Staff recommend option A:

- Supports an agile and efficient forum; Avoids deadlock where views differ; Still encourages consensus, without creating roadblocks; Better reflects the SRF's role as a broad, representative, advisory body.

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Issue 3: Frequency of SRF meetings

Key points:

- Frequency of SRF meetings can be set out in the foundation documents.
- Initial start-up phase likely requires regular engagement and meetings, with flexibility over time.

The Options:

- Option A: Strict, bi-monthly meeting.
- Option B: Flexible, as determined by the SRF.
- Option C: Hybrid, bi-monthly or as determined by the SRF.

Staff recommend Option C.

- Provides a regular meeting cadence initially, while allowing the SRF to adjust frequency as circumstances require.

Issue 4: Frequency of revisiting SRF's functions

Key points:

- The JWG has given direction that the SRF will not initially have any final decision-making authority. It will be an advisory / recommendatory body to allow the shareholding Councils to make final decisions.
- The shareholders may review and evolve the SRF's role over time, including the option to delegate final decision-making authority to the SRF on one or more matters.

The Options:

- Option A: No set frequency (amend via Shareholders' Agreement as needed).
- Option B: Review towards the end of each Council's triennium (first triennium ends circa November 2028), with a recommendatory report to be considered by the incoming Council.
- Option C: To be reviewed at the earlier of: (i) A new Council joining the WO; (ii) Towards the end of each Council's triennium; (iii) As determined by a majority of WO's shareholders.

Staff recommend Option C.

- Provides a regular review (every 3 years); Builds in flexibility for changing circumstances; Ensures a review when a new shareholder joins; Retains shareholder control over the evolution of the role of the SRF.

Issue 5: Frequency of Shareholder Meetings

Key Points:

- Shareholders must regularly monitor WO's performance, including undertaking an annual review.
- Companies Act requires at least one AGM per annum.
- The SRF will provide regular oversight, and recommendations to the shareholders, reducing the need for regular shareholding meetings.
- Shareholders have a statutory right to call for a special meeting, if required.

The Options:

- Option A: Strict, annual meetings.
- Option B: Hybrid, a strict annual meeting, with a right for any shareholder to call a meeting at any time.
- Option C: More frequent hybrid, a strict meeting every 6 months, with a right for any shareholder to call a meeting at any time.

Staff recommend Option B:

- Meets statutory requirements under both Acts; Avoids the need for unnecessary meetings; Retains flexibility and shareholder control where issues arise.

Issue 6: Quorum at Shareholder Meetings

Key points:

- A quorum is the minimum level of shareholder representation required to lawfully conduct business.
- The Companies Act allows the constitution to specify a quorum.
- Clear quorum rules supports certainty, and ensure shareholder meetings are effective.

The Options:

- Option A: One representative per shareholding Council.
- Option B: Two representatives per shareholding Council.
- Option C: More than two representatives per shareholding Council (please specify number).

Staff recommend Option B:

- Provides a balanced and practical quorum; ensures decisions represent more than a single delegate view; Reduces the risk of meetings not proceeding due to overly high thresholds.

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Issue 7: Review of Ring Fencing

Key points:

- TCC and WBOPDC have agreed to ring fence finances on establishment of the WO.
- TCC's WSDP notes ring-fencing will continue for a period of 5 – 10 years.
- WBOPDC's WSDP notes ring-fencing will be a feature of the WO, but does not specify the duration of the ring-fencing.
- This issue is not about ending ring fencing, or the factors that will be considered in deciding to end ring fencing.
- This issue is about when the shareholders will formally revisit the ringfencing arrangements.
- Staff recommend that the review timing align with second 3-year cycle of the Statement of Expectations.

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Issue 7: Review of Ring Fencing

- Option A: Review no later than 3 years after incorporation.
  - *Pros:* Early review within the first SOE cycle; Strong initial shareholder oversight; Flexibility to respond quickly to unforeseen issues; Avoids long-term assumptions before WO performance is tested.
  - *Cons:* Could create uncertainty during establishment; Limited operational and financial data to inform decisions; May conflict with what TCC signalled during consultation (5-10 years); Risk of distracting focus from bedding-in governance and operations.
- Option B: Review no later than 6 years after incorporation (*Recommended)*
  - *Pros:* Balances financial certainty with future flexibility; Aligns with TCC's 5-10 year ring fencing signals; Decisions informed by a more mature operating track record; Supports organisational stability; Still allows earlier review if directed by shareholders.
  - *Cons:* Defers any potential benefits arising from earlier financial or pricing alignment; May entrench community and political expectations that ring fencing will continue beyond the review point.

Issue 8: Selection of the Chair of the Board of Directors

Key points:

- The JWG has given direction that the Board should have up to 5 Directors.
- The Chair leads the Board; Sets agendas; Ensures effective lawful governance; Acts as the primary leadership link between the Board and the Executive of the WO.
- The Chair has no greater legal authority than other Directors, and has no casting vote.
- The Chair is critical is ensuring the Board is effective; implements quality governance; and complies with all legal obligations.

The issue:

- Who should select and appoint the Chair of the Board?

Issue 8: Selection of the Chair of the Board of Directors

- *Option A: The Board appoints the Chair (recommended)*
  - *Pros:* Reinforces independence of the Board and collective responsibility; Aligns with standard commercial governance practice; Allows selection based on Board dynamics, skills, and leadership capability; Reduces perception of shareholder involvement in day-to-day governance; Supports a clear separation between ownership and governance.
  - *Cons:* Limits direct shareholder influence over a key leadership role; Shareholders have less ability to shape governance tone through the Chair appointment.
- Option B: The Shareholders appoint the Chair
  - *Pros:* Provides shareholders will direct influence over the Board leadership; Enables alignment between shareholder expectations and governance leadership.
  - *Cons:* May be perceived as reducing the independence of the Board; Risk of politicisation of the Chair role; May blur boundary between ownership and governance; May complicate Board dynamics if the Chair is seen as primarily accountable to the shareholders; Appointment process may be slower; Chair may not be the Board's preferred leader.

Next Steps

- JWG to consider and discuss options, with the aim of reaching a consensus view on each issue identified in this paper.
- Where consensus is reached, it proceeds as a recommendation to both Councils.
- Where consensus is not reached, the issue is escalated to full Councils, with positions and rationale clearly set out.
- Next JWG meeting is on 2 March 2026.

Water Services | Tauranga City | Western Bay of Plenty District Council

AGENDA

LWDW: Joint Working Group Meeting

2 March 2026

Time: 3.30pm – 6.30pm

Location: WBoPDC Council Chamber,
1484 Cameron Road, Greerton

Order of Business

1. OPENING KARAKIA

2. APOLOGIES

3. BUSINESS

#	Item	Comment/Direction
1	Chairperson discussion	• Chairperson Introductory Comments
2	Confirmation of Meeting notes	• Meeting notes of 23 February endorsed
3	Tangata Whenua & Class A Shareholding (continuation of item from 23 February meeting)	• Information request response • Staff overview of the issue and key considerations • Working Group questions and discussion *Note - direction / feedback will be sought & the outcome of the meeting will be reflected in the TCC and WBOPDC Reports for decision making*
4	Finance Overview Update	• Staff overview of the issue and key considerations • Working Group questions and discussion *Note - direction / feedback will be sought & the outcome of the meeting will be reflected in the TCC and WBOPDC Reports for decision making*
5	Issues & Options Paper – Commercial Terms (cont.)	• Staff overview of the issue and key considerations • Working Group questions and discussion *Note - direction / feedback will be sought & the outcome of the meeting will be reflected in the TCC and WBOPDC Reports for decision making*
6	Programme Workplan	• Update on Programme Workplan
7	General Business	

4. CLOSING KARAKIA

LWDW Joint Working Group Meeting

Tauranga City Council & Western Bay of Plenty District Council

Western Bay of Plenty Council Chambers

Date: 23 February 2026

Attendance

Independent Chair: Lyall Thurston

Tauranga City Council:

Members: Cr Marten Rozeboom, Cr Glen Crowther

Western Bay of Plenty District Council:

Members: Mayor James Denyer, Cr Darlene Dinsdale, Cr Grant Dally, Cr Rodney Joyce, Cr Graeme Elvin

Tangata Whenua:

Members: Kylie Smallman, Shadrach Rolleston, Roana Bennett, Hakopa Tapiata, Kiri Allan, Rohario Murray,

Non-members: Matire Duncan & Spencer Webster, Chris Nepia

Supporting Staff: Christine Jones, Charles Lane, Tyler Buckley, Reneke van Soest, Adele Henderson, Ariell King

Apologies: Cr Kevin Schuler, Cr Hautapu Baker

Opening Karakia

Key Discussion Items

The meeting began with expressions of condolences for absent Councillors. Councillor Rozeboom explained that while two members were absent due to bereavements, the group would proceed with the working group meeting and address any outstanding issues at the next meeting.

2 Meeting Notes – 13 February 2026

Endorsed

Meeting Notes – 16 February 2026

Endorsed with the following amendment:

Issue 3 - Should interested Directors be allowed to vote on remuneration or other matters?

- Option C: No, except for the following specified circumstances (being, any payment or other benefit under s 161 of the Companies Act; and the entry into an indemnity or insurance arrangement).

Can Tangata Whenua be a Class A (Voting) Shareholder?

Information requested from JWG meeting on 13 February.
It was noted that while allowing Tangata Whenua to be a Class A (voting) shareholder would be unorthodox and not consistent with the intent of the legislation, it is not explicitly excluded.

Following general discussion, it was agreed to revisit the matter at the next meeting, after further consultation with council colleagues.

3 Issues and Options Paper – SRF and Other Matters

Consensus was reached by all on the following:

Issue 1 – What subject matter should be assigned to the SRF to form recommendations?

- Option A: Specify a list of subject matter to reflect the list in the document (with any amendments the Councils may choose to make).
- Subjects suggested by Tangata Whenua to be included in the list:
    - Treaty settlement compliance monitoring;
    - Environmental and cultural performance oversight;
    - Long-term infrastructure prioritisation and capital sequencing;
    - Engagement framework and resourcing;
    - Risk and emergency management protocols?
    - Te Tiriti compliance
    - Climate change and adaptation
    - Customer and consumer affordability

Issue 2 – Decision-making of SRF

- New Option A: Simple majority but consensus where possible and any dissenting view to be presented to the Councils.

Issue 3 – Frequency of SRF meetings

- Option C: Hybrid: “Bi-monthly or as otherwise determined by the SRF”.

Issue 4 – Frequency of re-visiting SRF functions

- New Option C: Revisit at the earlier of either:

i. another shareholder joining the WO; or,
ii. towards the end of the triennium with a recommendary report to be considered by the incoming Councils; or,
iii. otherwise as determined by a majority of the WO’s shareholders.
iv. changes to Local Government Legislation.

Issue 5 – Frequency of shareholder meetings

- Option B: Annually, with a right for any shareholder to call a meeting at any time. Expectation that the meetings will be more frequent earlier on in the process.

Issue 6 - What constitutes a quorum at a shareholders meeting

- Option B: Two representatives from each shareholding Council

Issue 7 - Period of time before topic of ring-fencing is revisited

- It was agreed to a compromise where councils must consider whether to conduct a review earlier than the 6-year mark at the 3-year point, with the actual review to be completed before the 6-year period

Issue 8 – Selection of Chair of Board of Directors

- Option A: Board selects and appoints the Chair

4 Stocktake of Tangata Whenua arrangements

The recommendations were agreed with the following amendments:

1. That the Joint Working Group recommends to the Councils that they:

    a. Adopt the principle of ~~"no worse off"~~ maintaining ~~with respect to~~ Tangata Whenua participation, engagement and arrangements, with existing commitments and practices either retained or bettered during, and following, the transition to a Water Organisation.

    b. Agree that developing a Tangata Whenua Engagement Policy and a Tangata Whenua Remuneration Policy will is to be a priority for the Water Organisation and note that this will be considered for inclusion in the Statement of Expectations.

    c. Agree that the Water Organisation is to consider each existing arrangement (as identified in each Council's Tangata Whenua stocktake) and assess and identify how they will be transferred across to Water Organisation and note that this will be considered for inclusion in the Statement of Expectations.

    d. Explore the development of an overarching Tangata Whenua Framework, including strategic guidance and input.

3 General Business

- None

Closing

- Meeting closed with karakia.
- Next meeting: 2 March 2026 at Western Bay offices.

Information requested from Joint Working Group Meeting on 2 March 2026

CAN TANGATA WHENUA BE A CLASS A (VOTING) SHAREHOLDER?

Summary

Although the Local Government (Water Services) Act 2025 (**Act**) does not expressly prohibit Tangata Whenua holding a voting class of shares, the Act clearly requires a Water Organisation (**WO**) to be wholly owned by councils or consumer trusts. Both DIA and Simpson Grierson advise that Tangata Whenua representation is likely better addressed through non-shareholding governance mechanisms, such as a Stakeholder Representative Forum.

Local Government (Water Services) Act 2025

Section 45 of the Act forms part of a statutory ownership model that limits shareholding control of WOs to territorial authorities (and trustees of consumer trusts). The Act's focus is on who holds the shares, rather than the rights attaching to different share classes. The legislative intent is to ensure democratic accountability for water services remains with local authorities.

DIA advice

DIA advises that:

- Only councils (and consumer trusts) can be shareholders in a water organisation company.
- The exemptions in section 64 of the Act do not enable shared ownership arrangements (other than the co-operative company model, which is not proposed).
- DIA recommends alternative mechanisms, including use of the Statement of Expectations, and a forum with a strong recommendatory role for Tangata Whenua.

Simpson Grierson advice

Simpson Grierson advises that:

- Although granting Tangata Whenua a voting class of shares is not expressly prohibited, the Act requires the WO to be wholly owned by councils or consumer trusts.
- Any alternative approach would be unorthodox and is not seen elsewhere.
- Tangata Whenua representation is best addressed through the Stakeholder Representative Forum, rather than voting shareholding.

Final points

As final points, we also note that:

- Shares must be owned by an entity with "legal personality". TCC and WBOPDC are entities with legal personality (in particular on the basis of section 12 of the Local Government Act 2002).
- If a decision was made to grant Tangata Whenua Class A voting shares, it is not clear to staff what the Tangata Whenua legal entity (or legal entities) would be that actually own the shares. As far as we are aware, there is no entity with legal personality that comprises (or representing) all Tangata Whenua within TCC and WBOPDC boundaries (let alone a legal entity representing all Tangata Whenua across both boundaries). And we do not anticipate that it would be a straightforward exercise to establish such a legal entity ahead of the WO being incorporated.
- Even where Tangata Whenua groups such as Hapu and Iwi have legal personality, their boundaries are not necessarily aligned with territorial authority boundaries.
- It is also unclear how the Tangata Whenua ownership would evolve over time as more Councils join the WO. The same issues mentioned in the two bullet points directly above are likely to exist for other Councils also.

Issues & Options Paper #8 (Paper for 2 March JWG Meeting):

- **Extent of each Councils' guarantee of Water Organisation's debt under LGFA arrangements;**
- **Form of SRF;**
- **Shareholders' influence over WSS;**
- **Triggers to reassess Class B Shares.**

Purpose

1. To obtain direction from the JWG (to inform a decision report to both TCC and WBOPDC) on the following issues. All of the matters presented in this paper are political issues, and therefore we have set out the pros and cons of each option:

    a. Issue 1: Extent of each Council's guarantee of the Water Organisation's debt under LGFA arrangements.

    b. Issue 2: Threshold for changing approach to LGFA guarantee.

    c. Issue 3: Council shareholder's ability to influence level of debt from WO to LGFA.

    d. Issue 4: Form of SRF (under the Local Government Act 2002).

    e. Issue 5: Scope and nature of shareholder's involvement in preparing, amending and finalising the WSS.

    f. Issue 6: Triggers to re-assess Class B shares.

2. 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.

3. By necessity, this paper assumes that elected members decide to proceed with the establishment of the WO (and we acknowledge that elected members are yet to make that decision).

4. This paper touches on six issues that are relevant to the drafting of the WO's foundation documents, being the shareholders' agreement and the company constitution. In considering this paper, it is worth bearing in mind that:

    a. Except where indicated in the body of this paper, the issues set out below are not constrained by legislation.

    b. While a very wide range of theoretical options are available for each of the issues, we have focused on the options included within the Commercial Term Sheet that has previously been presented to the JWG.

c. It is important to keep in mind a long-term picture and look to set up the WO in such a manner that it is an attractive organisation for other Councils to join in the future.

5. As a snap-shot, we have set out below a summary of the proposed options available for each issue, along with staff recommendations. More detailed information on each option and the rationale for the staff recommendation is outlined from paragraph 6 onwards.

Issue	Options			Staff recommendation (if any)
Issue 1: Extent of each Council's guarantee of Water Organisation's debt under LGFA arrangements	Option A: Each Council's guarantee to the LGFA will be joint and several for the WO's full debt	Option B: Each Council's guarantee to the LGFA will be joint and several for the WO's full debt, with additional agreement where each Council will indemnify the other to the extent of its ring fenced debt.		Option B
Issue 2 – Threshold for changing approach to LGFA guarantee	Option A: Greater than 75% of shareholders (i.e. special resolution threshold)	Option B: Unanimous shareholders		Option A
Issue 3 – Council shareholder's ability to influence level of debt from WO to LGFA	Please advise which of the following options you wish to use (you can use more than): Option A: Use of Statement of Expectations with carve-out in foundation documents Option B: Comment on, or approval of, water services strategy, with carve-out in foundation documents Option C: Constrain WO's debt as guarantor via side-agreement Or Option D: Do not use any of A, B or C and rely only the in-built statutory provisions			Staff view this as a political issue, and do not have a recommendation
Issue 4 – Form of SRF (under the Local Government Act 2002)	Option A: Joint committee.	Option B: Other subordinate decision-making body ("SDMB").	Option C: Contractual (non-LGA) arrangement.	Option A
Issue 5 – Scope and nature of shareholders involvement in preparing, amending and finalising the WSS	Option A: Shareholders can provide comments on the draft WSS, but cannot: a) require the WO to amend the draft WSS; or, b) approve the final WSS.	Option B: Shareholders can: a) provide comments on the draft WSS; b) (ii) require the WO to amend the draft WSS; c) (iii) approve the final WSS.	Option C: For the first WSS, shareholders can a) provide comments on the draft WSS; b) require the WO to amend the draft WSS; c) approve the final WSS. However, for the second and subsequent WSS, the shareholders can only provide comments.	Staff view this as a political issue, and do not have a recommendation. However, which ever option is selected it may be appropriate to determine that it will be reviewed prior to finalisation given the inter-relationships with decisions, policy development and the role of the Board.

Issue	Options			Staff recommendation (if any)
Issue 6 – Triggers to re-assess Class B shares	Option A: Agree to the list of proposed triggers as set out within this Paper (with any exclusions / further inclusions that the parties may request at the JWG meeting).	Option B: Do not define a particular list of triggers and instead deal with circumstances as and when they arise.		Option A

Issue 1: Extent of each Council's guarantee of Water Organisation's debt under LGFA arrangements

[Political decision – explanation of advantages and disadvantages]

6. The Local Government Funding Agency ("LGFA") is a Council-owned borrowing vehicle that enables local authorities and eligible Council-controlled organisations to access debt funding at a lower cost and on longer terms than would typically be available individually.

7. For WOs established under the Act, the LGFA is relevant as a potential primary source of debt finance, supporting large-scale, long-term investment in water infrastructure. The LGFA has made it clear that access to its lending is conditional on shareholder Council support, typically through the provision of Council guarantees.

8. Although borrowing by the WO is treated separately from Council borrowing for LGFA covenant purposes, the provision of guarantees creates a contingent liability for shareholder Councils, which would need to be acknowledged and managed through Council financial policies and governance arrangements.

9. It is also worth bearing in mind the rating agency treatment of Council guarantees: Credit rating agencies assess whether a WO's debt should be attributed to a Council based on the likelihood that the Council would be required to provide financial support under any guarantee. Where support is considered highly likely, the debt may be treated as Council tax-supported debt; where the WO has a strong stand-alone financial position and multiple shareholders, the debt is more likely to be treated as a contingent liability only.

10. The LGFA has provided some messaging to Councils regarding its requirements for Council-guarantees of WO debt. In messaging the LGFA has stated a preference for joint and several liability[1], although it has indicated it may be willing to accept

[1] In this context, joint and several liability means that each shareholding Council would individually (and collectively) guarantee the LGFA for the entire amount of the WO's debt (i.e. each Council's guarantee would not be limited to the Council's proportion of ownership in the WO). This "joint and several liability" approach can be contrasted with "proportionate liability" where each shareholding Council would individually guarantee the LGFA only for the part of the WO's debt (i.e. the part that is attributable to the relevant Council).

guarantees based on different percentages of liability as set out in the WO's shareholding agreement. In its January 2026 update to Councils, the LGFA stated:[2]

> **1. Council Guarantee of Water CCOs**
>
> For water CCOs that wish to borrow from LGFA, all shareholder councils in a water CCO will need to provide a guarantee to the water CCO. This is a requirement of LGFA's Foundation Policies.
>
> - The guarantee needs to be joint and several. This principle is consistent with the joint and several guarantee that councils offer in respect of their guarantee of LGFA.
> - The guarantee will be for any LGFA lending to a water CCO. It is not a guarantee of all the water CCO's liabilities.
> - LGFA has previously indicated that a council's share of the guarantee will be based on drinking water connections as at 30 June each year. While this is still our preference, LGFA is willing to accept a guarantee based on different percentages as set out in the water CCO's shareholder agreement.
> - While LGFA will accept a guarantee based on percentages set out in the water CCO's shareholder agreement, LGFA believes that transitioning to a guarantee based on drinking water connections in the future will be fairest outcome. This is because changes in the number of drinking connections will change depending on the different growth rates of councils. LGFA is happy to discuss this issue with each water CCO.

11. In subsequent discussions staff have had with the LGFA, the LGFA has confirmed to staff that the guarantee will need to be joint and several, but that the shareholders can have a side arrangement between themselves (either in the Shareholders' Agreement, or otherwise) which limits each shareholder's liability to the value of its debt to the LGFA.

12. Taking into account all of the above, the options are:

    a. Option A: Each Council's guarantee to the LGFA will be joint and several for the WO's full debt;

    b. Option B: Each Council's guarantee to the LGFA will be joint and several for the WO's full debt, with an additional agreement between the Councils where each Council will indemnify the other to the extent of its share of ring fenced debt.

13. **Hypothetical scenario of each of the options:**

    The table below provides a hypothetical scenario applying the same assumptions to the 2 options and showing the potential guarantee obligation that could be called upon. The scenario assumptions are:

    - TCC's ring fenced debt is 80% of total debt, and WBOPDC ring fenced debt is 20% of total debt.
    - WO has debt of $100m to LGFA.

[2] See https://www.lgfa.co.nz/about-lgfa/news-and-market-announcements/lgfa-financing-local-government-water-services-january

Option	TCC Guarantee	WBOPDC Guarantee
A – Joint & Several	$100m	$100m
B – To LGFA Joint & Several with additional indemnity agreement between Councils	• LGFA: $100m • Actual payable if guarantee called up: $80m	• LGFA: $100M • Actual payable if guarantee called up: $20m

14. **Staff recommend option (b) above**.

15. At a very high level, the following table outlines the key advantages and disadvantages of each option.

Advantages	Disadvantages
Option A: Each Council's guarantee to the LGFA will be joint and several for the WO's full debt	
• Strongest credit support for LGFA. • Likely to support lower borrowing costs and greater funding certainty. • Simple structure from a lender perspective.	• Each Council exposed to the full amount of WO debt. • Higher contingent liability and risk concentration. • May be perceived as inequitable where ownership differs.
Option B: Each Council's guarantee to the LGFA will be joint and several for the WO's full debt, with an additional agreement where each Council will indemnify the other to the extent of its ring fenced debt.	
• Provides full support to LGFA while reallocating risk between Councils. • Better alignment of long-term risk may be more acceptable than an unqualified joint and several guarantee.	• More complex legal structure and documentation. • Indemnities do not reduce exposure to LGFA. • Residual risk if an indemnifying Council cannot perform.

Issue 2: Threshold for changing approach to LGFA guarantee

[Political decision – explanation of advantages and disadvantages]

16. Whatever consensus is reached on the above Issue 1, we would also recommend that the parties decide on the threshold for changing that approach in the future. For clarity, this decision would be reserved for the shareholders, with the shareholders making the decision based on the Class A (voting rights) share allocation, which is on an equal basis.

17. The options are:

    a. Greater than 75% of shareholders (i.e. special resolution threshold).

    b. Unanimous shareholders.

18. **Staff recommend option (a) above**.

19. At a very high level, the following table outlines the key advantages and disadvantages of each option.

Advantages	Disadvantages
Option A: Greater than 75% of shareholders	
• Provides flexibility to adapt to changed circumstances (such as more Councils joining the WO over time). • Avoids a single Council having a veto. • Enables decisions where there is strong majority support. • Reflects the significance of the issue while allowing movement.	• Minority shareholders may be bound by a decision they do not support. • May be seen as reducing protection for Councils with higher exposure. • Potential for future disagreement if interests diverge.
Option B: Unanimous shareholders	
• Provides the highest level of protection for all Councils. • Ensures any change has full shareholder agreement. • Reduces the risk of inter-Council disputes. • A high threshold could be deemed appropriate given the long-term and high-risk nature of guarantees.	• Significantly reduces flexibility to respond to change. • A single Council can block change. • May slow or prevent decision-making in time-critical situations.

Issue 3: Council shareholder's ability to influence level of debt from WO to LGFA

[Political decision – explanation of advantages and disadvantages]

20. The above Issue 1 raises a potential concern for Councils: If the Councils are guaranteeing the WO's lending from the LGFA, what ability (if any) exists for the Councils to limit the WO's LGFA debt, and therefore limit the extent of the Councils' exposure under the LGFA guarantees (and the flow-on effects of this contingent liability on the Councils' own financial arrangements)?

21. As a word of warning, there are some complexities associated with shareholders seeking to influence a WO's decisions regarding lending, revenue or funding, particularly if such influence is structured in a way that places the Council in a position where it will remain a decision-maker on water services related matters (and significantly diminishes the WOs independence):

    a. Regulators may well take a dim view where Councils employ an over-zealous approach to restraining a WO's lending ability (and therefore the WO's ability to meet long-term infrastructure needs). It is worth bearing in mind that any regulator direction will take precedence over a shareholder direction contained within an SOE (in the case of inconsistency between the two). So if an SOE contains shareholder requirements to restrain lending to an extent

that the WO's ability to fulfil its statutory functions is jeopardised, then regulators could specifically override that aspect of the SOE.

b. Standard & Poor's Global Ratings has warned that where Councils exert stronger control over the WO, that may increase the likelihood of the WO's debt being consolidated with the Council's balance sheet for S&P Rating purposes.[3]

22. Noting the above, we have considered what different options may be available to the shareholders to influence the debt taken on by the WO (and therefore manage the exposure of the shareholding Councils under their guarantees). Unlike other "Issues & Options" we have presented to date, for this topic, the Councils could choose more than one of these options. We are raising this issue now (notwithstanding there are many unknowns regarding LGFA lending to the WO) because if the Councils wish to utilise two of the options (namely, Option A: SOE and Option B: WSS) with rights over and above what is provided in the Act, then we will need to introduce carve-outs in the WO's foundation documents.

23. The mechanisms available to the Council shareholders to constrain the WO's debt to LGFA are set out below (and a reminder more than one option can be chosen here if the parties wish – other than Option D, which is presented as an alternative).

a. *Option A: Use of Statement of Expectations with carve-out in foundation documents.* Council shareholders could provide direction in the SOE regarding the WO's borrowing levels, which would act to constrain the WO's decision-making, and engage regular reporting requirements. General directions can easily be included within the SOE. However, if the shareholders want to go beyond general directions and include specific requirements, then a "carve-out" may need to be created within the foundation documents to enable shareholders to have this ability.

b. Option B: Comment on, or approval of, water services strategy with carve-out in foundation documents. The WSS will need to set out the activities that the WO intends to undertake in order to meet the objectives of Act (which includes providing water services in a cost-effective and financially sustainable manner)[4] and the expectations set out in the SOE. The WSS could potentially set a borrowing limit for the WO. And the Council shareholders can decide whether their role with respect to the WSS is to provide comments only, or to require changes and approve the final WSS. Those potential roles are discussed further at Issue 5 of this paper.

c. Option C: Constrain WO's debt as guarantor via side-agreement. The Councils could contractually agree a borrowing limit with the WO as part of the financing arrangements in its capacity as a guarantor provider. The most straightforward way to do this would be to agree a monetary limit to each

[3] See 28 October 2025 article from S&O Global titled "Scenario Analysis: New Zealand Water Reforms Don't Guarantee Rating Relief For Local Councils" (in particular page 5) available here https://www.spglobal.com/ratings/en/regulatory/article/scenario-analysis-new-zealand-water-reforms-dont-guarantee-rating-relief-for-local-councils-s101637432
[4] Local Government (Water Services) Act, section 17(1)(b).

Council's guarantee. However, there is a relatively high risk that the LGFA insists the guarantees from shareholding Councils do not include a monetary limit. If that is the case, then any borrowing limit would therefore need to be agreed outside of the guarantee documentation (e.g. by way of side letter or other agreement between the WO and respective Council/s), under which the WO agrees that in consideration of the Council providing an unlimited guarantee of the WO's debts, the WO agrees not to incur more than $[X] of indebtedness.

d. *Option D: Do not use any of A, B or C and rely only the in-built statutory provisions.* An alternative to the options presented above would be to simply rely on the ability of shareholders to provide general directions within the SOE, and to provide comments on a WSS. This is the level of influence anticipated within the statutory framework, and preserves a great deal of autonomy for the WO. This is more of a "high-trust approach" from the Councils regarding the WO's Board, but it is worth bearing in mind that the Councils would have appointed the Board.

24. At a very high level, the following table outlines the key advantages and disadvantages of each option.

Advantages	**Disadvantages**
Option A: Use of Statement of Expectations	
• Provides a clear mechanism to express shareholder expectations on prudent borrowing. • Can be updated periodically (every 3 years with SOE cycles) to reflect changing risk appetite or financial context. • Engages regular reporting and transparency without undermining WO's formal independence. • Aligns with the legislative framework and avoids legal complexity. • WO will be statutorily required to give effect to the SOE.	• A SOE must be consistent with all legislative obligations that apply to the WO, including revenue and funding sufficiency to sustain long-term investment in water services. • A SOE cannot include any requirements or expectations that would compromise the financial independence of the WO. Any expectations set in the SOE about borrowing levels would need framed so as not to breach this requirement (effectively it would need to be non-binding). • An SOE cannot include any requirements or expectations that relate to the WO's performance or exercise of a duty, function, or power under the Act. Any expectation in the SOE related to the WO's borrowings would therefore need to be carefully framed to avoid any such interference.
Option B: Comment on, or approval of, water services strategy	
• WSS is a statutory document with formal shareholder engagement (comment or approval), offering a	• The WSS will be prepared by the WO. The level of input that a shareholder can have on the WSS will depend on the

Advantages	Disadvantages
structured opportunity to influence borrowing plans. • Borrowing limits can be linked to planned activities and financial sustainability objectives. • Provides a transparent and public-facing framework for debt planning.	arrangements documented at the time of establishing the WO (this is Issue 5 discussed below). • In the event that a borrowing limit is included in the WSS (or the SOE) for the WO, we note that this limit could only be a 'soft' control on the WO, as the WO can make decisions inconsistent with the WSS provided it identifies and explains the inconsistency[5] such that there would not be limited any consequences in the event that the WO breached the limit. This could, in practice, lead to relationship issues between the WO and shareholders.
Option C: Constrain WO's debt as guarantor via side-agreement	
• Provides a legally enforceable mechanism to cap the WO's borrowing, offering stronger protection for Councils' financial exposure. • Can be tailored to each Council's risk appetite and financial capacity. • Sits outside the statutory framework, avoiding potential constraints under the Act. • May be more acceptable to LGFA if structured as a side agreement rather than a limitation within the guarantee itself. • Creates a direct link between the provision of a guarantee and the WO's borrowing behaviour.	• LGFA may resist or reject guarantees that include monetary limits, reducing the effectiveness of this approach. • Side letters or separate agreements may lack transparency or be harder to enforce if not clearly integrated into broader governance arrangements. • Could complicate financing arrangements and delay access to LGFA funding. • May create tension between the WO's need for financial flexibility and the Councils' desire to limit exposure. • Requires careful legal drafting and ongoing monitoring to ensure compliance and enforceability.
Option D: Do not use any of A, B or C and rely only the in-built statutory provisions	
• Preserves the independence of the WO, aligning with the intent of the Act. • Avoids the need for complex carve-outs or amendments to the WO's foundation documents. • Minimises regulatory risk by not overstepping into operational decision-making, which could otherwise attract scrutiny.	• Provides limited ability for Councils to actively manage or cap their financial exposure under LGFA guarantees. • Relies heavily on the WO's internal financial discipline and responsiveness to general shareholder expectations. • If the WO's borrowing increases significantly, Councils may have limited

[5] Local Government (Water Services) Act 2025, section 233.

Advantages	Disadvantages
• Demonstrates a high-trust governance model, reflecting confidence in the WO's Board and its statutory obligations. • Simplifies governance and reduces administrative overhead for both the Councils and the WO.	recourse to intervene or influence debt levels. • Could lead to political or public concern if the Councils are perceived to have insufficient oversight of a growing contingent liability.

Issue 4: Form of SRF (under the Local Government Act 2002)

[Political decision – explanation of advantages and disadvantages]

25. The JWG has previously formed a consensus view of the make-up of the SRF (i.e. it will comprise representatives of each shareholding Council plus Tangata Whenua) and the functions of the SRF (including that the SRF will be an advisory body only – at least for an initial period of time). This issue is not concerned with re-visiting those points. Instead, this issue is concerned with the legal foundation for establishing the SRF under the Local Government Act 2002 ("LGA").

26. There are no requirements in the Act as to the structure or form of the SRF. Further, the Act does not displace the relevant LGA provisions or provide WO shareholders with a separate power of delegation. So, any delegation to the SRF needs to be made under the LGA.

27. This requires (relevantly) the appointment of a joint committee or other subordinate decision-making body ("SDMB") by the Councils under clauses 30 or 30A of Schedule 7 of the LGA, for the purpose of providing shareholder governance and oversight of the WO. While this is not an immediate issue for the SRF given it will not be delegated any decision-making powers over its initial years of existence, the structure of the SRF should take into account that, at some point in the future, the shareholding Councils may decide to delegate at least some decision-making powers to the SRF. Further, even without delegated decision-making responsibilities, the terms of reference for the SRF still need to be clearly documented.

28. The two main options are a joint committee and an SDMB. There are some important distinctions between these two options, including:

    a. The Local Government Official Information and Meetings Act 1987 ("LGOIMA") applies to a joint committee but not to an SDMB.[6] We would expect the Councils' (and their communities') preference to be that the SRF is subject to LGOIMA, and would conduct its business in an open and

[6] LGOIMA's requirements in Part 7 to notify meetings, hold meetings in public and make agenda reports publicly available would not automatically apply to the SRF if structured as a SDMB, although they could be imposed (non-statutorily) through the Shareholders' Agreement or other agreement establishing the SDMB. Nor would information held by the SDMB be "official information" that could be requested under the Act, unlike information held by a joint committee.

transparent manner and this is the approach we have seen being taken by other groups.

b. Members of a joint committee can only be appointed by a local authority or public body.[7] Because Tangata Whenua are unlikely to be a "public body" with direct appointment rights to a joint committee, any Tangata Whenua members on that committee could only be *nominated* by Tangata Whenua and would need to be *appointed* by the Councils. Therefore, the SDMB arrangement may be viewed more favourably by Tangata Whenua as it will remove the need to rely on Council appointments (or confirmations of nominations) for Tangata Whenua members. That said, a side agreement, such as a memorandum of understanding or letter of comfort between the Councils and Tangata Whenua, could provide a mechanism of some assurance that the Councils will appoint the representatives nominated by Tangata Whenua.

29. Aside from the two main options mentioned above, a third option would be to establish the SRF entirely outside of the LGA framework. We have referred to this as a "Contractual (non-LGA) arrangement". While this option is theoretically possible, we do not consider it to be appealing, due to the risk of decisions being challenged as unlawful. Also from a practical perspective, the Councils are likely be unfamiliar with this kind of structure, so any contractual arrangements will need to be drafted "from scratch" and without any of the parties having experience of how the arrangements will work in practice.

30. The options are:

    a. Joint committee.

    b. Other subordinate decision-making body ("SDMB").

    c. Contractual (non-LGA) arrangement.

31. **Staff recommend option (a) above**.

32. At a very high level, the following table outlines the key advantages and disadvantages of each option.

Advantages	**Disadvantages**
Option A: Joint committee established under the Local Government Act	
• Will align with intended multi-Council ownership, and joint decision-making context. • Provides a clear governance framework, based on clause 30A of the LGA which requires an agreement between Councils appointing members to the committee. Terms of reference	• Will involve discussion / potential negotiation on key structural aspects: membership, voting rights, appointed members, etc. • There are associated administrative requirements to be met before a Joint Committee can be established, including resolving the terms on which it will

[7] LGA Schedule 7, clause 30A(1).

Advantages	Disadvantages
can allow modifications to certain terms, and will otherwise prescribe decision-making requirements. • Will be a single body that the Board can engage with. Allows multiple Council interests to be considered together, to inform single joint direction / expectation setting to Board. • Allows for the delegation of powers to the committee in due course. • Increased transparency as a Joint Committee is subject to decision-making requirements under the LGA. • Increased transparency and public accountability as a Joint Committee is subject to LGOIMA (both official information and meetings provisions). • Clarity of powers, as the specific responsibilities delegated to the Joint Committee need to be outlined in the agreement that establishes the Joint Committee. • Allows for TW representatives to be appointed to joint committee. • Familiar structure – local authority shareholders will be used to the operation of joint committees.	operate, its powers and entering an agreement to establish the Committee. • There can no formal delegation of responsibilities by TW to the Joint Committee. • TW do not have direct powers to appoint members to a joint committee (need to rely instead on local authorities appointing TW members, noting however that this can be addressed through a side agreement).
Option B: Other subordinate decision-making body ("SDMB")	
• Will align with intended multi-Council ownership, and joint decision-making context. • More flexible governance structure as not subject to clause 30A requirements for Joint Committees. • More flexible as LGOIMA requirements (e.g. to notify meetings, hold meetings in public or make agenda reports publicly available) do not apply. • Will be a single body that the Board can engage with. Allows multiple Council interests to be considered together, to inform single joint direction / expectation setting to Board. • Allows for the delegation of powers.	• Will involve discussion / potential negotiation on key structural aspects: membership, voting rights, appointed members, etc. • There are associated administrative requirements to be met before establishment, including resolving the terms on which it will operate, its powers and entering an agreement to establish with all Councils (and potentially TW). • Less mandated transparency and public accountability due to LGOIMA (both official information and meetings provisions) not applying: but terms of reference could insert equivalent requirements to notify meetings, hold

Advantages	Disadvantages
• Potentially, TW could have a direct power of appointment to a SDMB (ie no need to rely on local authority to appoint (or confirm nomination of) member, as for a joint committee). • Can provide for non-elected member appointments, or for advice to be sought from external sources.	meetings in public and make agenda reports publicly available. • Unfamiliar structure for Councils and TW.
Option C: Contractual (non-LGA) arrangement	
• Maximum flexibility, as not subject to LGA rules. • Clarity of powers, as responsibilities of entity would need to be outlined in the agreement establishing the entity. • Allows for direct appointment of TW representatives to the entity.	• Lack of formal delegations means decisions may be challenged as invalid. • Potential lack of ability to exercise decision-making role due to lack of delegations. • Risk that structure will be deemed to be a committee or joint committee and not validly appointed. • Likely lack of statutory indemnity for members. • Contractual arrangements are more complex, as need to address matters covered by LGA Schedule 7 in the case of committees • Unfamiliar structure for Councils and TW.

Issue 5: Scope and nature of shareholders involvement in preparing, amending and finalising the WSS.

[Political decision – explanation of advantages and disadvantages]

33. As a re-cap:

a. Shareholding Councils will issue a Statement of Expectations ("SOE") to the WO every 3 years. The WO must give effect to the SOE.[8]

b. In response to the SOE, the WO must prepare a Water Services Strategy ("WSS") that publicly states how the WO will meet the matters set out in the SOE.

c. The WO must provide a draft copy of the WSS to the shareholding Councils.

d. By default, Councils are entitled to provide comments on the draft WSS only.[9]

e. However, if provision is made within the WO's foundation documents (i.e. SHA and Constitution), then the shareholding Councils' involvement in the WSS can

[8] Local Government (Water Services) Act 2025, section 226.
[9] Local Government (Water Services) Act 2025, section 236.

go beyond the default of "providing comments" and instead give the Councils an ability to:[10]

i. Require the WO to amend its draft WSS; and/or,

ii. Approve the final WSS.

f. Under the Act[11], the default position is that neither a WO nor its shareholders are required to publicly consult on a draft WSS. Public consultation is only required in limited circumstances. First, consultation may be triggered if the WO's Significance and Engagement (S&E) policy requires it, or if shareholders direct the organisation to consult, in which case consultation must occur in accordance with that policy. Second, public consultation is mandatory if the strategy proposes transferring ownership or control of a strategic water services asset (either in or out) or proposes a significant change to levels of service. Where mandatory consultation is required, it must be carried out by the shareholders, or by the WO if the shareholders direct it to do so. The Act also requires the S&E policy to clearly define what counts as a strategic asset, what constitutes a significant level-of-service change, and how the consultation obligations will be met.

34. The options are:

a. Shareholders can provide comments on the draft WSS only (and cannot require the WO to amend the draft WSS and do not have rights to "approve" the final WSS).

b. Shareholders can (i) provide comments on the draft WSS; (ii) require the WO to amend the draft WSS; (iii) approve the final WSS.

c. For the first WSS, shareholders can (i) provide comments on the draft WSS; (ii) require the WO to amend the draft WSS; (iii) approve the final WSS. However, for the second and subsequent WSS, the shareholders can only provide comments.

35. Staff view this as a political issue, and do not have a recommendation. However, whichever option is selected it may be appropriate to determine that it will be reviewed prior to finalisation given the inter-relationships with decisions, policy development and the role of the Board.[12]

36. At a very high level, the following table outlines the key advantages and disadvantages of each option.

[10] Local Government (Water Services) Act 2025, section 236.
[11] Local Government (Water Services) Act 2025, section 236.
[12] We also note that just because a carve out is drafted into the founding documents (giving the shareholders some degree of operational control), it does not mean the shareholders would have to use that carve out. In other words, having the carve out provides the shareholders with the discretion to exhibit a degree of operational control, but it would not be mandatory for the shareholders to exhibit such operational control.

Advantages	Disadvantages
Option A: Shareholders can provide comments on the draft WSS only (and cannot require the WO to amend the draft WSS and do not have rights to "approve" the final WSS)	
• Greater operational autonomy for the WO. The WO retains greater independence to set its long-term strategy. This can lead to more efficient decision-making and agility, as the strategy isn't subject to multiple layers of approval or political sign-off. • Streamlined process with fewer delays. • Clear accountability for the WO. With Councils not co-authoring or approving the WSS, the WO's Board and management remain clearly accountable for the content and success of the strategy. This clarity can simplify governance, as the WO cannot shift responsibility to the Councils for strategic choices. • Reduced political interference. By restricting Councils to a commentary role, the WSS is less subject to short-term political pressures. The WO can focus on technical and long-term considerations (such as infrastructure needs and regulatory compliance) without the risk of ad hoc changes driven by shifting political priorities.	• Limited Council influence over final WSS content • Risk of misalignment with Council/community priorities. The WO might adopt a strategy misaligned with individual Councils' Long-Term Plan infrastructure goals or community outcomes. • Weaker democratic oversight. Council governance influence is weaker. Elected members and mana whenua partners may feel their strategic priorities or local knowledge are not fully reflected, potentially undermining local democratic input into water service planning. • Potential public accountability concerns. Ratepayers might expect their Councils to have more direct control over significant water service decisions.
Option B: Shareholders can (i) provide comments on the draft WSS; (ii) require the WO to amend the draft WSS; (iii) approve the final WSS	
• Stronger strategic oversight and alignment with Council goals. Councils can ensure the WSS is consistent with their own long-term plans, infrastructure strategies, and community outcomes. • Enhanced democratic legitimacy. • Risk mitigation through collective review. By scrutinising and approving the WSS, Councils can address potential issues (financial risks, service level changes, asset management decisions, etc.) in advance. • Greater transparency and public trust. Requiring Council approval confers	• More complex and potentially slower process. This option introduces additional procedural steps (amendment requirements and formal approvals) that can slow down the WSS development. Coordinating multiple Councils' feedback and obtaining formal approvals (potentially via Council meetings) can be time-consuming. If shareholders disagree among themselves or with the water organisation, finalising the strategy could be delayed. • Increased compliance burden for Councils. Any territorial authority that chooses to approve the WSS must

Advantages	Disadvantages
democratic legitimacy on the WSS. Each Council's endorsement of the final strategy can increase transparency and public trust.	comply with the decision-making requirements of the LGA (e.g. considering community views, significance thresholds, etc). These processes can be resource-intensive. • Potential politicisation of strategic planning. Giving Councils power to direct changes and approve the strategy might inject short-term political considerations into what is meant to be a long-term infrastructure plan. • Blurred accountability between Councils and WO. Shared decision-making on the WSS means the WO's autonomy is qualified – and if the strategy proves unsuccessful, responsibility may be diffuse. The WO might argue it had to incorporate changes at shareholders' behest, while Councils (who approved the WSS) share ownership of any controversial decisions. • May dissuade good candidates from applying to the WO's Board due to diminished autonomy of the WO.
Option C: For the first WSS, shareholders can (i) provide comments on the draft WSS; (ii) require the WO to amend the draft WSS; (iii) approve the final WSS. However, for the second and subsequent WSS, the shareholders can only provide comments.	
• Provides strong initial oversight to ensure the first WSS aligns with Council and community priorities. • Builds trust and confidence in the WO's governance and strategic direction. • Allows Councils to shape foundational decisions while enabling the WO to have greater autonomy over time. • Reduces long-term administrative burden and complexity once the WO is established. • Signals a clear transition from establishment to steady-state governance. • May help secure political and community buy-in during the critical initial phase.	• Requires careful drafting of foundation documents to define the transition in governance rights. • Potential for ambiguity or disagreement over when and how the shift in involvement occurs. • May create expectations of continued influence that are difficult to unwind politically. • If the first WSS is not well-executed, Councils may regret relinquishing approval rights later. • Could lead to inconsistent governance practices if not all shareholders agree on the transition.

Issue 6: Triggers to re-assess Class B shares

[Political decision – explanation of advantages and disadvantages]

37. As a re-cap on the topic of shareholding within the WO, the JWG parties have previously reached a consensus on the following:

    a. Shares will be issued on a Class A (voting rights) and Class B (ownership) basis.

    b. The Class A shares (voting rights) will be allocated evenly across shareholders.[13]

    c. The methodology for allocating Class B shares (ownership) is yet to be finalised (at the time of writing).[14]

    d. The allocation of shares will be reviewed and adjusted on an ongoing basis. However, staff were tasked with generating a range of potential triggers to review and adjust shares. And that is the subject matter of this issue.

38. Notwithstanding the fact that the allocation of Class B shares is yet to be finalised, the parties can still determine the triggers that will require the shareholders to re-visit that allocation.

39. For the parties' consideration, we propose the following triggers could initiate a review and (where appropriate) an adjustment of Class B shareholding:

    a. The addition of a Council shareholder to the WO.

    b. The departure of a Council shareholder from the WO.

    c. Any reorganisation of local government structures (such as amalgamation or otherwise)[15] that directly impacts any of the Council shareholders.

    d. An end (or substantial change) to the WO's financial ring-fencing arrangements.

    e. Any periodic re-valuation of the water-related assets transferred to the WO by *all of* the shareholding Councils.[16]

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[13] It is not proposed that the foundation documents will include a mechanism to re-assess the allocation of Class A shares over time. The implication of equal voting rights (including as more Councils join the WO) was outlined in Issue & Option Paper #4 titled "Shareholdings, Share Rights, and Shareholder Approval Matters" and presented on 29 January 2026. See in particular the "Decision Making Table" at paragraph 8.

[14] This topic will be revisited at the JWG meeting on 9 March 2026.

[15] At the time of writing, we note that within the current proposed reform of Local Government arrangements (and we acknowledge this is subject to feedback and potential change) of the "Combined Territories Board" (comprising the Mayors residing within Bay of Plenty Regional Council's borders) will be required to generate "Regional Reorganisation Plans" within 2 years of the replacement of Regional Councillors.

[16] For clarity, to ensure fairness to all parties, we recommend that any such periodic revaluation be conducted by a single valuer for both sets of assets with a common valuation date, valuation methodology and key input assumptions. This topic will be covered in further detail at the JWG meeting on 9 March 2026.

f. A material change to the value of the water-related assets transferred to the WO by *any one* of the shareholding Councils which would result in more than a 5% change in the shareholding allocation.[17]

g. If the methodology for allocating shares includes a basis other than net assets or in addition to net assets (such as connections or population), a material change in that basis which would result in more than a 5% change in the shareholding allocation.[18]

h. In the absence of any other "trigger-event" occurring, once every 6 years.[19]

40. The options are:

a. Option A: Agree to the list of proposed triggers as set out within this Paper (with any exclusions / further inclusions that the parties may request at the JWG meeting).

b. Option B: Do not define a particular list of triggers and instead deal with circumstances as and when they arise.

41. **Staff recommend option (a) above**.

42. At a very high level, the following table outlines the key advantages and disadvantages of each option.

Advantages	**Disadvantages**
Option A: Agree to the list of proposed triggers as set out within this Paper (with any exclusions / further inclusions that the parties may request at the JWG meeting)	
• Provides clarity and certainty for all shareholders about when a review will occur. • Reduces the risk of disputes by setting expectations in advance. • Supports transparency and fairness in shareholding adjustments. • Facilitates forward planning and governance discipline. • Helps ensure shareholding reflects material changes in ownership value or structure. • If options (a) or (c) are selected for Issue 1 LGFA Guarantee, the financial	• May be too rigid to accommodate unforeseen or nuanced circumstances.[20] • Could lead to unnecessary reviews if a trigger is met but the impact is minor. • May require future amendment if triggers prove to be incomplete or inappropriate.

[17] We anticipate this option (f) would likely only be relevant during the ring-fencing period.
[18] We are seeking the JWG's direction on the methodology for issuing the Class B (ownership) shares at the JWG meeting on 9 March 2026.
[19] We note that it is likely the WO's Board will insist on periodic revaluations.
[20] Although we note there will always remain the option of amending the Shareholders' Agreement to accommodate reviews in unforeseen circumstances.

Advantages	Disadvantages
obligation aligned with up to date information.	
Option B: Do not define a particular list of triggers and instead deal with circumstances as and when they arise	
• Provides maximum flexibility to respond to unique or unforeseen circumstances. • Avoids premature or unnecessary reviews triggered by technical or low-impact events. • Simplifies initial governance documentation.	• Lack of clarity may lead to uncertainty or disagreement among shareholders. • Greater potential for politicisation or inconsistent decision-making. • May delay necessary reviews if there is no agreed process or threshold. • Could undermine confidence in the fairness and transparency of shareholding arrangements. • Relies on agreement to review with flow on implications for LGFA guarantee. Some Councils may be financially incentivised to defer review.

Next Steps

- In the above sections we have identified the reasonable options for the JWG to consider.
- We are seeking to have the JWG members reach a consensus view (or otherwise) on these options. The consensus view can be recorded in the summary table at Schedule A.
- 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.

Schedule A: Summary Table Recording JWG Consensus View

Issue	Options			Staff recommendation (if any)	JWG consensus view (if any)	Notes
Issue 1: Extent of each Council's guarantee of Water Organisation's debt under LGFA arrangements	Option A: Each Council's guarantee to the LGFA will be joint and several for the WO's full debt	Option B: Each Council's guarantee to the LGFA will be joint and several for the WO's full debt, with an additional agreement between the Councils where each Council will indemnify the other to the extent of its ring fenced debt.		Option B		
Issue 2 – Threshold for changing approach to LGFA guarantee approach	Option A: Greater than 75% of shareholders (i.e. special resolution threshold)	Option B: Unanimous shareholders		Option A		
Issue 3 – Council shareholder's ability to influence level of debt from WO to LGFA	Please advise which of the following options you wish to use (you can use more than): Option A: Use of Statement of Expectations with carve-out in foundation documents Option B: Comment on, or approval of, water services strategy, with carve-out in foundation documents Option C: Constrain WO's debt as guarantor via side-agreement Or Option D: Do not use any of A, B or C and rely only the in-built statutory provisions			Staff view this as a political issue, and do not have a recommendation		
Issue 4 – Form of SRF (under the Local Government Act 2002)	Option A: Joint committee.	Option B: Other subordinate decision-making body.	Option C: Contractual (non-LGA) arrangement.	Option A		

Issue	Options			Staff recommendation (if any)	JWG consensus view (if any)	Notes
Issue 5 – Scope and nature of shareholders involvement in preparing, amending and finalising the WSS	Option A: Shareholders can provide comments on the draft WSS, but cannot (i) require the WO to amend the draft WSS; or, (ii) approve the final WSS.	Option B: Shareholders can (i) provide comments on the draft WSS; (ii) require the WO to amend the draft WSS; (iii) approve the final WSS.	Option C: For the first WSS, shareholders can (i) provide comments on the draft WSS; (ii) require the WO to amend the draft WSS; (iii) approve the final WSS. However, for the second and subsequent WSS, the shareholders can only provide comments.	Staff view this as a political issue, and do not have a recommendation. However, whichever option is selected it may be appropriate to determine that it will be reviewed prior to finalisation given the inter-relationships with decisions, policy development and the role of the Board.		
Issue 6 – Triggers to re-assess Class B shares	Option A: Agree to the list of proposed triggers as set out within this Paper (with any exclusions / further inclusions that the parties may request at the JWG meeting).	Option B: Do not define a particular list of triggers and instead deal with circumstances as and when they arise.		Option A		

LGFA, SRF, WSS & Shareholding Matters

LWDW: Joint Working Group

2 March2026

Water Services | Tauranga City | Western Bay of Plenty District Council

Purpose of Today

- Outline key decisions required to shape the proposed Water Organisation.
  - Issue 1: Extent of each Council's guarantee of Water Organisation's debt under LGFA arrangements.
  - Issue 2: Threshold for changing approach to LGFA guarantee.
  - Issue 3: Council shareholder's ability to influence level of debt from WO to LGFA.
  - Issue 4: Form of SRF (under the Local Government Act 2002).
  - Issue 5: Scope and nature of shareholder's involvement in preparing, amending and finalising the WSS.
  - Issue 6: Triggers to re-assess Class B shares.
- We seek your direction on these matters today.
- This direction will inform the drafting of the Constitution and Shareholders' Agreement.

Issue 1: Extent of each Council's guarantee of Water Organisation's debt under LGFA arrangements

Key points:

- Councils must guarantee the WO's loans from the Local Government Funding Agency (LGFA). This creates a contingent liability for each council.
- Councils need to decide the structure of this guarantee.
- LGFA requires a joint and several guarantee (each council guaranteeing the full amount of all shareholder debt).
- Notwithstanding the need for a joint and several guarantee, the shareholders can indemnify each other for the value of each Council's respective debt to the LGFA.
- An example: If TCC has $80m of debt, and WB has $20m of debt, the WO's total debt is $100m. Under a joint and several guarantee, the LGFA could collect $100m from either TCC or WB. However, if LGFA collected $100m of debt from TCC, TCC (under the indemnity) could collect $20m from WB. The same applies in reverse.

Issue 1: Extent of each Council's guarantee of Water Organisation's debt under LGFA arrangements

- Option A – Each Council's guarantee to the LGFA will be joint and several for the WO's full debt.

- Option B – Each Council's guarantee to the LGFA will be joint and several for the WO's full debt, with an additional agreement between the Councils where each Council will indemnify the other to the extent of its ring-fenced debt.

Staff recommend Option B.

Issue 2: Threshold for changing approach to LGFA guarantee

Key points:

- If in the future the councils want to change the LGFA guarantee approach decided at Issue 1, what level of shareholder approval should be required?
- This decision would be reserved for the shareholders to be made based on the Class A (voting rights) share allocation, which is on an equal basis.
- Advantages / Disadvantages for each option are located within the Issues & Options Paper.

- Option A: Special Resolution (75% or greater approval).

- Option B: Unanimity.

Staff recommend option A

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Issue 3: Shareholder Influence over WO Borrowing

Key points:

- Because councils will guarantee the WO's LGFA debt, they have an interest in how much debt the WO takes on.
- This issue explores what mechanisms (if any) councils should use to influence or limit the WO's borrowing levels.
- Overly restrictive shareholder control could conflict with the intended arm's-length nature of the WO and possibly raise concerns with regulators or credit rating agencies.
- Unlike other issues, multiple options here could be implemented together if desired (they are not mutually exclusive – with the exception of Option D).
- Options are set out on next slide. Advantages / Disadvantages for each option are located within the Issues & Options Paper.

Issue 3: Shareholder Influence over WO Borrowing

- Option A – Use of Statement of Expectations with carve-out in foundation documents.

- Option B – Comment on, or approval of, water services strategy with carve-out in foundation documents.

- Option C – Constrain WO's debt as guarantor via side-agreement.

- Option D – Do not use any of A, B or C and rely only the in-built statutory provisions.

Staff view this as a political issue, and do not have a recommendation

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Issue 4: Form of SRF (under the Local Government Act 2002)

JWG direction to date:

- SRF members: Representatives from each shareholding Council, plus Tangata Whenua representatives.
- SRF role: Recommendatory / advisory only, at least initially.

Current issue:

- Determine the legal form for establishing the SRF under the LGA 2002.

Key points:

- The two main options are a Joint Committee or a Subordinate Decision Making Body (SDMB).
- Joint Committee: Subject to LGOIMA; TW members nominated by TW, but appointed by Council.
- SDMB: Not automatically subject to LGOIMA; TW members don't need to be appointed by Council.

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Issue 4: Form of SRF (under the Local Government Act 2002)

- .Option A: Joint committee.
- Option B: Subordinate decision-making body.
- Option C: Contractual (non-LGA) arrangement.

Staff recommend Option A

Issue 5: Scope and nature of shareholder's involvement in WSS

Key Points:

- Councils issue SOE; WO must give effect to the SOE, and respond via WSS
- Default under the Act is that shareholders can comment only on the WSS.
- However, foundation documents can expand role to include amendment/approval.
- Options are set out on next slide. Advantages / Disadvantages for each option are located within the Issues & Options Paper.
- Staff view this as a political issue and do not have a recommendation

Issue 5: Scope and nature of shareholders involvement in WSS

- Option A: Shareholders can provide comments on the draft WSS (only). This is the default position under the Act.

- Option B: Shareholders can:
  a. provide comments on the draft WSS;
  b. require the WO to amend the draft WSS;
  c. approve the final WSS

- Option C: For the first WSS, shareholders can
  a. provide comments on the draft WSS;
  b. require the WO to amend the draft WSS;
  c. approve the final WSS.

  However, for the second and subsequent WSS, the shareholders can only provide comments.

Staff view this as a political issue and do not have a recommendation

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Issue 6: Triggers to re-assess Class B shares

JWG direction to date:

- Two Classes of Shares: Class A (voting), Class B (ownership).
- Class A shares to be allocated evenly among shareholders.
- The methodology for allocating Class B shares is yet to be finalised (Will be addressed at the JWG meeting on 9 March).
- Share allocations to be reviewed and adjusted on an ongoing basis.

Current focus:

- Despite the methodology for allocating Class B shares not being finalised yet, parties can agree upfront on the triggers that will require the shareholders to revisit and adjust Class B ownership.
- Staff were tasked with developing a list of triggers, that would require the Class B share allocation to reviewed and (where appropriate) adjusted.

Issue 6: Triggers to re-assess Class B shares

- Proposed list of triggers:
  a. Addition of a Council shareholder to the WO.
  b. Departure of a Council shareholder from the WO.
  c. Any reorganisation of local government structures (such as amalgamation or otherwise) that directly impacts any of the Council shareholders.
  d. An end (or substantial change) to the WO's financial ring-fencing arrangements.
  e. Any periodic re-valuation of the water-related assets transferred to the WO by all of the shareholding Councils.
  f. A material change to the value of the water-related assets transferred to the WO by any one of the shareholding Councils which would result in more than a 5% change in the shareholding allocation.
  g. If the methodology for allocating shares includes a basis in addition to net assets (such as connections or population), a material change in that basis which would result in more than a 5% change in the shareholding allocation.
  h. In the absence of any other "trigger-event" occurring, once every 6 years.

Issue 6: Triggers to re-assess Class B shares

- Option A: Agree to the list of proposed triggers as set out within this Paper (with any exclusions / further inclusions that the parties may request at the JWG meeting).

- Option B: Do not define a particular list of triggers and instead deal with circumstances as and when they arise.

Staff recommend Option A

Next Steps

- JWG to consider and discuss options, with the aim of reaching a consensus view on each issue identified in this paper.
- Where consensus is reached, it proceeds as a recommendation to both Councils.
- Where consensus is not reached, the issue is escalated to full Councils, with positions and rationale clearly set out.
- Next JWG meeting is on 9 March 2026.

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AGENDA

LWDW: Joint Working Group Meeting

9 March 2026

Time: 2.30pm – 5.30pm

Location: WBoPDC Council Chamber,
1484 Cameron Road, Greerton

Order of Business

1. OPENING KARAKIA

2. APOLOGIES

3. BUSINESS

#	Item	Comment/Direction
1	Chairperson discussion	• Chairperson Introductory Comments
2	Confirmation of Meeting notes	• Meeting notes of 2 March endorsed
3	Communication and Engagement Plan	• Staff overview of the proposed communication and engagement plan. • Working Group questions and discussion
4	Due Diligence Reports	• Legal & Governance • Asset Management, Operations & Stormwater (AMOS) • People and Workforce (confidential) • Staff overview of the issue and key considerations • Working Group questions and discussion *Note - direction / feedback will be sought & the outcome of the meeting will be reflected in the TCC and WBOPDC Reports for decision making*
5	Consensus Commercial Term Sheet	• Staff overview of the issue and key considerations • Working Group questions and discussion *Note - direction / feedback will be sought & the outcome of the meeting will be reflected in the TCC and WBOPDC Reports for decision making*
6	Items for consideration and action after 2 April	• Seeking feedback on completeness of the schedule (*referred to previously as 'parked issues')*
7	Programme Workplan	• Update on Programme Workplan
8	General Business	

4. CLOSING KARAKIA

Water Services | Tauranga City | Western Bay of Plenty District Council

LWDW Joint Working Group Meeting

Tauranga City Council & Western Bay of Plenty District Council

Western Bay of Plenty Council Chambers

Date: 2 March 2026

Attendance

Independent Chair: Lyall Thurston

Tauranga City Council:

Members: Cr Marten Rozeboom, Cr Glen Crowther, Cr Kevin Schuler, Cr Hautapu Baker

Western Bay of Plenty District Council:

Members: Mayor James Denyer, Cr Darlene Dinsdale, Cr Grant Dally, Cr Graeme Elvin

Tangata Whenua:

Members: Kylie Smallman, Shadrach Rolleston, Roana Bennett, Hakopa Tapiata, Kiri Allan, Rohario Murray,

Non-members: Spencer Webster

Supporting Staff: Christine Jones, Charles Lane, Tyler Buckley, Reneke van Soest, Adele Henderson, Ariell King, Stephen Burton, Kathryn Shaplin, Jonathan Fearn

Apologies: Cr Rodney Joyce

Opening Karakia

Key Discussion Items

The Chair opened the meeting, welcomed attendees, and reviewed housekeeping procedures. Members were reminded that all discussion should be directed through the Chair and that staff instructions are to be followed in the event of an emergency.

2 Meeting Notes – 23 February 2026

Endorsed with the following amendments:

Issue 3 – Frequency of SRF meetings

- Option C: Hybrid: “Bi-monthly or as otherwise determined by the SRF **or council**.”

Issue 4 – Frequency of re-visiting SRF functions

- New Option C: Revisit at the earlier of either:

i. another shareholder joining the WO; or,
ii. towards the end of the triennium with a recommendary report to be considered by the incoming Councils; or,
iii. otherwise as determined by a majority of the WO's shareholders.
iv. changes to local government legislation and **legislation pertaining to treaty settlements**.

Stocktake of Tangata Whenua arrangements

The recommendations were agreed with the following amendments:

That the Joint Working Group recommends to the Councils that they:

a. Adopt the principle of **retaining or bettering** Tangata Whenua participation, engagement and arrangements, with existing commitments and practices during, and following, the transition to a Water Organisation.

3 Tangata Whenua & Class A Shareholding

The meeting discussed the potential for Tangata Whenua to hold Class A shares in a water organisation. Staff advised that while the Local Government Water Services Act does not explicitly prohibit this, it is not the intended approach.
It was agreed that:

- All Treaty-related matters will be added to the future action list and work programme for further discussion.
- The Waraki consent item will also be added to the future action list and work programme.

4 Finance Overview

Kathryn Sharplin introduced the finance paper. Key points noted:

- No red flags were identified that would prevent continued progress.
- The methodology for determining the level of debt has been verified by Mafic.
- A Finance Due Diligence paper will be presented at the 16 March meeting, providing further detail.
- The price path adjustments and a scenario analysis that in-house water services would require significantly higher water charges due to debt constraints.

5 Issues and Options Paper – Commercial Terms

Consensus was reached on the following:

Issue 1: Extent of each Council's guarantee of Water Organisation's debt under LGFA arrangements
Option B: Each Council's guarantee to the LGFA will be joint and several for the WO's full debt, with additional agreement where each Council will indemnify the other to the extent of its ring fenced debt.

Issue 2 – Threshold for changing approach to LGFA guarantee
Option A: Greater than 75% of shareholders (i.e. special resolution threshold)

Issue 3 – Council shareholder's ability to influence level of debt from WO to LGFA
Option D: Do not use any of A, B or C and rely only the in-built statutory provisions

Issue 4 – Form of SRF (under the Local Government Act 2002)
Option A: Joint committee.

Issue 5 – Scope and nature of shareholders involvement in preparing, amending and finalising the WSS
Option A: Shareholders can provide comments on the draft WSS, but cannot:
require the WO to amend the draft WSS; or,
approve the final WSS.

Issue 6 – Triggers to re-assess Class B shares
Option A: Agree to the list of proposed triggers as set out within this Paper (with any exclusions / further inclusions that the parties may request at the JWG meeting).

6 Programme Workplan

The workplan remains on track, subject to minor amendments.

7 General Business

The meeting acknowledged and thanked staff for the exemplary quality and volume of work delivered to date.

Closing

- Meeting closed with karakia.
- Next meeting: 9 March 2026 at Western Bay offices.

LWDW: TCC & WBOPDC

Commercial Term Sheet: Water Organisation Foundation Documents

	Term	Options for consideration	Political or commercial decision[1]	JWG CONSENSUS
Constitution				
Foundational information				
1.	*Name of Water Organisation*	[TBC]	Political	This is covered under a separate workstream, and is being addressed separately.
2.	*TCC stormwater: Should TCC or the WO be responsible for stormwater services within the TCC region?*[2]	(a) Council transfers responsibility for stormwater services to the WO (b) Council retains responsibility for stormwater services	Political	Option (a). JWG consensus view was for TCC to transfer responsibility for stormwater services to the WO. Subsequently (and consistent with the JWG consensus) on 10 February 2026, TCC's full Council resolved that responsibility for stormwater services will be transferred to the WO.[3]
3.	*TCC stormwater: In the event TCC retains responsibility for stormwater services, who delivers the service?*[4]	(a) TCC delivers stormwater services in-house (b) TCC outsources stormwater delivery to the WO	Political	Not applicable because TCC did not decide to retain stormwater responsibility.
4.	*Stormwater charging: In the event WO assumes responsibility for stormwater (either for WBOPDC only, or both WBOPDC and TCC), do the shareholders want to be*	(a) The WOs operational matters (including charging) are set by the WO Board with some operational direction from the shareholders (b) The WOs operational matters (including charging) are set by the WO Board	Political	Option (x[6]). The shareholders may have some ability to provide operational direction with respect to stormwater charging only. But TCC's full Council has requested further advice on this prospect. [7]

[1] Political decisions were covered in presented within issues & options papers have advantages and disadvantages. Whereas commercial decisions received a recommendation only.
[2] Option Paper #3, issue 1. Presented on 22 December 2025. JWG consensus formed on 22 December 2025
[3] Subsequently, on 10 February 2026 TCC's Council resolved to transfer stormwater to the WO along with drinking water and wastewater (subject to 2 April decision).
[4] Option Paper #3, issue 2. Presented on 22 December 2025. No consensus formed as this issue was not applicable because TCC did not decide to retain stormwater responsibility.
[6] In this paper, where "Option (x)" is mentioned, this reflects the fact that the JWG reached a consensus on an option that was not presented to them in the Issues & Options papers (instead, the Option (x) was raised and a consensus formed at the relevant JWG meeting).
[7] TCC's full Council resolved on 10 February to request further information from staff about the prospect of providing operational input to the WO on the topic of stormwater charging, including the option of "pass-through" charging.

	Term	Options for consideration	Political or commercial decision[1]	JWG CONSENSUS
	providing direction on operational matters?[5]			
Ownership and control, and governance structure				
5.	*Number of directors*[8]	(a) Up to 5 directors (b) Different number of directors	Political	Option (a). Up to 5 directors. At commencement, there may well be less than 5 directors appointed, with the Board only growing to its full size in due course.
6.	*Director appointment*[9]	(a) Each shareholder will have a right to appoint one or more directors (as specified), with additional directors appointed by agreement (but noting all directors must be independent once the Water Organisation takes on the Water Services obligations) (b) Shareholders (directly or via SRF) will jointly appoint all directors	Political	Option (b). Shareholders (directly or via SRF) will jointly appoint all directors. For clarity, the SRF at its inception will only have the ability to make recommendations. All directors jointly appointed in a manner consistent with Director Skills Matrix and each Council's policy for appointing CCO directors.
7.	*Director Term of appointment*[10]	(a) Specified appointment term (eg 3 years), with a requirement to retire (but option to be re-elected) up to a maximum term (eg 9 years (3 x 3)) (b) Unspecified appointment term, with no requirement to retire unless removed/replaced	Commercial	Option (a). A term of up to 3 years, and a maximum of 3 terms (if re-elected). Provides a 9 year maximum total duration.
8.	*Director Remuneration*[11]	(a) Determined by shareholders by ordinary resolution (ie >50% vote) (b) Determined by shareholders by unanimous resolution (c) Determined by the SRF	Political	Option (x). SRF to make a recommendation (taking into account each shareholder's policy, and market benchmarking data) for the full Councils to decide.
9.	*Interested directors allowed to vote on remuneration or other matters?* [12]	(a) Yes (b) No (c) No, except for specified circumstances.	Commercial	Option (c). No, except for the following specified circumstances (being, any payment or other benefit under s 161 of the Companies Act; and the entry into an indemnity or insurance arrangement).
10.	*Whether dividends permitted*[13]	(a) No dividend permitted (b) Dividend permitted with board approval (c) Dividend permitted with unanimous shareholder approval	Political	Option (x). Dividends not permitted unless there is unanimous shareholder approval plus approval from the WO's Board of Directors (by ordinary Board resolution) subject to meeting

[5] Option Paper #3, issue 3. Presented on 22 December 2025. JWG consensus formed on 22 December 2025.
[8] Issue & Option Paper #5, issue 6. Presented on 2 February 2026. JWG consensus formed on 13 February 2026.
[9] Issue & Option Paper #5, issue 7. Presented on 2 February 2026. JWG consensus formed on 13 February 2026.
[10] Issue & Option Paper #6, issue 1. Presented on 16 February 2026. JWG consensus formed on 16 February 2026.
[11] Issue & Option Paper #6, issue 2. Presented on 16 February 2026. JWG consensus formed on 16 February 2026.
[12] Issue & Option Paper #6, issue 3. Presented on 16 February 2026. JWG consensus formed on 16 February 2026.
[13] Issue & Option Paper #6, issue 4. Presented on 16 February 2026. JWG consensus formed on 16 February 2026.

	Term	Options for consideration	Political or commercial decision[1]	JWG CONSENSUS
				any solvency and statutory tests (as per Companies Act).
11.	*Additional reporting obligations of the Water Organisation to each Council*[14]	(a) Include explicit additional reporting requirements upfront. (b) Do not specify additional reporting requirements and instead rely on the flexibility of section 249 and require additional documents as and when the Councils see fit.	Commercial	Option (b). Do not specify additional reporting requirements and instead rely on the flexibility of section 249 and require additional documents as and when the Councils see fit.
12.	*Scope and nature of shareholders involvement in preparing, amending and finalising the WSS.* [15]	(a) Shareholders can provide comments on the draft WSS, but cannot: i. require the WO to amend the draft WSS; or, ii. approve the final WSS (b) Shareholders can: i. provide comments on the draft WSS; ii. require the WO to amend the draft WSS; iii. approve the final WSS. (c) For the first WSS, shareholders can i. provide comments on the draft WSS; ii. require the WO to amend the draft WSS; iii. approve the final WSS. However, for the second and subsequent WSS, the shareholders can only provide comments	Political	Option (a). Shareholders can provide comments on the draft WSS only (and cannot require the WO to amend the draft WSS; or approve the final WSS)
Shareholders' Agreement				
Foundational information				
13.	*Shareholding Sub-part A: methodology of allocating shares*[16]	(a) Proportionate to the net assets each shareholding council transfers to the Water Organisation (and not subsequently adjusted) (b) Proportionate to the population or number of water connections each shareholding council has at the transfer date (and not subsequently adjusted) (c) A hybrid model comprised of one or more of a range of metrics (net assets, population, connections etc.) (d) One of the above options, with a subsequent review and adjustment (eg annually) to water connections	Political	Option (x). Shares to be divided into 2 classes: • Class A shares (voting rights only): Split evenly across shareholders. • Class B shares (ownership): (TBC, issue to be discussed at 16 March JWG meeting)
14.	*Shareholding Sub-part B: ongoing review*	(a) Review and adjust shareholding on a regular basis (such as bi-annually). (b) Do not review and adjust shareholding	Political	Option (a). Regular review and adjustment of shares. The triggers for reviewing and adjusting shares is discussed further below at issue 37 (discussed at JWG meeting on 2 March)

[14] Issue & Option Paper #6, issue 5. Presented on 16 February 2026. JWG consensus formed on 16 February 2026.
[15] Issue & Option Paper #8, issue 5. Presented on 2 March 2026. JWG consensus formed on 2 March 2026.
[16] Issue & Option Paper #4, issue 1, subpart A. Presented on 29 January 2026. JWG consensus formed on 13 February 2026.

	Term	Options for consideration	Political or commercial decision[1]	JWG CONSENSUS
	and adjustment of shares[17]			
Voting rights and decision making				
15.	*Rights attaching to shares*[18]	(a) The number of shares (however the split of shareholdings may be determined) will then determine the voting rights of a shareholder (b) Each shareholder has equal voting rights (regardless of shareholding percentage)	Political	Option (b). Each shareholder has equal voting rights (regardless of ownership shareholding percentage).
16.	*Size of SRF*[19]	No options provided as the size of the SRF was to be informed by the JWG's view on the number of Elected Member representatives (CTS item 17), the number of Tangata Whenua representatives (CTS items 18 and 19), whether an independent chair will be appointed to the SRF (CTS item 20) and what the JWG viewed as right-sizing for the SRF.	Political	Option (x). SRF will commence with 3 / 3 / 3 (TCC / WBOPDC / Tangata Whenua) members and can evolve within the scale of 2 - 4 members per party (always with equal number per party, including Tangata Whenua).
17.	*SRF Membership – Elected Members.* [20]	(a) One or more elected member[s] of each shareholding council. (b) At least one elected member, and one or more other person[s] (senior council officer, or an independent expert or specialist) appointed by either individually by each shareholding council, or collectively by all shareholding councils.	Political	Option (a). Each party (i.e. each Council plus TW) to have one or more elected members of each shareholding council (equal number of members, between 2 to 4 members each).
18.	*SRF Tangata Whenua (Sub-part 1): The role of Tangata Whenua on the SRF*[21]	(a) TW has no position on the SRF, and instead TW has an advisory role to the SRF (via an 'Advisory Board' type arrangement which links directly into the SRF). (b) TW has a position on the SRF but with no voting rights. (c) TW has a position on the SRF but with limited voting rights (such as no right to vote on financial matters). (d) TW has a position on the SRF with full voting rights.	Political	Option (x). Initially the SRF will be advisory / recommendatory body only (not delegated any decision-making authority). On that basis (i.e. nobody will have final decision-making voting rights on the SRF) TW will have a formal position on SRF, equivalent to all other SRF parties.
19.	*SRF Tangata Whenua (Sub-part 2): The number of Tangata*	(a) One Tangata Whenua representative. (b) The same number of representatives as each shareholding council. For example, if each shareholder has two representatives on the SRF, Tangata	Political	Option (b). Tangata Whenua will have the same number of representatives as each shareholding council. For example, if each shareholder has two representatives on the

[17] Issue & Option Paper #4, issue 1, subpart B. Presented on 29 January 2026. JWG consensus formed on 13 February 2026. See the range of triggers at Schedule B (and item 45) of this document.
[18] Issue & Option Paper #4, issue 2. Presented on 29 January 2026. JWG consensus formed on 13 February 2026.
[19] Issue & Option Paper #5, issue 1. Presented on 2 February 2026. JWG consensus formed on 13 February 2026.
[20] Issue & Option Paper #5, issue 2. Presented on 2 February 2026. JWG consensus formed on 13 February 2026. JWG also provided direction to staff to include flexibility for the number of members for each party to change (i.e. reduce) as more Councils become shareholders. So they may decide to have 4 members each while there are 3 parties. But by the time an additional 4 Councils join, it may be more appropriate for each party to only have 2 reps on the Forum.
[21] Issue & Option Paper #5, issue 3, subpart 1. Presented on 2 February 2026. JWG consensus formed on 13 February 2026.

	Term	Options for consideration	Political or commercial decision[1]	JWG CONSENSUS
	Whenua representatives on the SRF[22]	Whenua will also have two representatives on the SRF.		SRF, Tangata Whenua will also have two representatives on the SRF.
20.	*SRF independent chair (Sub-part 1): Whether to appoint an independent chair*[23]	(a) Yes, SRF has an independent chair. (b) No, SRF has no independent chair	Political	Option (x). SRF reserves right to appoint and remove an independent chair at the SRF's discretion.
21.	*SRF independent chair (Sub-part 2): Whether independent chair will have a vote*[24]	(a) An independent chair with no voting rights. (b) An independent chair with limited voting rights. For example, only as a casting vote or only a vote on defined topics. (c) An independent chair with full voting rights.	Political	Option (a). Independent chair (if appointed) will have no voting rights.
22.	*SRF nominations: (Sub-part 1) Nomination of Tangata Whenua representatives to the SRF*[25]	(a) Tangata Whenua representatives are appointed by shareholding councils, following a nomination from Tangata Whenua. (b) Tangata Whenua representatives are appointed by shareholding councils, without a nomination from Tangata Whenua.	Political	Option (a). Tangata Whenua representatives are appointed by shareholding councils, following a nomination from Tangata Whenua
23.	*SRF nominations: (Sub-part 2) Nomination of all members of the SRF*[26]	(a) Each council individually appoints its own representatives to the SRF; and, all shareholders jointly appoint: i. Any Tangata Whenua representatives (if approved). ii. An independent chair (if approved). (b) The shareholders jointly appoint all representatives to the SRF, including: i. Its own representatives. ii. Any Tangata Whenua representatives (if approved). iii. An independent chair (if approved).	Political	Option (a). Each council individually appoints its own representatives to the SRF; and, all shareholders jointly appoint: i. Any Tangata Whenua representatives (if approved). ii. An independent chair (if approved).
24.	*Extent of shareholding council's guarantee to Water Organisation's under LGFA arrangements* [27]	(a) Each Council's guarantee to the LGFA will be joint and several for the WO's full debt (b) Each Council's guarantee to the LGFA will be joint and several for the WO's full debt, with additional agreement where each Council will indemnify the other to the extent of its ring fenced debt.	Political	Option (b). Each Council's guarantee to the LGFA will be joint and several for the WO's full debt, with an additional agreement between the Councils where each Council will indemnify the other to the extent of its ring fenced debt
25.	*Threshold for changing approach to*	(a) Greater than 75% of shareholders (i.e. special resolution threshold) (c) Unanimous shareholders	Political	Option (a). Greater than 75% of shareholders (i.e. special resolution threshold)

[22] Issue & Option Paper #5, issue 3, subpart 2. Presented on 2 February 2026. JWG consensus formed on 13 February 2026.
[23] Issue & Option Paper #5, issue 4, subpart 1. Presented on 2 February 2026. JWG consensus formed on 13 February 2026.
[24] Issue & Option Paper #5, issue 4, subpart 2. Presented on 2 February 2026. JWG consensus formed on 13 February 2026.
[25] Issue & Option Paper #5, issue 5, subpart 1. Presented on 2 February 2026. JWG consensus formed on 13 February 2026.
[26] Issue & Option Paper #5, issue 5, subpart 2. Presented on 2 February 2026. JWG consensus formed on 13 February 2026.
[27] Issue & Option Paper #8, issue 1. Presented on 2 March 2026. JWG consensus formed on 2 March 2026.

	Term	Options for consideration	Political or commercial decision[1]	JWG CONSENSUS
	LGFA guarantee[28]			
26.	*Council shareholders' ability to influence level of debt from WO to LGFA*[29]	(a) Use of Statement of Expectations with carve-out in foundation documents (b) Comment on, or approval of, water services strategy, with carve-out in foundation documents (c) Constrain WO's debt as guarantor via side-agreement (d) Do not use any of A, B or C and rely only the in-built statutory provisions	Political	Option (d). Rely on in-built statutory provisions (i.e. ability to comment on WSS and include general requirements in SOE).
Board meetings				
27.	*Frequency of board meetings*[30]	(a) Strict: "Monthly". (b) Flexible: "As determined by the Board". (c) Hybrid: "Monthly or as otherwise determined by the Board".	Commercial	Option (c). Monthly or otherwise as determined by the Board.
28.	*Will the chair of a board have a casting vote?* [31]	(a) Yes – Chair has a casting vote. (b) No – Chair does not have a casting vote.	Political	Option (b). No – Chair does not have a casting vote.
Shareholder meetings				
29.	*Frequency of SRF meetings*[32]	(a) Strict: "Bi-monthly". (b) Flexible: "As determined by the SRF". (c) Hybrid: "Bi-monthly or as otherwise determined by the SRF".	Commercial	Option (c). Hybrid: Bi-monthly or as otherwise determined by the SRF or Councils
30.	*Frequency of shareholder meetings*[33]	(a) "Annually". (b) Annually, with a right for either shareholder to call a meeting at any time. (c) Every 6 months, with a right for any shareholder to call a meeting at any time	Commercial	Option (b). Annually, with a right for any shareholder to call a meeting at any time
31.	*What constitutes a quorum at a shareholders meeting*[34]	(a) One representative from each shareholding Council. (b) Two representatives from each shareholding Council. (c) More than two representatives from each shareholding Council (please specify number).	Commercial	Option (b). Two representatives from each shareholding Council
Decision-making by SRF				
32.	*Decision-making of SRF*[35]	(a) Simple majority (b) Consensus	Commercial	Option (x). By consensus where possible, and where that is not possible by simple majority,

[28] Issue & Option Paper #8, issue 2. Presented on 2 March 2026. JWG consensus formed on 2 March 2026.
[29] Issue & Option Paper #8, issue 3. Presented on 2 March 2026. JWG consensus formed on 2 March 2026. Specifically, do not introduce "carve-outs" in the foundation documents to enable the shareholders to require more specificity in SOE, or require changes to WSS, or approve WSS. Similarly, no desire to constrain WO's debt as guarantor via side-agreement.
[30] Issue & Option Paper #6, issue 6. Presented on 16 February 2026. JWG consensus formed on 16 February 2026.
[31] Issue & Option Paper #6, issue 7. Presented on 16 February 2026. JWG consensus formed on 16 February 2026.
[32] Issue & Option Paper #7, issue 3. Presented on 23 February 2026. JWG consensus formed on 23 February 2026.
[33] Issue & Option Paper #7, issue 5. Presented on 23 February 2026. JWG consensus formed on 23 February 2026.
[34] Issue & Option Paper #7, issue 6. Presented on 23 February 2026. JWG consensus formed on 23 February 2026.
[35] Issue & Option Paper #7, issue 2. Presented on 23 February 2026. JWG consensus formed on 23 February 2026.

	Term	Options for consideration	Political or commercial decision[1]	JWG CONSENSUS
				but with dissenting views being presented to Councils
33.	*Responsibilities of SRF*[36]	(a) Specify a list of subject matter to reflect the list (see Schedule A) with any amendments the Councils may choose to make. (b) Do not specify a list of subject matter, and instead wait for issues to arise that the Councils feel ought to be tasked to the SRF, and have both Councils issue resolutions assigning the issues to the SRF as and when they arise	Political	Option (a). Specify a list of subject matter to reflect the list above (with any amendments the Councils may choose to make) See Schedule A for complete list to go into terms of reference.
34.	*Form of SRF (under LGA)* [37]	(a) Joint committee. (b) Other subordinate decision-making body ("SDMB"). (c) Contractual (non-LGA) arrangement	Political	Option (a). Joint committee under LGA
Reserved or other matters				
35.	*Decisions requiring unanimous shareholder approval (Sub-part A): Whether to define matters requiring unanimous approval of shareholders*[38]	Are there defined material decisions which require unanimous approval: (a) Yes, some matters will require unanimous shareholder approval (b) No matters will require unanimous shareholder approval	Political	Option (a). Yes, some matters will require unanimous shareholder approval (itemised in next topic CTS item 36).
36.	*Decisions requiring unanimous shareholder (Sub-part B): Matters requiring unanimous approval of shareholders*[39]	If yes, what are the matters that will require unanimous approval? Examples proposed included: (a) The addition of new shareholder; (b) Liquidation or winding up of WO; (c) Amending the WO's constitution or SHA; (d) Approving an amalgamation, merger or major restructure of WO; and (e) The future addition of any further decisions that will require unanimous approval.	Political	The following matters will require unanimous shareholder approval: (a) Adding new shareholders (b) Liquidation or winding up of WO (c) Amending the WO's constitution or SHA (d) Approving an amalgamation, merger or major restructure of WO. (e) The future addition of any further decisions that will require unanimous approval. (f) Removal of anti-privatisation clauses within foundation documents.[40]
37.	*Shareholder special resolutions (Sub-part A): Whether to add*	Should any matters be added to the statutory list of special resolution topics (a) Yes, matters will be added to the statutory list of special resolution topics	Political	Option (a). Yes matters will be added to the statutory list of special resolution topics (itemised in next topic CTS item 38).

[36] Issue & Option Paper #7, issue 1. Presented on 23 February 2026. JWG consensus formed on 23 February 2026.
[37] Issue & Option Paper #8, issue 4. Presented on 2 March 2026. JWG consensus formed on 2 March 2026.
[38] Issue & Option Paper #4, issue 3, subpart A. Presented on 29 January 2026. JWG consensus formed on 13 February 2026.
[39] Issue & Option Paper #4, issue 3, subpart B. Presented on 29 January 2026. JWG consensus formed on 13 February 2026.
[40] This item was added at a subsequent JWG meeting, namely 16 February 2026 in the context of discussing anti-privatisation.

	Term	Options for consideration	Political or commercial decision[1]	JWG CONSENSUS
	topics to the statutory list requiring special resolution[41]	(b) No, matters should not be added to the statutory list of special resolution topics		
38.	*Shareholder special resolutions (Sub-part B): Matters requiring 75+% approval of shareholders' votes*[42]	If yes, what are the additional matters that will require special resolution? Examples proposed included: (a) Issue of, or changes to rights attaching to, or buy-backs of, shares. (b) A material change to the nature of the WO's business. (c) Approving any shareholder funding and/or shareholder guarantee obligations. (d) Giving financial assistance for the purposes of purchasing shares. (e) The future addition of any further matters that will require special resolution approval.	Political	In addition to any statutory matters requiring special resolution, the following matters will also require special resolution threshold: (a) Issue of, or changes to rights attaching to, or buy-backs of, shares. (b) A material change to the nature of the WO's business. (c) Approving any shareholder funding and/or shareholder guarantee obligations. (d) Giving financial assistance for the purposes of purchasing shares. (e) The future addition of any further matters that will require special resolution approval.
39.	*Shareholder special resolutions (Sub-part C): Whether to increase special resolution voting threshold above 75+%* [43]	Should the threshold for special resolutions be increased above 75% and above the major shareholder's shareholding? (a) No. Leave the special resolution threshold at the statutory default 75% (b) Yes. Increase the special resolution threshold above 75% and above the major shareholders shareholding.	Political	Option (a). No. Leave the threshold for special resolutions would remain at 75%
40.	*Protection against privatisation*[44]	(a) Include additional anti-privatisation clauses within the foundation documents (over and above what is provided in the Act), and require unanimous shareholder approval before such clauses can be amended. (b) Do not include anti-privatisation clauses within the foundation documents over and above what is provided in the Act	Political	Option (a). Include additional anti-privatisation clauses within the foundation documents (over and above what is provided in the Act) and require unanimous shareholder approval before such clauses can be amended.
Dispute resolution				
41.	*Dispute resolution regime*[45]	(a) Escalation process comprising: Negotiation → Mediation → Arbitration. (b) Mediation then Court	Commercial	Option (c). Escalation process comprising: Negotiation → Mediation → Arbitration.

[41] Issue & Option Paper #4, issue 4, subpart A. Presented on 29 January 2026. JWG consensus formed on 13 February 2026.
[42] Issue & Option Paper #4, issue 4, subpart B. Presented on 29 January 2026. JWG consensus formed on 13 February 2026.
[43] Issue & Option Paper #4, issue 4, subpart C. Presented on 29 January 2026. JWG consensus formed on 13 February 2026.
[44] Issue & Option Paper #6, issue 8. Presented on 16 February 2026. JWG consensus formed on 16 February 2026. There was discussion about requiring a poll/referendum before any privatisation, which will be investigated further.
[45] Issue & Option Paper #6, issue 9. Presented on 16 February 2026. JWG consensus formed on 16 February 2026. There was discussion about the possibility of conducting some arbitrations in an open forum in the interests of transparency if all parties to the arbitration agree. The parties reserve the position to seek urgent interlocutory relief from the Court system without going through the escalation process.

	Term	Options for consideration	Political or commercial decision[1]	JWG CONSENSUS
42.	*Frequency of re-visiting SRF functions*[46]	(a) Do not specify a frequency for revisiting the SRF's function, and instead rely on the ability to vary the Shareholders' Agreement (if all shareholders agree) to amend the SRF's function. (b) Revisit only towards the end of the triennium with a recommendary report to be considered by the incoming Councils. (c) Revisit at the earlier of either: i. another shareholder joining the WO; or, ii. towards the end of the triennium with a recommendary report to be considered by the incoming Councils; or, iii. otherwise as determined by a majority of the WO's shareholders.	Political	Option (x[47]). Revisit at the earlier of either: i. another shareholder joining the WO; or, ii. towards the end of the triennium with a recommendary report to be considered by the incoming Councils; or, iii. otherwise as determined by a majority of the WO's shareholders, or iv. any substantive legislative change or other significant matter impacting treaty settlements
43.	*Period of time before topic of ring-fencing is revisited*[48]	(a) No later than three years after the incorporation of the WO. (b) No later than six years after the incorporation of the WO	Political	Option (x): No later than three years after the incorporation of the WO, the shareholders must consider whether to require the WO to provide a full report to the shareholders on the issue of revisiting the financial ring-fencing arrangement. The shareholders may decide not to require that report at the three-year point, but in that case the requirement to obtain a full report must not be deferred beyond six years after the incorporation of the WO. If the shareholders have not required the WO to provide a full report before the date that is six years after the incorporation of the WO, the WO must, at that time, provide a full report to the shareholders on the issue of revisiting the financial ring-fencing arrangement.
44.	*Selection of Chair of Board of Directors*[49]	(a) Board selects and appoints the Chair (b) Councils select and appoint the Chair	Political	Option (a). Board selects and appoints the Chair
45.	*Will Tangata Whenua hold Class A (voting right) shares?*[50]	(a) Yes (b) No	Political	Option (b). Consensus that only Councils will hold Class A shares
46.	*Triggers to re-assess Class B shares*[51]	(a) Agree to the list of proposed triggers as set out at Schedule B. (b) Do not define a particular list of triggers and instead deal with circumstances as and when they arise	Political	Option (a). The list of proposed triggers as set out at Schedule B of this CTS document

[46] Issue & Option Paper #7, issue 4. Presented on 23 February 2026. JWG consensus formed on 23 February 2026.
[47] The JWG formed a consensus on option (c) with additional sub-item (iv).
[48] Issue & Option Paper #7, issue 7. Presented on 23 February 2026. JWG consensus formed on 23 February 2026.
[49] Issue & Option Paper #7, issue 8. Presented on 23 February 2026. JWG consensus formed on 23 February 2026.
[50] This topic was initially raised on 13 February as a prospect by Tangata Whenua. The topic was thereafter discussed at the JWG meetings on 13 February, 23 February and 2 March (with research undertaken between those meetings to establish whether it was a legal possibility for Tangata Whenua to own Class A voting shares). On 2 March a consensus was formed that Tangata Whenua will not own class A voting shares.
[51] Issue & Option Paper #8, issue 6. Presented on 2 March 2026. JWG consensus formed on 2 March 2026.

SCHEDULE A: SRF RESPONSIBILITY SUBJECT MATTER LIST

1. The shareholders will assign the following subject matters to the SRF (and that in due course the following list – amended as the Councils see fit – could be captured within a schedule the SRF's Terms of Reference):

    a. Statement of Expectations ("SOE"). Responsibilities to include:

        i. Review draft SOE prepared by staff.

        ii. Provide feedback and comments on draft documents to staff and require amendments to achieve a version of the SOE that the SRF is content to endorse to the Councils.

        iii. Present SOE to both Councils for recommendation.

    b. Director remuneration. Responsibilities to include:

        i. Review remuneration policies.

        ii. Review market data benchmarking information.

        iii. Prepare recommendations and present to both Councils for recommendation.

    c. Service Level Agreements.[52] Responsibilities to include:

        i. Review draft agreements prepared by staff (and potentially negotiated with the WO).

        ii. Provide feedback and comments on draft documents to staff and request negotiated changes to draft documents to achieve a version of each agreements that the SRF is content to endorse to the Councils.

        iii. Present agreements to Councils for recommendation.

    d. Significant contracts.[53] Responsibilities to include:

        i. Review WO's proposal for a significant contract, and WO's assessment of options.

        ii. Form a recommendation for the Councils to consider, and present to Councils.

    e. Appointment of Board of Directors. Responsibilities to include:

        i. Review candidates against Director Skills Matrix and any policies of the respective Councils.

[52] That is, those agreements between the WO and the relevant Council that address the management of mixed use assets, or services shared across both organisations (as examples).
[53] As captured by sections 23 and 24 of the Local Government (Water Services) Act 2025. This will capture public-private partnerships as defined within the Act.

ii. Form a view on proposed Director appointment roles that the SRF is content to endorse to the Councils.

iii. Consideration of succession planning, rotation and future skill requirements.

iv. Oversee Board performance review.

v. Present recommendation to both Councils.

f. Any WO policies that require shareholder input (such as significance and engagement policy or director appointment policy). Responsibilities to include:

i. Review draft policy prepared by WO (or prepared by Council staff if relevant).

ii. Provide feedback and comments on draft documents to WO / to staff and require amendments to achieve a version of the relevant policy that the SRF is content to endorse to the Councils.

iii. Present policies to Council(s) for recommendation.

g. Director Skills Matrix. Responsibilities to include:

i. Review Director Skills Matrix periodically to align term of appointment to Board.

ii. As the SRF sees fit, prepare amendments of the Matrix and present to both Councils for recommendation.

h. WO's Water Services Strategy ("WSS"). Responsibilities to include:

i. Review draft WSS provided by WO.

ii. Prepare proposed comments on the WSS for the Councils to raise with the WO.

iii. Present the proposed comments to Councils for recommendation.

i. Annual review of the WO in accordance with s 250 of the Act.[54] Responsibilities to include:

i. Prepare an annual report with the SRF's perspective on the performance of the WO including the WO's performance in giving effect to the SOE and WSS.

ii. Present annual report to both Councils for recommendation.

j. WO's Water services annual report. Responsibilities to include:

i. Review WO's annual report.

ii. Prepare comments on the WO's annual report

[54] Section 250 requires shareholders to "regularly monitor the performance of the water organisation [including] an annual review of the organisation's performance in giving effect to" the SOE and WSS.

iii. Provide comments to Councils for recommendation.

k. WO's half-yearly water services report.[55] Responsibilities to include:

i. Review WO's half-yearly report.

ii. Prepare comments on the report

iii. Provide comments to Councils for recommendation.

l. WO's annual budget. Responsibilities to include:

i. Review WO's annual budget.

ii. Prepare comments the WO's annual report

iii. Provide comments to Councils for recommendation.

m. Any other plans or reports that the shareholders require from the WO under section 249 of the Act. Responsibilities to include:

i. Review WO's plans or reports.

ii. Prepare comments and provide to Councils for recommendation.

n. Any other functions (and responsibilities related to such functions) assigned to the SRF by the shareholders in writing over time (whether those functions are initially raised by the Councils, or initially raised by the SRF for recommendation and approved by the Councils).

[55] Section 248 Local Government (Water Services) Act 2025.

Schedule B: Proposed role of SRF with respect to each function

1. Staff have proposed the following triggers could initiate a review and (where appropriate) an adjustment of Class B shareholding:
    a. The addition of a Council shareholder to the WO.
    b. The departure of a Council shareholder from the WO.
    c. Any reorganisation of local government structures (such as amalgamation or otherwise)[56] that directly impacts any of the Council shareholders.
    d. An end (or substantial change) to the WO's financial ring-fencing arrangements.
    e. Any periodic re-valuation of the water-related assets transferred to the WO by *all of* the shareholding Councils.[57]
    f. A material change to the value of the water-related assets transferred to the WO by *any one* of the shareholding Councils which would result in more than a 5% change in the shareholding allocation.[58]
    g. If the methodology for allocating shares includes a basis in addition to net assets (such as connections or population), a material change in that basis which would result in more than a 5% change in the shareholding allocation[59]
    h. In the absence of any other "trigger-event" occurring, once every 6 years.

[56] At the time of writing, we note that within the current proposed reform of Local Government arrangements (and we acknowledge this is subject to feedback and potential change) the "Combined Territories Board" (comprising the Mayors residing within Bay of Plenty Regional Council's borders) will be required to generate "Regional Reorganisation Plans" within 2 years of the replacement of Regional Councillors.
[57] For clarity, to ensure fairness to all parties, we recommend that any such periodic revaluation be conducted by a single valuer for both sets of assets with a common valuation date, valuation methodology and key input assumptions.
[58] We anticipate this option (f) would likely only be relevant during the ring-fencing period.
We are seeking the JWG's direction on the methodology for issuing the Class B (ownership) shares at the JWG meeting on 9 March 2026.

LWDW: Ongoing list of "Park and Return" items

Purpose

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.

The JWG has met on numerous occasions to take reports from staff and to discuss matters relating to the establishment of the WO. Throughout those JWG meetings, a number of topics have arisen where staff and the JWG members have agreed to "park and return" to the issue at a later date. The purpose this document is to maintain a "live" list of such items, with an explanation and proposed timeframe / mechanism for closing out each issue. [1]

Parked item	Explanation / Description	Timeframe / Mechanism to close out item
Clarification of WO's commitment to Treaty / Tiriti principles and Treaty / Tiriti settlement obligations. Also clarification on the Tangata Whenua Partnership approach with the WO	Tangata Whenua reps on the JWG have queried where and how the WO's commitment to Treaty / Tiriti principles and Treaty / Tiriti settlement obligations will be recorded. A Tangata Whenua Partnership paper was included in the agenda of a JWG meeting and discussed. The paper information some of the conversations and direction. Further discussions required as and when the WO arrangements are put in place.	The intention is to address these topics initially within the Shareholders' Agreement, Constitution and the Statement of Expectations. Beyond that, the WO may address these topics further within WO policies authored by the WO.
Tangata Whenua stocktake	Review of each element of the Tangata Whenua stocktake,[2] and determine how each item will be addressed in the WO environment.	This topic will form part of the transitional workplan for the WO.
Dividends	Staff are instructed to reiterate in the Statement of Expectations that dividends not permitted unless there is unanimous shareholder approval plus approval from the WO's Board of Directors (by ordinary Board resolution) subject to meeting any solvency and statutory tests (as per Companies Act). Staff are asked to emphasise that exceptional circumstances would need to be in place before any dividends would be permitted	This topic will be addressed in the Statement of Expectations (and also the Shareholders' Agreement)

[1] Once an item has been revisited, and a consensus reached by the JWG, the item will be removed from this document.

[2] Which was presented to the JWG on 23 February 2026.

Parked item	Explanation / Description	Timeframe / Mechanism to close out item
Introduce flexibility re size of SRF	JWG members have requested that staff include flexibility for the number of members for each party to change (i.e. reduce) as more Councils become shareholders. So they may decide to have 3 members each initially while there are 3 parties on the SRF. But by the time additional Councils join as shareholders, it may be more appropriate for each party on the SRF to only have 2 reps on the Forum	This topic will be addressed in the SRF Terms of Reference (and as necessary, also within the Shareholders' Agreement).
Poll re prospect of privatisation	The JWG has reached a consensus[3] view to include anti-privatisation clauses within the WO's foundation documents that will preclude the sale of any shares in the WO to non-territorial authorities. This will be in addition to the statutory provisions that reflect the same. There has also been a discussion at JWG level about requiring a public poll (i.e. public referendum) to be conducted before the anti-privatisation position under the WO's foundation documents is revisited.	This topic can be considered in further detail when the WO's foundation documents are being drafted and presented for approval.
Dispute resolution: arbitrate in open forum	The JWG has reached a consensus that the dispute resolution process will reflect the following: Escalation process comprising: Negotiation → Mediation → Arbitration. There was additional discussion about arbitration being a private process. A query was made about whether arbitration could be undertaken in an open forum if the disputing parties each consented to do so.	This topic can be incorporated into WO's foundation documents are being drafted.
Treaty settlements and resource consents (such as water-take consents etc)	Tangata Whenua have queried how the establishment of the WO will impact existing resource consents (including water-take consents) relating to Treaty / Tiriti settlements. For example, Tangata Whenua are particularly concerned to ensure that local Marae will have ongoing access to the Waiari water supply	Work programmes moving forward will be updated to capture and incorporate consideration of this topic.
Query regarding Tangata Whenua representatives on SRF	At the 2 March JWG meeting, a query was raised regarding Tangata Whenua representatives on the SRF. The query reflected the fact that WBOPDC's boundaries do not align perfectly with the boundaries of	Documents such as the Shareholders Agreement and the SRF Terms of Reference will clarify the appointment process

[3] Although the JWG itself reached a consensus (i.e. the majority within each party formed the same view) it is acknowledged that in some instances there was a minority dissenting view within each party.

Parked item	Explanation / Description	Timeframe / Mechanism to close out item
	local Iwi / Hapu (representatives of which may ultimately be nominated to the SRF). To date the JWG has reached a consensus view that: - TCC, WBOPDC and Tangata Whenua will have equal representation on the SRF (such as 3:3:3). - Tangata Whenua will nominate their own representatives to the SRF. - The SRF will take the form of a Joint Committee under the LGA. Accordingly, the Councils will need to ultimately appoint the Tangata Whenua representatives (i.e. confirm the nominations). - The parties do not currently view it as necessary to enter a side-agreement or MOU to confirm that the Councils will appoint the Tangata Whenua nominees (but this issue can be addressed in the future if situations arise that warrant it).	(including the process for appointing Tangata Whenua reps to the SRF).
DC Policy / FINCO Policy / Development Levies Regime[4]	Proposed changes to the Resource Management Act and the Local Government Act require Councils (and the WO) to move away from a "Financial Contributions" model (most immediately) and away from a "Development Contributions" model (within a longer timeframe) and ultimately move to a brand new Development Levies regime. WBOPDC currently uses a FINCO model, so will be the first party to face change. TCC uses a DC model, so will have more time to prepare/adjust. The changes have not yet become law, and are only "proposed" at this stage.	WBOPDC to closely monitor the proposed legislative changes that will remove its ability to charge FINCOs. WBOPDC will need to adapt accordingly. Likewise, TCC will need to closely monitor the proposed changes to DCs, and adapt. Both shareholders (plus the WO, once incorporated) will need to consider how the WO will tackle this issue.
Interaction between Water Services Strategy and Significance and Engagement Policy	On 2 March the JWG reached a consensus view that the shareholders will provide comments on the WO's Water Services Strategy, but will not have the power to require changes or approve the final WSS document. There was discussion about the interaction between the Significance and Engagement Policy and the WSS, with the JWG members wanting to see the S&E Policy once drafted.	Share draft S&E Policy with JWG once drafted.

[4] This topic was addressed in the Legal Due Diligence Paper.

Parked item	Explanation / Description	Timeframe / Mechanism to close out item
Side agreement between Councils regarding indemnity with respect to LGFA joint and several guarantee	On 2 March the JWG reached a consensus view that each Council's guarantee to the LGFA will be joint and several for the WO's full debt, with an additional agreement between the Councils where each Council will indemnify the other to the extent of its ring fenced debt. This will necessitate the drafting of a relevant indemnity side-agreement.	Side agreement to be prepared following 2 April decision, and in conjunction with Councils setting up lines of credit with LGFA and the LGFA requiring joint and several guarantee as a condition of those credit lines.

Water Services | Tauranga City | Western Bay of Plenty District Council

AGENDA

LWDW: Joint Working Group Meeting

16 March 2026

Time: 2.30pm – 5.30pm

Location: WBoPDC Council Chamber,
1484 Cameron Road, Greerton

Order of Business

1. OPENING KARAKIA

2. APOLOGIES

3. BUSINESS

#	Item	Comment/Direction
1	Chairperson discussion	• Chairperson Introductory Comments
2	Confirmation of Meeting notes	• Meeting notes of 9 March endorsed
3	Financial Workstream Papers	• Due Diligence Report • Costs Impacts of Water Services Establishment *(note portions are confidential)* • Cross Boundary Infrastructure Access and Funding Staff overview of the issue and key considerations Working Group questions and discussion *Note - direction / feedback will be sought & the outcome of the meeting will be reflected in the TCC and WBOPDC Reports for decision making*
4	Issues & Options Paper: Class B shares – methodology for Net Asset approach	• Staff overview of the issue and key considerations • Working Group questions and discussion *Note - direction / feedback will be sought & the outcome of the meeting will be reflected in the TCC and WBOPDC Reports for decision making*
5	Commercial Terms	• Consideration of WBoPDC proposed changes
6	Water Organisation Name and Identity Development	• Staff overview of the issue and key considerations • Working Group questions and discussion
7	Programme Workplan	• Update on Programme Workplan
8	General Business	

4. CLOSING KARAKIA

Water Services | Tauranga City | Western Bay of Plenty District Council

LWDW Joint Working Group Meeting

Tauranga City Council & Western Bay of Plenty District Council

Western Bay of Plenty Council Chambers

Date: 9 March 2026

Attendance

Independent Chair: Lyall Thurston

Tauranga City Council:

Members: Cr Marten Rozeboom, Cr Glen Crowther, Cr Kevin Schuler, Cr Hautapu Baker

Western Bay of Plenty District Council:

Members: Mayor James Denyer, Cr Darlene Dinsdale, Cr Grant Dally, Cr Graeme Elvin, Cr Rodney Joyce

Tangata Whenua:

Members: Kylie Smallman, Shadrach Rolleston, Roana Bennett, Hakopa Tapiata, Kiri Allan, Rohario Murray

Non-members: None

Supporting Staff: Christine Jones, Charles Lane, Tyler Buckley, Reneke van Soest, Adele Henderson, Ariell King, Jonathan Fearn, Lucy Reed, Luke Balvert, Cathy Davidson, EJ Wentzel, Heather Burton

Apologies: None

Opening Karakia

Key Discussion Items

The Chair opened the meeting, welcomed attendees, and reviewed housekeeping procedures. Members were reminded that all discussion should be directed through the Chair and that staff instructions are to be followed in the event of an emergency.

2 Meeting Notes – 2 March 2026

Endorsed with the following amendment:

Tangata Whenua & Class A Shareholding

- The **waiariki** consent item…

3 Communication and Engagement Plan

- Luke Belford and Lucy Reed presented a two-page plan outlining key milestones and approaches for public-facing and internal communications.
- The plan includes four main phases:
    - current preparations
    - leading up to the council meeting on the 24th
    - the decision meeting on April 2nd
    - and post-decision communications

- Discussion included whether the two existing council websites could be consolidated into a single source of information. It was noted that this decision would likely be made after 2 April.
- Involvement of Tangata Whenua was discussed and it was agreed that the expectation is to share information with the community, with no requirement for them to provide feedback at this stage.

4 Due Diligence Reports

Legal & Governance
Key points:

- No significant legal red flags identified
- Risks are known, manageable and typical
- No issues identified that will undermine the legality of establishing a WO or the proposed timing or sequencing

What this means:

- Legal due diligence supports proceeding to the next phase
- Key legal work will occur during the establishment phase, including the Transfer Agreement and development of key policies
- Decisions ahead are not constrained by legal risk

Asset Management, Operations & Stormwater (AMOS)
Key points:

- Due Diligence confirms readiness for WO
- Primary risks are workforce capacity, funding alignment, asset data improvements are
- Risks known and manageable

People and Workforce (confidential)

[redacted]

5 Consensus Commercial Terms Sheet

- Several key points were discussed; it was agreed to keep the board size at 5 members with flexibility to temporarily increase to 7 if needed.

- It was agreed that feedback would be sought from both councils to confirm that the paper accurately reflects the agreed positions on the items outlined. Minor issues could be resolved after 24 March, with full agreement required by 2 April to support incorporation of the water organisation on 1 July.

6 Items for consideration and action after 2 April

- It was noted that a workplan will be developed using this list as the initial foundation. The list is considered a live document and can be updated as needed. It was agreed that the list is complete as at today.

7 Programme Workplan

The workplan remains on track, subject to minor amendments.

8 General Business

The meeting thanked everyone for their participation and open conversation.

Closing

- Meeting closed with karakia.
- Next meeting: 16 March 2026 at Western Bay offices.

~~9~~ 120 March 2026

LWDW: TCC & WBOPDC

WBOPDC Comments on Commercial Term Sheet

At the JWG meeting on Monday 9 March, staff requested that if any party wished to introduce amendments to the CTS, they raise the request with staff. On that basis, Western Bay has requested a number of changes.

The table set out below tracks the changes requested by Western Bay based on our interpretation of their request. However, for ease of reference we have also cut and paste Western Bay's exact requests – these appear as "comments" by "TCC Legal". We have also tracked the change requested by Tangata Whenua on Monday regarding its position on Class A (voting) shares.

The purposes of this paper are to:

1. Illustrate the requests that have been made by WB, for the consideration of the JWG.
2. Subject to input from Tangata Whenua, confirm that the "Stakeholder Representative Forum" will re-named the "[Insert WO name] Joint Committee".

Ownership and control, and governance structure				
5	*Number of directors*[1]	(a) Up to 5 directors (b) Different number of directors	Political	Option (~~a~~x). Up to 5 directors, other occasions where more directors will required for succession purposes etc. At commencement, there may well be less than 5 directors appointed, with the Board only growing to its full size in due course.
14	*Shareholding Sub-part B: ongoing review and adjustment of shares*[2]	(a) Review and adjust shareholding on a regular basis . (b) Do not review and adjust shareholding	Political	Option (a). Regular review and adjustmer shares. The triggers for reviewing adjusting shares is discussed further below at issue 37 (discussed at JWG meeting on 2 March)
16	*Size of SRF*[3]	No options provided as the size of the SRF was to be informed by the JWG's view on the number of Elected Member representatives (CTS item 17), the number of Tangata Whenua representatives (CTS items 18 and 19), whether an independent chair will be appointed to the SRF (CTS item 20) and what the JWG viewed as right-sizing for the SRF.	Political	Option (x). 3/3/3 (But also noting that it is likely to change if more councils join)~~SRF commence with 3 / 3 / 3 (TCC / WBOPDC Tangata Whenua) members and can evolve within the scale of 2 - 4 members per party (always with equal number per party, including Tangata Whenua).~~
17	*SRF Membership –*	(a) One or more elected member[s] of each shareholding council.	Political	~~Option (a). Each party (i.e. each Council TW) to have one or more elected member~~

[1] Issue & Option Paper #5, issue 6. Presented on 2 February 2026. JWG consensus formed on 13 February 2026.
[2] Issue & Option Paper #4, issue 1, subpart B. Presented on 29 January 2026. JWG consensus formed on 13 February 2026. See the range of triggers at Schedule B (and item 45) of this document.
[3] Issue & Option Paper #5, issue 1. Presented on 2 February 2026. JWG consensus formed on 13 February 2026.

Commented [TL1]: WB comment: I thought we had allowed for there occasionally to be more than 5 for succession purposes etc?

Commented [TL2]: WB comment (not specific to this item): Check that it is a biannual revaluation of assets

Commented [TL3]: WB comment: I thought we'd agreed 3/3/3 for the SRF, rather than a 2-4 range? (But also noting that it is likely to change if more councils join)

Commented [TL4]: WB comment (not specific to this item): We also need to find a new name for the SRF as the current use of 'stakeholder' is causing issues with some of our Councillors as they then think large water users, and Federated Farmers should sit on what is proposed to be a joint committee of the Councils.

Commented [TL5R4]: Both TCC and WBOPDC have commented they are agreeable to "[Insert WO Name] Joint Committee"

Commented [TL6]: WB comment: Can this be changed to Option (x) rather than Option (a) - the Councillors want it to be clear that it is 1 or more EM and that this doesn't preclude appointing an expert advisor

	Elected Members. [4]	(b) At least one elected member, and one or more other person[s] (senior council officer, or an independent expert or specialist) appointed by either individually by each shareholding council, or collectively by all shareholding councils.		~~each shareholding council (equal number of members, between 2 to 4 members each).~~ Option (x). 1 or more elected member(s) and this does not preclude the appointment of an expert advisor.
18	*SRF Tangata Whenua (Sub-part 1): The role of Tangata Whenua on the SRF*[5]	(a) TW has no position on the SRF, and instead TW has an advisory role to the SRF (via an 'Advisory Board' type arrangement which links directly into the SRF). (b) TW has a position on the SRF but with no voting rights. (c) TW has a position on the SRF but with limited voting rights (such as no right to vote on financial matters). (d) TW has a position on the SRF with full voting rights.	Political	Option (b).~~x). Initially the SRF will be advisory / recommendatory body only (no delegated any decision-making authority). On that basis (i.e. nobody will have final decision-making voting rights on the SRF) TW will have a formal position on SRF, equivalent to all other SRF parties.~~
20	*SRF independent chair (Sub-part 1): Whether to appoint an independent chair*[6]	(a) Yes, SRF has an independent chair. (b) No, SRF has no independent chair	Political	Option (x). ~~SRF~~ Councils reserves righ appoint and remove an independent cha the ~~SRF's councils'~~ discretion (taking into account any recommendations by the SRF).
32	*Decision-making of SRF*[7]	(a) Simple majority (b) Consensus	Commercial	Option (x). By consensus where possible, where that is not possible by simple majo but with dissenting views being presented to Councils
36	*Decisions requiring unanimous shareholder (Sub-part B): Matters requiring unanimous approval of shareholders*[8]	If yes, what are the matters that will require unanimous approval? Examples proposed included: (a) The addition of new shareholder; (b) Liquidation or winding up of WO; (c) Amending the WO's constitution or SHA; (d) Approving an amalgamation, merger or major restructure of WO; and (e) The future addition of any further decisions that will require unanimous approval.	Political	The following matters will require unanim shareholder approval: (a) Adding new shareholders (b) Liquidation or winding up of WO (c) Amending the WO's constitution or SHA (d) Approving an amalgamation, merger or major restructure of WO. (e) The future addition of any further decisions that will require unanimous approval. (f) Removal of anti-privatisation clauses within foundation documents.[9] ~~(f)~~(g) Payment of dividends by the WO (this will also be subject to additional approval from the WO's Board of

Commented [TL7]: WB comment: Option x is rather unclear. I thought we'd chosen option b. Separately, we then need to make clear it is a recommendatory body only, at least initially.

Commented [TL8]: WB comment: Needs to be clear that Council's makes the final decisions

Commented [TL9]: WB comment: Option (x) rather than option (b)

Commented [TL10]: WB comment: Can we add dividends to the list (double up?)

[4] Issue & Option Paper #5, issue 2. Presented on 2 February 2026. JWG consensus formed on 13 February 2026. JWG also provided direction to staff to include flexibility for the number of members for each party to change (i.e. reduce) as more Councils become shareholders. So they may decide to have 4 members each while there are 3 parties. But by the time an additional 4 Councils join, it may be more appropriate for each party to only have 2 reps on the Forum.
[5] Issue & Option Paper #5, issue 3, subpart 1. Presented on 2 February 2026. JWG consensus formed on 13 February 2026.
[6] Issue & Option Paper #5, issue 4, subpart 1. Presented on 2 February 2026. JWG consensus formed on 13 February 2026.
[7] Issue & Option Paper #7, issue 2. Presented on 23 February 2026. JWG consensus formed on 23 February 2026.
[8] Issue & Option Paper #4, issue 3, subpart B. Presented on 29 January 2026. JWG consensus formed on 13 February 2026.
[9] This item was added at a subsequent JWG meeting, namely 16 February 2026 in the context of discussing anti-privatisation.

				Directors by ordinary Board resolution and subject to meeting any solvency and statutory tests (as per Companies Act).[10]
37	*Shareholder special resolutions (Sub-part A): Whether to add topics to the statutory list requiring special resolution*[11]	Should any matters be added to the statutory list of special resolution topics (a) Yes, matters will be added to the statutory list of special resolution topics (b) No, matters should not be added to the statutory list of special resolution topics	Political	Option (a). Yes matters will be added to statutory list of special resolution to ~~(itemised in next topic CTS item 38)~~.
41	*Dispute resolution regime*[12]	(a) Escalation process comprising: Negotiation → Mediation → Arbitration. (b) Mediation then Court	Commercial	Option (~~c~~a). Escalation process compris Negotiation → Mediation → Arbitration.
42	*Frequency of re-visiting SRF functions*[13]	(a) Do not specify a frequency for revisiting the SRF's function, and instead rely on the ability to vary the Shareholders' Agreement (if all shareholders agree) to amend the SRF's function. (b) Revisit only towards the end of the triennium with a recommendary report to be considered by the incoming Councils. (c) Revisit at the earlier of either: i. another shareholder joining the WO; or, ii. towards the end of the triennium with a recommendary report to be considered by the incoming Councils; or, iii. otherwise as determined by a majority of the WO's shareholders.	Political	Option (x[14]). Revisit at the earlier of either a) another shareholder joining the WO; ~~b) towards the end of the triennium with a recommendary report to be considered by the incoming Councils; or,~~ ~~c)~~b) otherwise as determined by a majority of the WO's shareholders, or ~~d)~~c) any substantive legislative change or other significant matter impacting treaty settlements
43	*Period of time before topic of ring-fencing is revisited*[15]	(a) No later than three years after the incorporation of the WO. (b) No later than six years after the incorporation of the WO	Political	Option (~~x~~b): No later than three years after the incorporation of the WO, the shareholders must consider whether to require the WO to provide a full report to the shareholders on the issue of revisiting the financial ring-fencing arrangement. The shareholders may decide not to require that report at the three-year point, but in that case the requirement to obtain a full report must not be deferred beyond six years after the incorporation of the WO.

Commented [TL11]: WB comment: Reword consensus option to reflect actual wording used in option a

Commented [TL12]: WB comment: Should it be option (a) instead of option (c)

Commented [TL13R12]: Agreed. Simply typo.

Commented [TL14]: WB comment: Suggest that ii is removed from the list - removes crossover with election cycles

Commented [TL15]: WB comment: Should option (b) be option (x)

[10] This item was added consistent with CTS item 10.
[11] Issue & Option Paper #4, issue 4, subpart A. Presented on 29 January 2026. JWG consensus formed on 13 February 2026.
[12] Issue & Option Paper #6, issue 9. Presented on 16 February 2026. JWG consensus formed on 16 February 2026. There was discussion about the possibility of conducting some arbitrations in an open forum in the interests of transparency if all parties to the arbitration agree. The parties reserve the position to seek urgent interlocutory relief from the Court system without going through the escalation process.
[13] Issue & Option Paper #7, issue 4. Presented on 23 February 2026. JWG consensus formed on 23 February 2026.
[14] The JWG formed a consensus on option (c) with additional sub-item (iv).
[15] Issue & Option Paper #7, issue 7. Presented on 23 February 2026. JWG consensus formed on 23 February 2026.

				If the shareholders have not required the WO to provide a full report before the date that is six years after the incorporation of the WO, the WO must, at that time, provide a full report to the shareholders on the issue of revisiting the financial ring-fencing arrangement.
45	*Will Tangata Whenua hold Class A (voting right) shares?*[16]	(a) Yes (b) No	Political	No consensus reached. TCC & WB's view is Option (b) that Councils will hold Class A shares. Tangata Whenua's view is Option (a) that if it is possible for Tangata Whenua to hold Class A shares, then Tangata Whenua wishes to do so. Option (b). Consensus that only Councils will hold Class A sharesBecause the JWG was unable to reach a consensus on this point, then as per the JWG's Terms of Reference, both options will be put to the full Councils, with an explanation of each party's preferred position.

Commented [TL16]: WB comment: Note that this is not a consensus decision but a majority

[16] This topic was initially raised on 13 February as a prospect by Tangata Whenua. The topic was thereafter discussed at the JWG meetings on 13 February, 23 February, and 2 March and 9 March (with research undertaken between prior to the 23 February and 2 Marchthose meetings to establish whether it was a legal possibility for Tangata Whenua to own Class A voting shares). On 2 9 March Tangata Whenua clarified that no a consensus was formed that Tangata Whenua will not own class A voting sharesformed on this issue.

Fact Sheet: Statement of Expectations

Purpose of a Statement of Expectations

The Councils who hold shares in a Water Organisation are required to provide a joint Statement of Expectations ("SOE") to the Water Organisation. In turn, the Water Organisation is required by to give effect to the SOE (including through the Water Services Strategy).

An SOE will:

- Set out the Councils' expectations for the Water Organisation's direction, priorities, and behaviour for a period of no less than 10 years.
- Inform and guide the Water Organisation's direction, actions and its Water Services Strategy.

The SOE will be issued collectively by TCC and WBOPDC. It is a high level document providing direction, rather than detail. It provides a line of sight between community aspirations, Council priorities, and the work of the Water Organisation.

At a Glance

In terms of content, the Local Government (Water Services) Act 2025 requires that an SOE must address the following points:

- The outcomes that TCC and WBOPDC expect the Water Organisation to achieve.
- Requirements relating to resource management planning and land use planning relevant to the Water Organisation.
- A requirement that the Water Organisation must meet relevant statutory obligations.
- Clarity on the information that the Water Organisation must include in its half-yearly report.

In addition to the above, the SOE may also address other matters including the following:

- How the Water Organisation should conduct its relationships with stakeholders (including shareholders; the communities; Māori organisations; and consumers).
- Performance indicators to monitor the Water Organisation.
- Strategic priorities to be included in the Water Organisation's Water Services Strategy.
- A requirement to undertake community or consumer engagement.

- Expectations regarding collaboration with TCC and WBOPDC when providing water services.
- A potential requirement for the Water Organisation's Water Services Strategy to be independently reviewed or audited.

The content of the SOE must be consistent with legislative requirements and the Water Organisation's foundation documents (including the Shareholders Agreement and Constitution).

In Practice

- A draft of the SOE must be shared with the Water Organisation. In turn, TCC and WBOPDC must consider any feedback provided by the Water Organisation before the SOE is finalised.
- The Water Organisation must then take the SOE into account when preparing its Water Services Strategy and business plan.
- The SOE cannot override the Water Organisation's legislative or regulatory obligations (including obligations imposed by the Commerce Commission or the Water Services Authority).
- In terms of timing, TCC and WBOPDC must provide the SOE to the Water Organisation as soon as practicable after the Water Organisation is established, and at least 6 month before the Water Organisation is required to finalise a Water Services Strategy.
- There is an option for TCC and WBOPDC to provide an "interim statement of expectations" that will apply from the date on which the Water Organisation is established, to the date on which the finalised SOE is put in place.

Things to Consider / Key Decisions

- TCC and WBOPDC must together prepare a single SOE to ensure one clear voice.
- Engagement with tangata whenua partners will need to inform the SOE content.
- The SOE is not a substitute for regulation (and cannot override legislative and regulatory obligations) – compliance with Commerce Commission and Water Services Authority is mandatory (and in the event of any inconsistency between the SOE and regulatory obligations, the regulatory obligations will prevail).
- The SOE is not operational direction – the Water Organisation's Board and management decide how to deliver on expectations.

- The SOE is not permanent – it is reviewed and refreshed regularly to reflect evolving priorities.

Where to Learn More

- Local Government (Water Services) Act 2025, sections 224 to 229
  https://www.legislation.govt.nz/act/public/2025/0042/latest/whole.html

Fact Sheet – Shareholders Agreement

Purpose of a Shareholders Agreement

The purpose of a Shareholders' Agreement ("SHA") is to set out the rights and obligations of each Council that owns shares within the Water Organisation. The SHA focuses on decision making, governance and other rights and obligations that shareholders will owe to each other and to the Water Organisation.

The SHA formalises:

- The relationship between the shareholders themselves, including their rights and responsibilities and how they will make decisions; and
- The relationship between shareholders and the Water Organisation itself, including how shareholders can work together to hold the Water Organisation board to account.

At a Glance

In terms of content, the SHA will set out:

- Who owns the Water Organisation (including initial allocation of shares and price of those shares).
- Who makes decisions in respect of the Water Organisation and how they are made (including voting rights).
- How directors are appointed to the Water Organisation.
- How shareholder loans and guarantees will be provided.
- Principles that will apply to the transfer of assets from the Councils to the Water Organisation (which principles will in turn be put into practice within the Transfer Agreements).
- The circumstances under which other territorial authorities may join the Water Organisation in the future.
- The role of Tangata Whenua within the Water Organisation.
- How disagreements between shareholders, or defaults by shareholders will be addressed.

Some people may confuse a Shareholding Agreement with a company Constitution. They are interrelated and should be drafted in tandem. But by way of comparison:

- A company Constitution sets out governance rules for the company itself. It will address the internal operation of the company, including director powers,

meeting procedures, and the issue of shares. The Constitution must be publicly available and registered with the Companies Office.

- An SHA is a private contract between shareholders that governs their relationship, oversight mechanisms, shareholder disputes and shareholder exit strategies. The SHA can override the Constitution in some areas, provided it doesn't conflict with significant legislation. The SHA is not made publicly available on the Companies Office platform (although there is nothing preventing the shareholders from making the SHA publicly available elsewhere).

The following table compares a Shareholding Agreement with a company Constitution:

Feature	**Shareholding Agreement**	**Company Constitution**
Legal Status	Private contract between shareholders	Must be made publicly available (not a private contract)
Purpose	Regulates relationships and rights between shareholders	Governs company structure and company management
Binding On	Only parties to the agreement	The company, shareholders and directors
Customisation	Highly flexible	Must comply with Companies Act 1993 parameters
Override Possibility	Can override Constitution (although cannot override key waters legislation)	Cannot override SHA (and cannot override key waters legislation)

Further Key Points

The SHA is one of two "foundation documents" as defined within the Local Government (Water Services) Act 2025 that a territorial authority is required to prepare for a Water Organisation.

The parties to an SHA are:

- The shareholders (in this case TCC and WBOPDC).
- The company within which shares are held (in this case the Water Organisation limited liability company).

The SHA explains how the shareholders (i.e. TCC and WBOPDC) will deliver their statutory commitments, including preparing the Water Organisation's Constitution and the shareholders Statement of Expectations for the Water Organisation. The SHA also sets out how the shareholders will ensure that the business of the Water Organisation is conducted in accordance with the Constitution, Statement of Expectations and Transfer Agreement (all documents are interrelated and should be drafted consistently).

To streamline future decision-making, shareholders can choose to delegate oversight in respect of the Water Organisation to a body that represents the shareholders ("Shareholder Forum", which is also referred to as a Shareholding Council or Shareholders Council). If the shareholders do elect to establish a Shareholder Forum, then the SHA can address key points, such as:

- The numerical size and make-up of the Shareholder Forum.
- Terms of Reference for the Shareholder Forum, which can include details on how the Forum is to appoint a Chair and Deputy Chair.

Without a Shareholder Forum, the shareholders (i.e. TCC and WBOPDC) will each need to undertake their own governance oversight and decision-making in respect of the Water Organisation.

In Practice

TCC and WBOPDC will jointly own the Water Organisation (i.e. the two Councils will be the shareholders). Together, they must decide how key the various points raised within this Fact Sheet will be addressed and then provide instructions to their staff on that basis. The Councils must decide together how, as shareholders, they will appoint directors, and how Tangata Whenua will be involved.

Things to Consider / Key Decisions

To enable staff to prepare the SHA, the TCC and WBOPDC Councils will need to agree and instruct staff on matters including the following:

- The number of shares each shareholder will receive, and the amount to be paid for those shares.
- The name, registered office and address for service of the Water Organisation.
- The identity of the initial directors.
- The initial business set up, operational steps and transactions to be procured by the shareholders.
- Whether to establish a Shareholder Forum.
- The initial business plan and budget for the Water Organisation.

- Any principles to govern future share issues.
- Any specific matters to be included in a Statement of Expectations.

Where to Learn More

- Local Government (Water Services) Act 2025 https://www.legislation.govt.nz/act/public/2025/0042/latest/whole.html
- Guidance Material: Shareholders' Agreement Template (Multi-Council Water Services Council Controlled Organisation) https://www.dia.govt.nz/diawebsite.nsf/Files/Water-Services-Policy/$file/B2-Guidance-material-Shareholders'-Agreement.pdf.

Fact Sheet – Transfer Agreement

Purpose of a Transfer Agreement

The Transfer Agreement will be a legally binding contract between a Council and the Water Organisation that facilitates the formal transfer of water service assets, liabilities, and staff to the Water Organisation. Its purpose is to clearly define what is being transferred, when and how that transfer will occur, and how the parties will cooperate on shared interests post-transfer.

The Transfer Agreement will ensure operational continuity, legal clarity, and public transparency. The agreement is essential for transitioning service delivery to the Council-owned Water Organisation.

At a Glance

The key matters that must be included within a Transfer Agreement include the following:

- Assets and liabilities being transferred from the relevant Council to the Water Organisation. This will include schedules listing all assets (and any exclusions) covered by the transfer.
- Responsibilities, duties and powers shifting to the Water Organisation. This will include operational control of water networks, compliance obligations etc.
- Transfer terms and conditions. This will comprise the legal terms of the transfer, such as the date the transfer occurs, any purchase price, warranty clauses etc.
- Matters not being transferred. The Transfer Agreement must note whether any water assets, liabilities or functions will be excluded from the transfer (for example, this will apply if stormwater is excluded from the Water Organisation's scope).
- Charging and revenue collection. The Transfer Agreement must set out arrangements for charging and revenue collection, including whether the Water Organisation will directly bill customers, or whether the Council(s) will continue to collect water service charges on behalf of the Water Organisation.
- Matters of shared interest. For example, the Councils will retain a regulatory role under the Resource Management Act. The Transfer Agreement will explain how the Council will obtain input from the Water Organisation for resource consents or building consents that involve water infrastructure.
- Ad hoc services that either party will provide to the other. For example, a Council might temporarily provide IT support, customer services, or maintenance

services to the Water Organisation for a period after transfer to ensure continuity. These would be listed (often in a schedule) with terms for service and cost.

Further Key Points

In contrast to governance documents (i.e. a Shareholders Agreement or company Constitution) the Transfer Agreement's focus is on the operational handover to the Water Organisation. The Transfer Agreement is concerned with transferring service delivery and assets and is not concerned with shareholding structure or board matters.

Once finalised, the Transfer Agreement must be made publicly available (with any truly sensitive details able to be redacted). This transparency will help to maintain public trust during the transition.

The Transfer Agreement will be a comprehensive document. It will cover all assets, contracts, property, and staff involved in providing water services that are to move over to the Water Organisation. The Agreement will also cover any liabilities or debts tied to those services. For example, if there are outstanding loans for water infrastructure, the agreement will specify how those are handled – e.g. paid off by Council or possibly novated to the Water Organisation. By listing "Excluded" items as well, the Transfer Agreement ensures that nothing falls through the cracks in the transition.

In Practice

For TCC and WBOPDC, the Transfer Agreement will be the cornerstone of moving water services to the new Water Organisation. In practical terms, this means TCC and WBOPDC (as the two shareholders of the Water Organisation) must work together closely to settle all the details that go into their respective Transfer Agreement before the handover date.

Council staff will be required to compile comprehensive lists of all water assets, contracts, and obligations to be transferred. The guiding principle will be to give the Water Organisation everything it needs to operate effectively from Day 1 without disrupting Council's other functions.

Once drafted, both Councils will need to formally approve their final Transfer Agreement (likely by Council resolution) before execution. The Water Organisation's board (once appointed) will also approve and sign as the other party.

In terms of timing, the Transfer Agreement does not need to be finalised prior to the incorporation of the Water Organisation . Instead, it will need to be finalised prior to the "go live" date of the Water Organisation (likely to be 1 July 2027). However, while drafting the Water Organisation's foundation document (including the Shareholder

Agreement and Constitution) TCC and WBOPDC should also be considering "principles" that will apply to the Transfer Agreement. At minimum, those principles could be included within the Shareholder Agreement (although ideally, a draft Transfer Agreement would go further and actually include a template Transfer Agreement agreed by the parties).

Things to Consider / Key Decisions

To enable staff to finalise the Transfer Agreement, several key decisions will need to be made, including the following (many of these are interdependent with the Shareholders' Agreement and overall establishment of the Water Organisation):

- Transfer scope and exclusions. This will include confirmation of *which* water assets and liabilities will / will not transfer from the respective Council to the Water Organisation.
- "Completion Date" for the transfer. This will involve a decision on when the Water Organisation will "go live" on taking over operations.
- Treatment of debt and financial assets.
- Future service delivery arrangements. Decisions will need to be made about what, if any, services the Councils will continue to provide to the Water Organisation after transfer. For example, Councils might offer customer call-centre support or IT system access for an interim period.
- Charging mechanism. Decisions will need to be made about who will bill customers for water services post-transfer.

Where to Learn More

- Local Government (Water Services) Act 2025 – especially sections 11–16 and Schedule 2, which set out the requirements for Transfer Agreements (e.g. content and effect). This legislation provides the legal framework underpinning everything discussed in this fact sheet.https://www.legislation.govt.nz/act/public/2025/0042/latest/whole.html
- Guidance Material: Transfer Agreement Template (Multi-Council Water Services Council Controlled Organisation) https://www.dia.govt.nz/Water-Services-Templates-and-guidance-for-new-water-organisations.

Fact Sheet: Company Constitution of a Multi-Council Water Organisation

Purpose of a Constitution

A company Constitution is a founding document that sets out rules for the internal operation, governance and growth of a company. The Constitution must be publicly available via New Zealand's Companies Office. The Constitution is binding on the company, its directors and its shareholders.

A well-drafted Constitution will:

- Ensure clear and consistent governance.
- Protect the interests of shareholders.
- Provide certainty for the Water Organisation's board of directors, management, and staff.
- Give confidence to stakeholders (communities, regulators, lenders).

At a Glance

In terms of content, the Constitution will set out:

- The company's ownership structure, including in this case the initial share allocation between TCC and WBOPDC, and any provisions for issuing more shares or adding new shareholders in future.
- How the Water Organisation will be run by its board of directors.
- How decisions will be made, including processes relating to:
    - the management of share issues;
    - meetings and resolutions;
    - the appointment and removal of directors;
    - directors' powers; and
    - board proceedings.

The Constitution will not:

- Take the form of an operational manual. Day-to-day company processes sit with the executive and management of the company.
- Supersede the Water Organisation's Shareholder Agreement (although these will be drafted together to ensure consistency).

- Override legislative obligations that sit with the Water Organisation or that sit with TCC and WBOPDC (such as key obligations arising from the Companies Act 1993, Local Government Act 2002, Local Government (Water Services) Act 2025). In the event that there is an inconsistency between the Constitution and relevant legislation, the legislation will prevail.

Some people may confuse a Shareholder Agreement with a company Constitution. They are interrelated and should be drafted in tandem. The accompanying "Fact Sheet – Shareholders Agreement" provides a summary (and table) of the differences between the two documents.

Further Key points

The company Constitution is one of two "foundation documents" as defined within the Local Government (Water Services) Act 2025 that a territorial authority is required to prepare for a Water Organisation.

TCC and WBOPDC will want to ensure the Constitution reflects the principles of transparency and public accountability inherent in a publicly owned water entity. At the same time, more day-to-day operational arrangements (like detailed performance targets) can be left to the Shareholders Agreement and the Statement of Expectations.

The Constitution must comply with the Companies Act 1993 as well as the specific provisions of the Local Government (Water Services) Act 2025 and the Local Government Act 2002 that are relevant to a Water Organisation in the form of a company.

It is anticipated that the Water Organisation's Constitution may address the following key points:

1. **Company Purpose**
    - Delivery of safe, reliable, and efficient water services.
    - Commitment to environmental, cultural, and community outcomes.
2. **Shareholding Arrangements**
    - Which Councils are shareholders.
    - Rules for issuing or transferring shares and allowing other Councils to join the Water Organisation.
    - Reinforcement of the fact that water infrastructure must remain in public ownership.
3. **Board of Directors**

- Appointment and removal process.
- Number of directors, independence requirements, skills mix.

4. **Decision-Making Rules**
    - Matters requiring ordinary resolutions (majority vote).
    - Matters requiring special resolutions (such as changes to Constitution or asset sales).
5. **Meetings & Voting**
    - Procedures for shareholder meetings.
    - Quorum and voting thresholds.
6. **Reporting & Accountability**
    - Requirements for annual plans, financial statements, and performance reporting.
    - Audit and assurance expectations.
7. **Dispute Resolution**
    - Processes to resolve disagreements between councils, or between shareholders and the company's board of directors.
8. **Other Standard Provisions**
    - Indemnity and liability of directors.
    - Processes for winding up or restructuring the company.

Next Steps and Things to Consider

The draft Constitution will be developed alongside the Shareholder Agreement, Statement of Expectations and in consultation with Tangata Whenua. In due course, the Statement of Expectations and Transfer Agreement will also need to be drafted in a manner that is consistent with the Constitution.

TCC and WBOPDC will have important decisions to make that will inform the drafting of the Constitution, including:

- Share structure and capital: How many shares will the company have, and how will they be divided between the two councils?
- Board size and composition: How many directors will the Water Organisation have, and are there any specific criteria for them?

- Process for director appointments and removals.
- Water Organisation name and registration details (address for service etc).
- Future shareholding changes: Consider scenarios of new entrants or exits in the future.

Where to Learn More

- Local Government (Water Services) Act 2025 https://www.legislation.govt.nz/act/public/2025/0042/latest/whole.html
- DIA Templates and guidance for establishing new water organisations https://www.dia.govt.nz/Water-Services-Templates-and-guidance-for-new-water-organisations.

Appendix 1

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. As you know, we have received written advice on stormwater from Simpson Grierson dated 3 October 2025, **as attached at Schedule 1**.

4. This paper builds on the advice from Simpson Grierson and outlines:

    a. First principles.

    b. Key points regarding stormwater charging.

    c. Stormwater service zone (Who can the WO charge for stormwater).

    d. Liability for stormwater management and flooding.

    e. Summary of key stormwater decisions for Elected Members.

    f. Additional tasks for LWDW Staff to complete to support decision-making and implementation.

    g. Further direction required from Elected Members.

"First Principles" Regarding the Act and Stormwater

5. **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).

6. **"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.

7. **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 assets.

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 assets.

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.

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.

8. **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.[1] 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.

[1] Section 202 of the Act envisions scenarios where two WSPs manage different aspects of the same stormwater network (for example, a council might manage overland flow paths while a WO manages pipes)

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. This likely means extra work and cost to residents.

9. **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. One potential approach is to transfer the core stormwater assets/infrastructure – pipes, pumps, pumpstations, drains – but retain land or facilities whose primary purpose is something else (e.g. public parks, reserves, roads). For example, a large retention pond in a public park provides a stormwater function but also recreational space; Council might choose to retain ownership of the land, even if the WO owns the pipe network connected to the retention pond. For clarity, if the land in question is classified as "reserve" land then Council likely has no viable choice but to retain ownership (see paragraph 10e below)

c. 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[2]. 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.

10. **"Contracting Back" Arrangements Will Be Needed for Dual-Purpose Assets (and More So if TCC Stays as a 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).

[2] For example, the management or maintenance of water service networks.

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[3].

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[4]).

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

[3] Before entering any "significant contract" (as defined by section 24 of the Act) a WSP must identify and assess options and undertake public consultation in accordance with sections 30 to 32 of the Act.
[4] There are specific requirements for a WSP to access land under section 161 of the Act.

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.[5]

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. To allow time to implement any amendment to the WSDP by 1 September 2026, and undertake public consultation (if that is required), we will need EMs to make a final decision on how stormwater is to be treated very early in 2026, and by no later than 31 March 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

[5] See section 23(2)(d) of the Local Government (Water Services Preliminary Arrangements) Act 2024.

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 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 index as a policy choice (as long as it's reasonable and not just a proxy to sneak property value back in).
- 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.[6] 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).

[6] Also, under section 236(2) of the Act, again if provided for in the foundation documents (s 236(4)), the shareholders can determine that their involvement in finalising the WSS will include the ability to require the WO to amend the draft WSS, or the power to approve the final strategy. Effectively the shareholding councils can give themselves the power to direct content or veto what the WO produces.

16. Ultimately the Commerce Commission (or other regulators) may end up influencing the level of stormwater charges set by the WO. 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.[7]

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).

Could the WO charge TCC for stormwater, and TCC then recover those stormwater costs via rates?

18. We have received external legal advice that this option is legally possible, but not recommended.[6] Because this option would be so unorthodox, if there is further appetite to explore this, we would recommend seeking the input of DIA at an early stage.

19. The advice 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

[7] Local Government (Water Services) Act 2025, s 229(2).

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."

20. We note that the topic of stormwater charging is covered in more detail in its own Fact Sheet **attached at Schedule 2**.

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

21. An important concept in determining stormwater charges is the "stormwater service zone".[8] 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. As part of the due diligence and establishment planning phases, LWDW staff will:

    a. Develop a practical working definition of the "stormwater service zone"[9];

    b. Based on the definition developed above, map the stormwater service zones; and,

    c. Based on the mapping of the stormwater service zone, reach a conclusion as to the respective 2-tiers of properties (i.e. those that fall inside vs outside of the zone).

23. 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

[8] Under the Act, "stormwater service zone" is defined as follows (but bear in mind that this definition in turn refers to other concepts that include their own definitions under the Act): *"a geographic area (one or more urban areas and adjacent land) within a water service provider's service area that provides stormwater services to, or receives stormwater services from, the stormwater network"*

[9] This will seek to distill the interrelated web of definitions (including, stormwater service zone, stormwater network, stormwater services, service area, infrastructure, green water services infrastructure, transport corridor, overland flow path, watercourse, urban area) down to a single workable definition. For example, it will confirm whether one or more of the following can be included in the "stormwater service zone", transport corridor, privately owned farmland, properties located outside the service area but receive the benefit of stormwater infrastructure located within the service area.

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:

> This WSDP covers the financial position for TCC, noting that financials in the multi-WO will be ring-fenced. This ring fencing was a key assumption provided in TCC's community consultation, where it was proposed that ring fencing in the short to medium term (5-10 years), would underpin the approach to partnering with other councils, and would be in place until such time as there was an explicit decision of Council to transition to a form of pricing alignment. **In a nutshell - Tauranga revenue and debt will stay with Tauranga.**

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. We have prepared a separate Fact Sheet 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 (see **attached at Schedule 3**). Key points arising from that Fact Sheet include the following:

    a. Legislative Framework: Responsibilities are governed by multiple pieces of legislation including the LGA[10], RMA[11], CDEM Act[12], SCRCA[13] and Water Services Act[14] 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. Following the transfer of responsibility to a WO:

[10] Local Government Act 2002
[11] Resource Management Act 1991
[12] Civil Defence Emergency Management Act 2002
[13] Soil Conservation and Rivers Control Act 1941
[14] Local Government (Water Services) Act 2025

i. The WO will own[15] and operate stormwater assets, hold discharge consents, and manage infrastructure.

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

iii. BOPRC's role will liekly 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 apply where liability is established.

e. With the above general principles in mind, the Fact Sheet at **Schedule 3** also runs through various scenarios including urban flooding, river flooding, coastal storm surge and combined events such as cyclones.

f. Section 211 of the 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. The entity responsible for stormwater services, whether it is TCC/WBOPDC or WO, will likely bear liability for flooding or damage resulting from those assets. 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.

26. If the Council retains ownership of certain assets (e.g. overland flow paths) but operational responsibility transfers to the WO, liability will likely shift to the WO. 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.

27. If Council retains both ownership and responsibility, liability will likely remain with the Council.

28. Additionally, we are mindful of the interaction between the WO and the Regional Council in managing flooding events, including the need to clarify which entity's insurance

[15] If ownership is transferred.

applies in specific scenarios. This is particularly important to avoid the WO inheriting unresolved liabilities, such as those comparable to the Edgecumbe flooding repercussions.

29. Further clarity on these arrangements will be provided in due course.

Stormwater Options

30. Bearing in mind all of the above, TCC can elect to proceed with one of six possible scenarios:

    a. Scenario 1 – TCC retains ownership and responsibility for stormwater.

    b. Scenario 2 – TCC retains ownership of assets and responsibility for stormwater. However, TCC contracts with WO to provide stormwater services.

    c. Scenario 3 – TCC retains ownership of stormwater assets, but transfers responsibility for stormwater services.

    d. Scenario 4 – TCC transfers ownership of stormwater assets and responsibility for stormwater to WO.

    e. Scenario 5 – TCC transfers ownership of stormwater assets and responsibility for stormwater to WO. However, WO contracts with TCC to provide stormwater services.

    f. Scenario 6 – TCC transfers to WO ownership of all stormwater assets to WO, except for dual use land, and responsibility for stormwater services across the district.

31. The above scenarios (and their implications) are discussed at **Schedule 4 Stormwater Options**.

32. Although we understand WBOPDC is not intending to revisit its decision to transfer responsibility for stormwater to the proposed WO, for the reasons outlined at paragraph 11 above, we recommend TCC and WBOPDC endeavour to be aligned with their approach to stormwater.

Summary of Key Stormwater Decisions for Elected Members

33. Elected Members will likely need to make at least the following decisions regarding stormwater:

    a. Whether to transfer stormwater responsibility to the WO. If no, TCC will need to amend its WSDP and undertake further public consultation on the amended WSDP.

b. Whether to transfer ownership of hard stormwater assets to the WO (such as pump stations, pipes, inlets, outlets, dams, scruffy domes etc.)

c. Whether to transfer ownership of non-reserve green assets to the WO (such as dual use land, waterways, ponds, swales etc.)[16]

d. Whether to implement a contract between the WO and Councils for the provision of stormwater services, and if yes, the nature and extent of such a contract (We note such a contract would not change the WSP responsible for stormwater).

e. The duration (and extent) of financial ring-fencing between shareholders before price harmonisation occurs (WBOPDC's does not give direction on this matter; TCC gives direction of 5 – 10 years).

f. Whether the shareholders should have the power through the SOE to influence the WO's charging mechanisms (if so, then the constitution and/or shareholders agreement will need to accommodate this).

g. Whether the shareholders should have the power to approve final Water Service Strategies (if so, then the constitution and/or shareholders agreement will need to accommodate this).

Addition tasks for LWDW Staff to Support Decision-Making and Implementation

34. We intend to undertake the following addition work to inform decision making:

a. Financial Modelling (as set out in the Stormwater Workplan).

b. Defining, mapping and analysing the "stormwater service zone". This will include preparing practical examples.

Further Direction Required from Elected Members

35. We would be grateful for further direction from the Elected Members on the following:

a. In addition to the tasks at paragraph 34 do you require any other additional information to be able to make the decisions at paragraph 33?

b. Would you like further briefings or workshops prior to making a final decision on stormwater at a Council meeting? If yes, please provide details of what you require.

[16] As noted above, we recommend all reserve land remain with the Council owing to the difficulty (time and cost) of removing the reserve status to enable the transfer.

Stormwater

LWDW: Joint Working Group

22 December 2025

Water Services | Tauranga City | Western Bay of Plenty District Council

Background

- TCC & WBOPDC planning a joint Water Organisation (WO).
- TCC & WBOPDC have submitted individual WSDPs (approved by DIA) on the basis 3 waters will transfer to the WO.
- TCC Resolution: Further work directed, possible retention of stormwater in-house.
- WBOPDC **did not** pass a similar resolution.
- Financial modelling on stormwater is still being finalised.

Water Services | Tauranga City | Western Bay of Plenty District Council

Key Principles

- The Act is very flexible in how a WO can be structured.
- Responsibility vs. Ownership: These can be split; owning assets ≠ service responsibility.
- The entity with responsibility is the Water Service Provider (WSP) and carries statutory obligations – WSS, stormwater budgets, auditing requirements and reports, ensuring regulatory compliance
- Any significant change to TCC's WSDP (e.g. retaining stormwater in-house) requires public consultation and DIA approval.

Best Practice & Reasonable Options

- There are many possible combinations for stormwater. Appendix 2 lists 5 main options, of which 3 are considered reasonable options based on best practice.
- "**Best Practice**" includes:
  - Council retains ownership of land (reserve & non-reserve)
  - WSP should own “hard” stormwater assets (pumps, pipes etc.)
  - Prefer single WSP for efficiency and value for money.
  - Regardless of WSP, some form of contracting arrangement will be required to manage interface between Councils and WO.

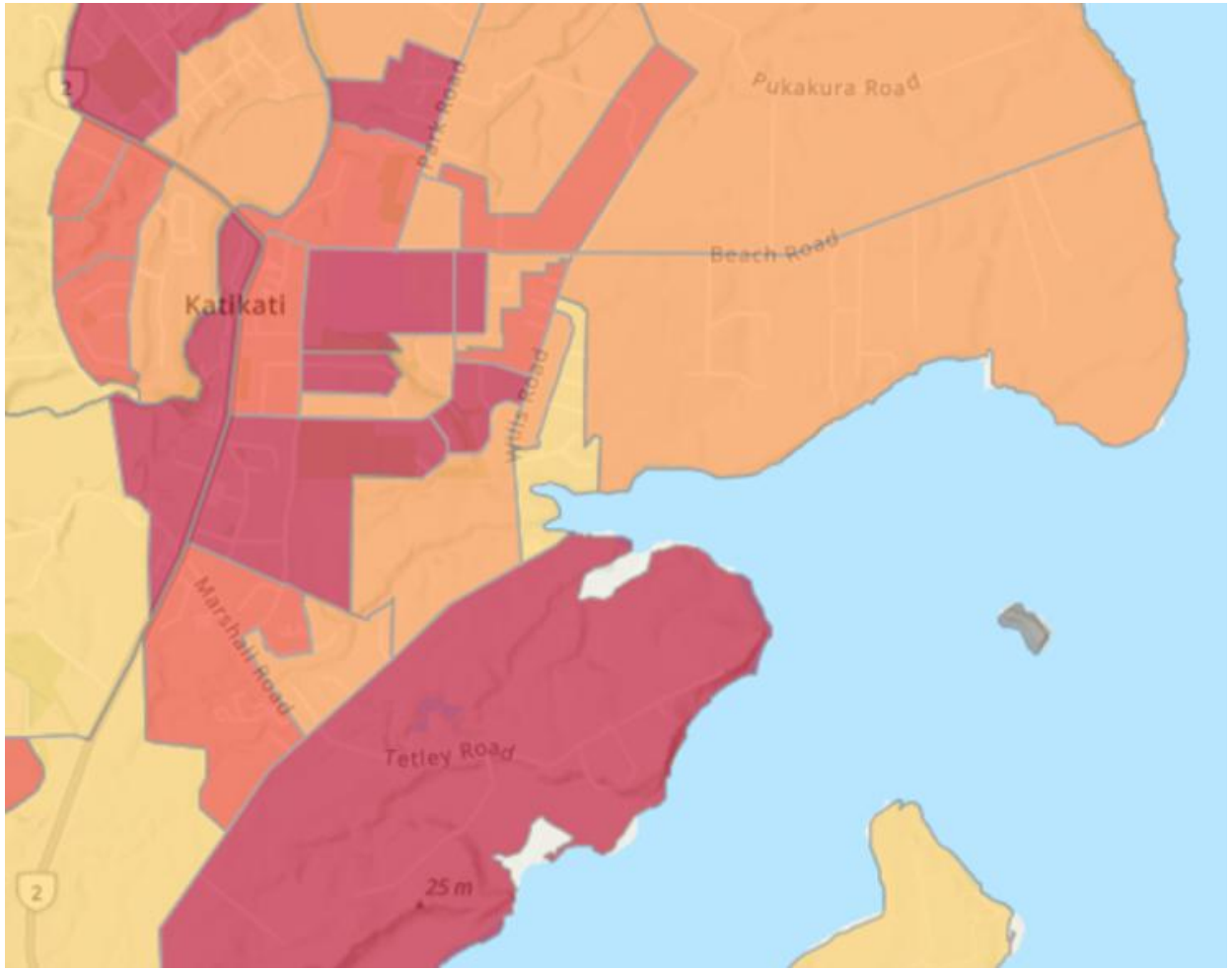
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Stormwater Charging

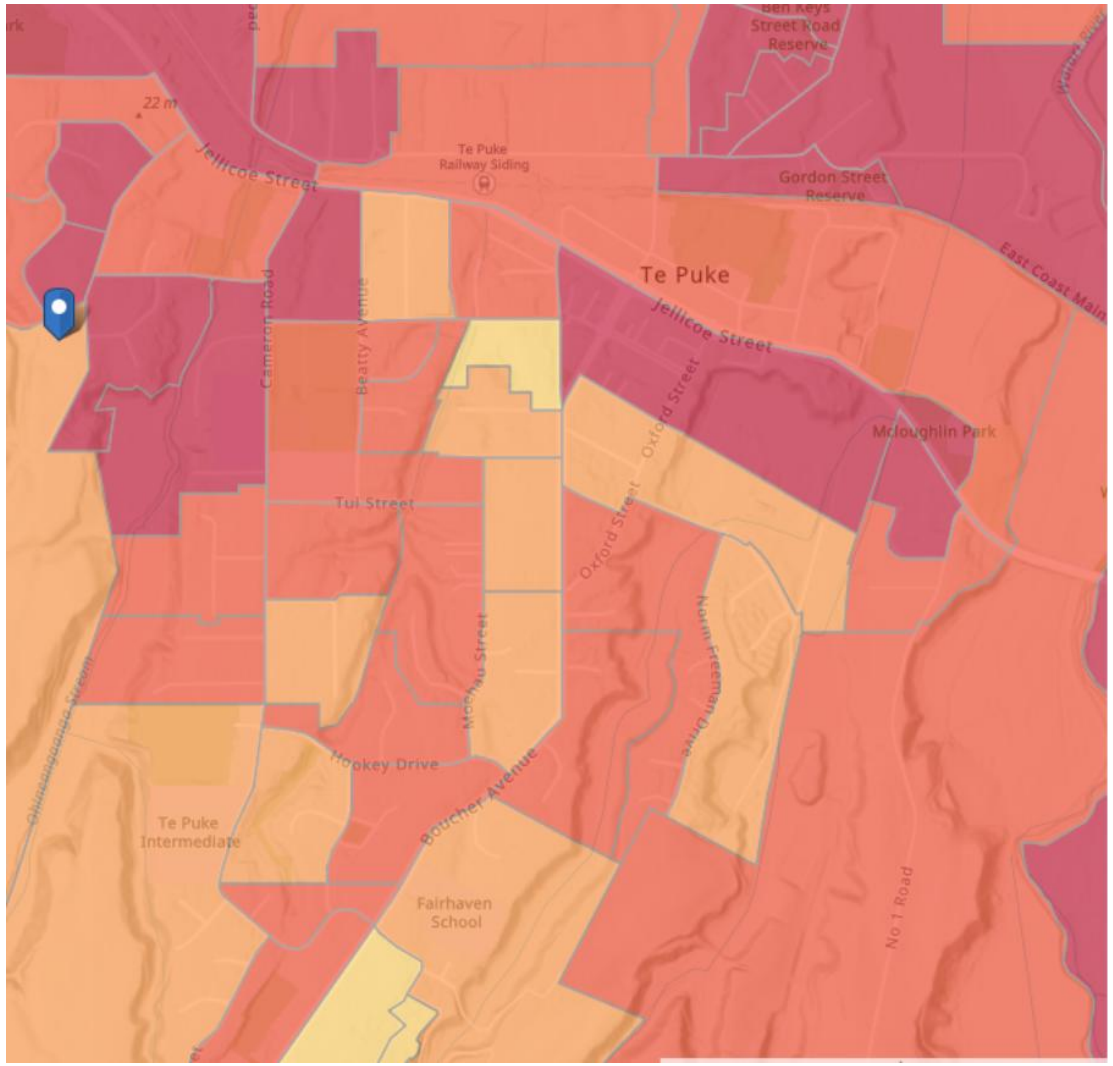
- Councils can charge based on ratable value
- WO must move away using a ratable value over a 5 year period. By year 5 most of the charge (more than 50%) must be comprised of something other than a ratable value charge. By year 6 the WO must use methods other ratable value.
- Examples of other reasonable methods of charging: Fixed fee; deprivation index; land size; permeable area.
- Stormwater Service Zone: All properties within a service area can be charged for stormwater. However, charges must be different for properties inside or outside of the SSZ.
- Although permissible for WO to charge Council, and for Council to then issue a rate to property owners, we advise against this approach because it will separate funding from responsibility, which may confuse accountability.

Deprivation Index

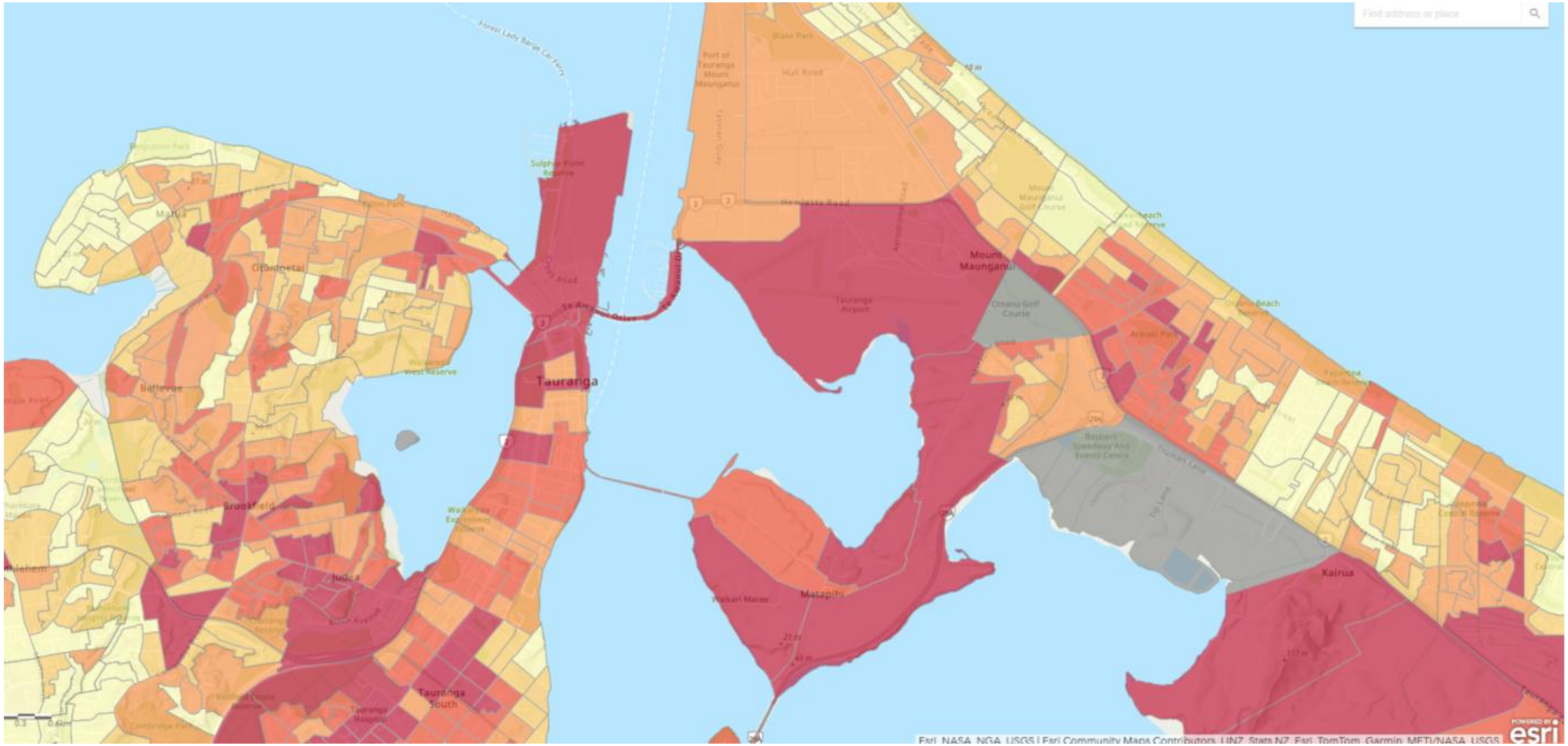
- Deprivation index produced by Stats NZ.
- Measure at geographic mesh block level of socioeconomic deprivation.
- Based on census data associated with communication, income, employment, qualifications, home ownership, support, living space and dwelling condition.
- Socioeconomic deprivation decile per statistical area, not for individuals or households. The higher the deprivation decile, the more socioeconomically deprived the area.
- Map colours:
  - higher deprivation areas = the darkest shading
  - lowest deprivation = lightest shading.



Deprivation Index – Te Puke



Deprivation Index – Tauranga



Issue 1: Who Should be responsible for stormwater?

TCC Decision – However, seeking direction from JWG.

Option 1: Transfer responsibility to WO:

- ***Pros:*** No WSDP amendment, single WSP, economies of scale, consistent approach by TCC & WBOPDC, 9 out of 12 WOs across NZ are 3 water WOs
- ***Cons:*** TCC loses direct control over charging, must move away from rateable value-based charging. However, can influence charging via SOE.

Option 2: TCC retains responsibility:

- ***Pros:*** TCC sets charges, can use rateable value
- ***Cons:*** Requires WSDP amendment & consultation, duplication of obligations, potential confusion, number of downsides to inconsistent approach by TCC & WBOPDC (see [11] of Factsheet)

Issue 2: If TCC retains responsibility, who delivers stormwater?

TCC Decision – However, seeking direction from JWG

Option 1: TCC delivers in-house:

- ***Pros:*** Direct control and accountability
- ***Cons:*** Missed efficiencies, full WSP obligations on TCC

Option 2: TCC outsources to WO (Iawai model):

- ***Pros:*** Efficiency, consistent cross-boundary approach
- ***Cons:*** Disconnect between responsibility and delivery, complex contracting, "significant contract" that will require public consultation, TCC still bears WSP obligations

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Issue 3: Who should set stormwater charges – WO Board alone, or WO Board with input from shareholders?

- Seeking **direction from JWG**.
- We recommend shareholders should only seek operational influence where:
  - A particular matter is **highly important** to them; and/or
  - They want more control over a **specific, significant and strategic outcome**.
- Shareholder influence via foundation documents and statement of expectations – s228(4) of the Act.
- Commerce Commission/regulator requirements override shareholder direction – s 229 of the Act.

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Charging options – Pros and Cons

Option 1: With shareholder direction:

- ***Pros:*** Community feedback, potentially more influence on affordability
- ***Cons:*** May inhibit WO autonomy, may increase risk of inconsistency with regulator, may deter board candidates

Option 2: Without shareholder direction:

- ***Pros:*** Board autonomy, best practice, long-term focus
- ***Cons:*** Less direct Council influence, possible community misunderstanding

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Next Steps

- Finalise financial modelling for stormwater.
- Update I&O Paper with financial modelling and feedback from JWG.
- Issues 1 and 2: TCC to decide at TCC Council Meeting in early 2026.
- Issue 3: If consensus from JWG, proceed with recommendation to Councils; If no consensus, escalate to Councils noting reasons for no consensus.

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Shareholding, Voting Rights and Shareholder Decision Making

LWDW: Joint Working Group

29 January 2026

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Purpose of Today

- Outline key decisions required to shape the proposed Water Organisation.
- Provide advice to facilitate a discussion on:
  - Share allocation
  - Voting Rights
  - Unanimous / Special Resolution matters.
- We will seek your direction on these matters at the JWG meeting on 13 February.
- This direction will inform the drafting of the Constitution and Shareholders' Agreement.

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Governance Framework

Key points:

- Shareholders are responsible for only a very small set of high-level decisions. Voting rights should therefore be viewed in the context of this narrow but important scope.
- Shareholders may make decisions by unanimous approval, special resolution (75%+), or ordinary resolution (50%+)
- Most governance occurs through the SRF or Board.

Refer to the diagrams at pages 13 to 15 of the Agenda

- These visuals outline the tiers of Governance and decision making.
    - Page 13: Decisions likely reserved for Shareholders (TCC & WBOPDC).
    - Page 14: Decisions likely delegated to the SRF.
    - Page 15: Decisions likely made by the WO's Board.

Governance Decision Making

Key Points:

- Shareholdings do not need to mirror voting rights.
- Although dividend payment possible - not expected to be regular feature of WO's financial model. Therefore, specific allocation of shares is of reduced significance when considering share allocation and voting rights.

Refer to the decision-making table at pages 18 and 19 of the Agenda.

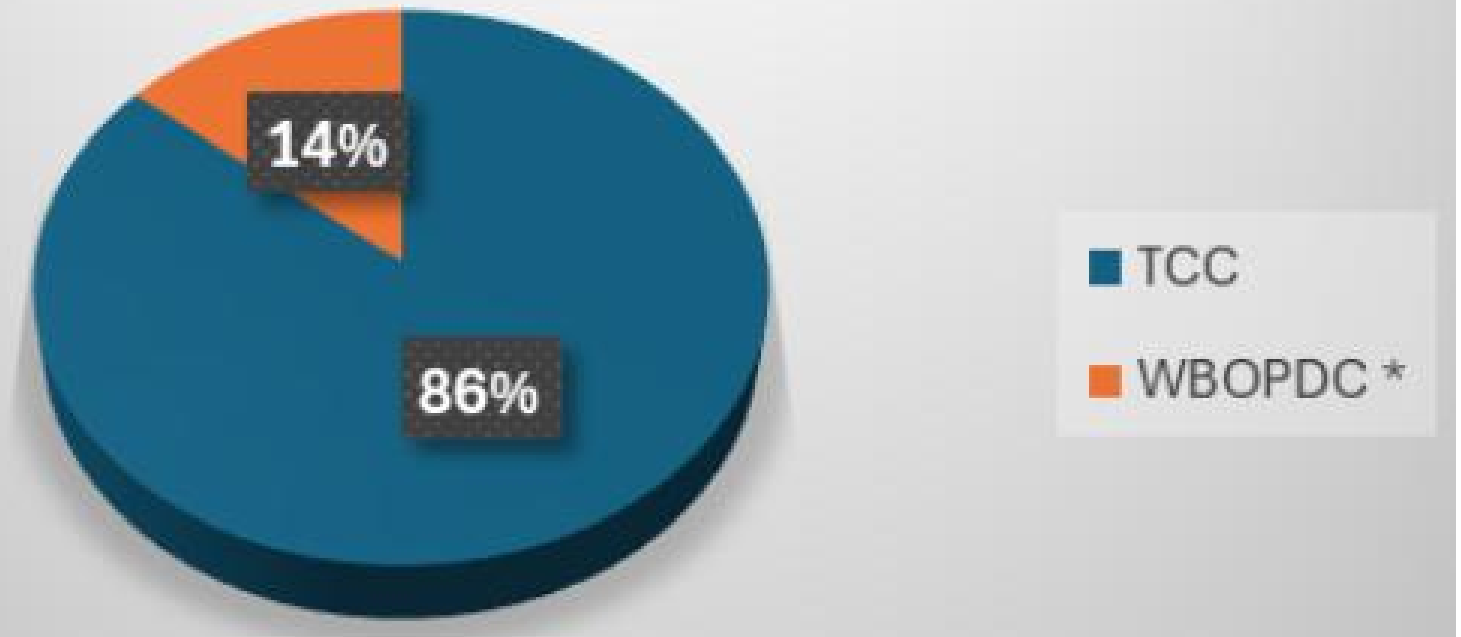
- Table shows how:
  - o ordinary resolutions, special resolutions, and unanimous decisions work under different shareholding models (2 to 5 Councils),
  - o a council has positive control (can pass a decision alone) or negative control (can block a decision alone).
  - o voting rights and share allocations interact, highlighting the influence each council would hold under different thresholds, and how decision outcomes change in the event more Councils join the WO in the future.

Issue 1(a): Methodology for Allocating Shares

- Several share allocation methods are available (net assets, population, connections, or a hybrid).
- Chosen method does not need to align with voting rights.
- Allocation of shares should be simple, transparent, and easy to explain to stakeholder.
- An establishment principle (Commitment Agreement) was "equitable share allocation."
- Pie charts (pg 20 –22) show outcomes of each method. Regardless of methodology, TCC will be the majority shareholder.
- If share allocation is not based on net assets, TCC will record a significant accounting loss or debt position.
- WO can be structured so that if a council exists, assets and related debt in that district return that Council.

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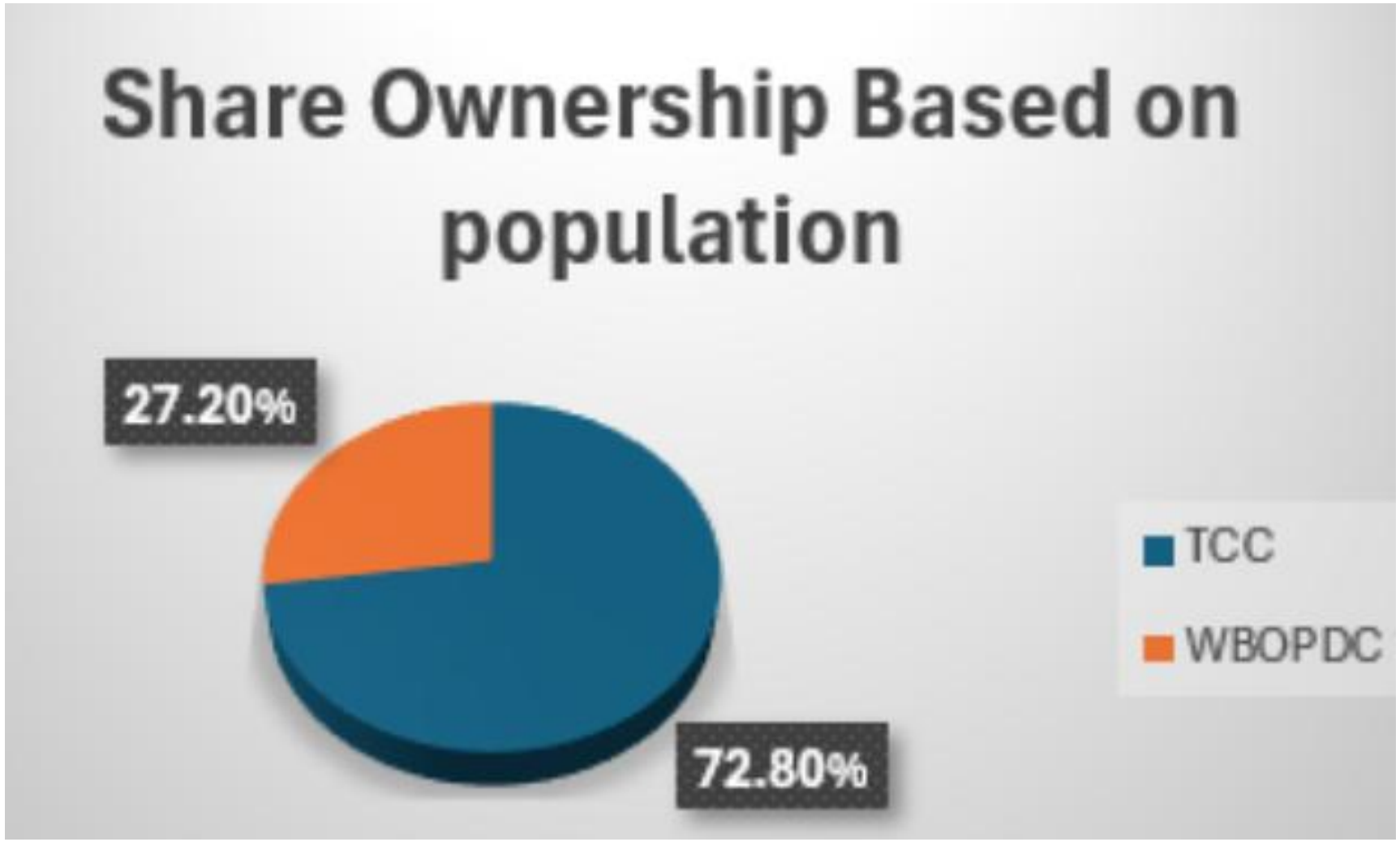
Share Ownership based on Net Assets



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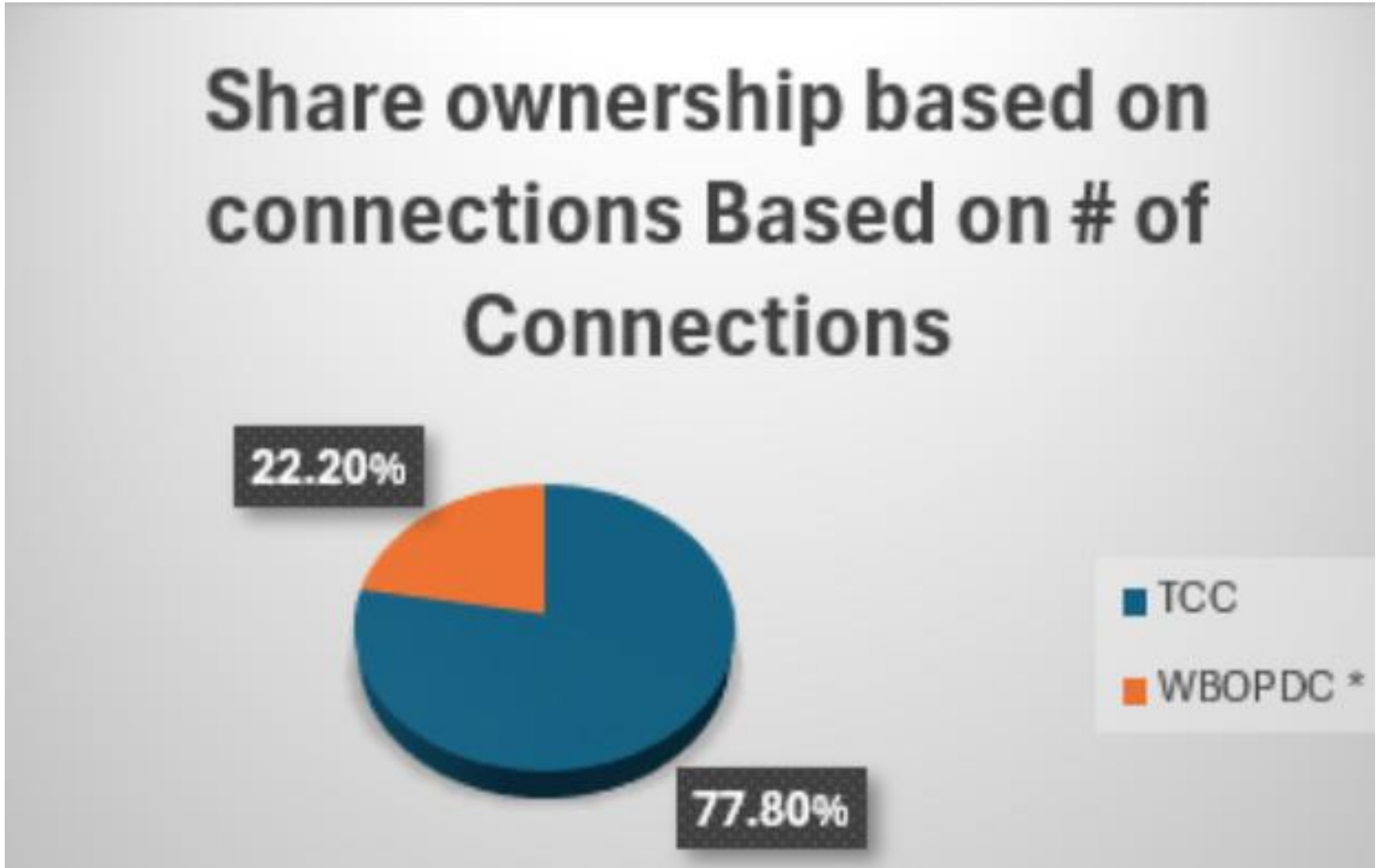
Western Bay of Plenty District Council

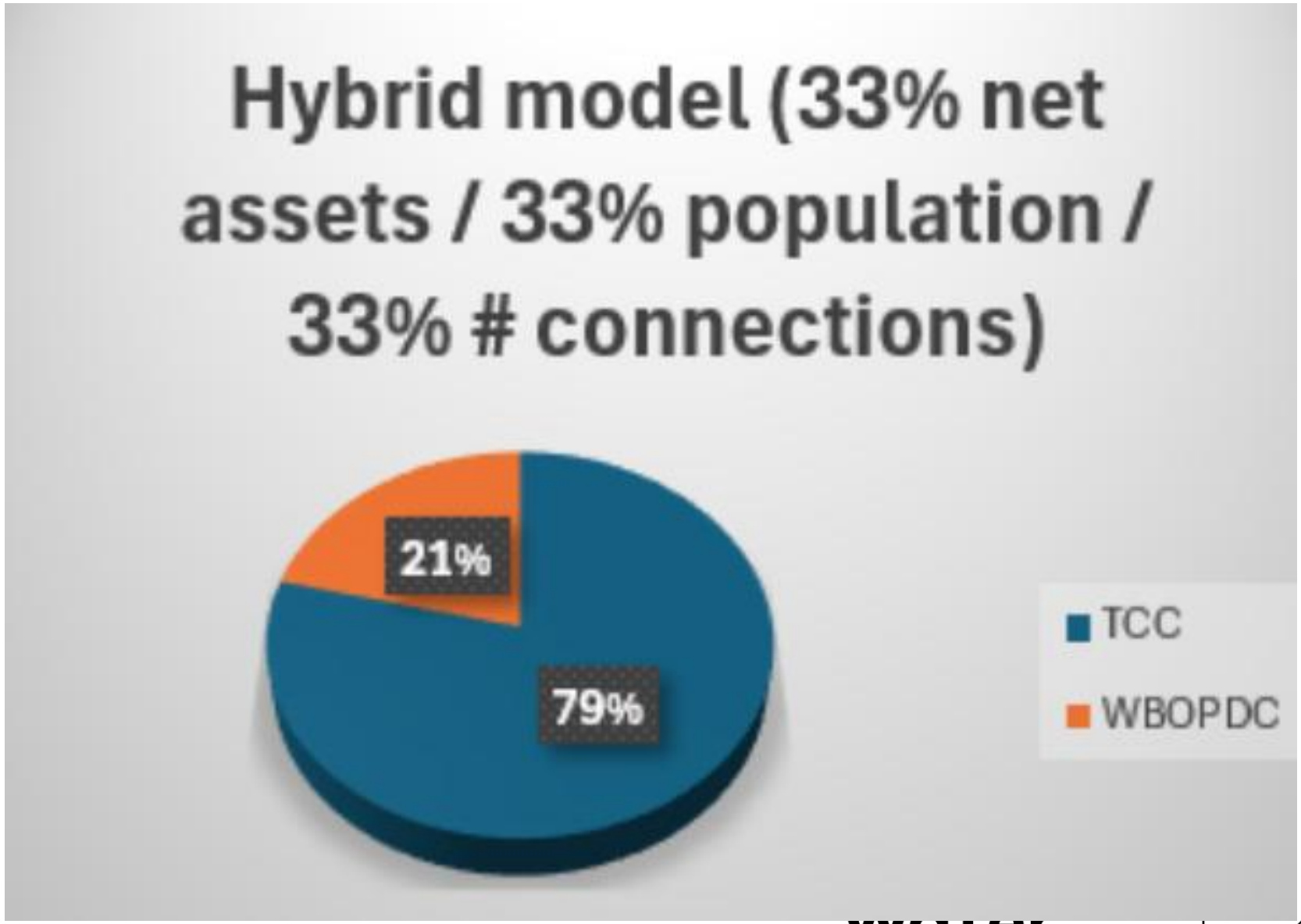


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Share ownership based on connections Based on # of Connections
22.20%
77.80%
TCC
WBOPDC *



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Issue 1(b): Ongoing review of Shares

- Shareholdings can be reviewed and adjusted over time. For example, annually or bi-annually to reflect changes such as population or connections.
- Can include a materiality threshold.
- Option A: Review and adjust shareholding on an ongoing basis
  - Enables shareholding to adapt to growth and changing circumstances.
  - Increases workload.
- Option B: Do not review and adjust shareholding on an ongoing basis
  - Provides certainty but may not reflect future changes.
  - Reduces workload.

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Issue 2: Voting Rights

- Voting Rights do not need to match shareholding.
- Important to approach this issue in the context of the key decisions that will be reserved for shareholders – refer to the diagram at page 13 of the Agenda.
- Voting rights chosen now will apply to any new shareholder that joins the WO in the future, unless the constitution / SHA is amended.
- If voting is tied to shareholding, the majority shareholder may be able to make major decisions unilaterally (positive control).
- If voting is equal, the minority shareholder may be able to block major decisions unilaterally (negative control).
- Special resolution thresholds (75%+) can be adjusted to prevent unilateral control; and, unanimous approval can be used for particularly material decisions where joint agreement is essential.

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Issue 2: Voting Rights, Decision Making Table

- Refer to decision making table (pages 18 & 19 Agenda).
- Table shows how outcomes change across multiple scenarios, from 2 to 5 shareholders.
- Option A: Votes Based on Shareholding:
  - Direct link between shareholding and influence.
  - In certain scenarios, could create positive control for majority shareholder.
- Option B: Equal Votes per Shareholder:
  - Partnership model.
  - In certain scenarios, could create negative control for minority shareholder.

Issue 3: Unanimous Decisions

- Section 107 of the Companies Act sets out decisions that may be made with unanimous approval.
- Should additional matters require unanimous approval?
- If yes, we recommend the following:
  - The addition of a new shareholder.
  - Liquidation or winding up of the WO.
  - Amending the WO's Constitution or Shareholders' Agreement.
  - Approving an amalgamation, merger or major restructure of the WO.
  - The future addition of any further decisions that require unanimous approval.

Key points: High assurance for all parties on critically important decisions. Potential for one shareholder to block decision.

Issue 4: Special Resolutions Matters

- Requires 75%+ majority
- Section 106 of the Companies Act requires special resolutions for key decisions, such as constitution changes, major transactions, amalgamations, and liquidation.
- Should additional matters require unanimous approval?
- If yes, we recommend the following:
  - Issue or amend share rights, or undertake share buy-backs.
  - Make any material change to the nature of the WO's business.
  - Approve shareholder funding or shareholder guarantee obligations.
  - Provide financial assistance for purchasing shares.
  - Add any future matters that require special resolution approval.

Issue 4: Special Resolution Threshold

- Companies Act sets threshold at a minimum of 75%
- Can be increased to a higher threshold.
- Option A: Keep at 75%
  - Consistent with Companies Act.
  - Majority Shareholder can make major decisions alone.
  - May speed up decision making but reduces shared influence and partnership.
- Option B: Greater of 75% or largest shareholder shareholding
  - Ensures major decisions require support of both councils, strengthening partnership.
  - Improves balance of influence, but may slow decision making.
- Refer to table at pages 18 and 19 of the Agenda.

Direction Needed on 13 Feb

We need your guidance on:

1(a). Preferred methodology for allocating shares.

1(b). Do you want an ongoing review and adjustment of shares?

2. Preferred approach to voting rights

3(a). Are there any defined material decisions that require unanimous approval?

3(b). If yes, what are the matters that will require unanimous approval?

4(a). Should any matters be added to the statutory list of matters requiring a special resolution?

4(b). If yes, what are the additional matters that will require special resolution?

4(c). Should the threshold for special resolutions be increased above 75% and above the majority shareholder's shareholding?

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Next Steps

- 2 February 2026: JWG Meeting to cover:
  - o Number of WO Directors.
  - o Process for appointing Directors.
  - o The size of the SRF.
  - o SRF Membership – Elected Members.
  - o SRF Membership – Tangata Whenua.
  - o SRF Membership – Independent Chair.
  - o Nomination and appointment of members of the SRF.
- 13 February 2026: JWG Meeting to seek guidance on:
  - o Shareholdings, Share Rights, and Shareholder Approval matters.
  - o Board and SRF membership and appointments.
  - o If consensus – recommendation put to Councils. If no consensus – escalated to Councils with options and rationale

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Paper for 16 March JWG Meeting: Methodology for allocating Class B (economic ownership) shares

Purpose

Following the meeting on 29 January, questions were raised about the alternative methods to allocate shares, including to address accounting issues that may arise if shares are not issued based on net assets.

1. The purpose of this Paper is to:

    a. Provide the JWG with principles to support the allocation of Class B shares and to seek agreement on these principles, and
    b. Once the principles have been agreed, encourage the JWG to reach a consensus view on the methodology for allocating Class B shares.

Background

2. 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.

3. In Issues & Options Paper #4 presented on 29 January, staff presented a number of options for the allocation of "ownership shares" (this was covered at Issue 1 within that Paper).

4. Following the meeting on 29 January, questions were raised about the alternative methods to allocate shares, including to address accounting issues that may arise if shares are not issued based on net assets.

5. In response to this question, staff advised the following:

    As noted in previous papers, the allocation of shares does not need to align with voting rights. For example, it would be possible to have shares split on a 70/30 basis, but for the parties to have equal voting rights.

*An alternative option is to issue two **classes** of shares, which is typically used where the parties wish to distinguish between the economic value of assets contributed and voting control. Under this approach, voting rights would be reflected in the number of "Class A" shares issued and can be issued on an equal basis per shareholder for the purposes of voting, "Class B" shares issued as the economic value transferred.*

Each class of shares would have the following rights:

- ***Class A shares**: Class A shares would carry voting rights only and would not entitle the holder to dividends or other distributions. The initial number of Class A shares would reflect the agreed voting proportions between the Councils and may be adjusted over time (by the WO issuing new shares or cancelling shares) to reflect changes in water connections or another agreed metric, as will be set out in the Shareholders' Agreement.*

- ***Class B shares:** Class B shares would entitle the holder to an equal share of any dividends or other distributions but would not carry voting rights. These shares would be issued to each Council at $1 per share, as consideration under each Council's Transfer Agreement. This will enable an economic interest in the WO, with any future dividend or distribution being allocated proportionately based on this. There may be an adjustment to the number of B Shares issued to each Council if the WO's basis for share allocation changed in the future..*

We would expect that if a Council was to exit the WO, then all relevant water services assets and associated debt in that Council's service area would be transferred back to that Council, and all of its WO shares would be cancelled. This would be set out in the Shareholders' Agreement. This is a key reason for the preferred basis of Class B shares to be on the basis of net assets (assets less liabilities).

The shareholding arrangements do not have to affect the ringfencing arrangements. If the Councils subsequently decide to move towards harmonisation, it may be that Class B shares are then adjusted (providing the appropriate decision-making threshold is met - such as special resolution). In any case, this would not affect what would occur if a Council exited (as set out above).

If a new Council was to join the WO, the expectation is that Class A shares would be issued at a level that provides the voting rights agreed with the existing Council, and Class B shares would be issued to reflect the agreed economic value to the WO by that new Council shareholder.

Re-cap: Consensus reached re Class A / Class B structure, and Class A methodology on 13 February. Consensus view on Class B methodology agreed at JWG meeting on 16 March

6. At the JWG on 13 February, the JWG reached a consensus on the following:
    a. Shares will be issued on a Class A (voting rights) and Class B (economic ownership) basis.
    b. The Class A shares (voting rights) will be allocated evenly across shareholders.
    c. The allocation of Class B shares (economic ownership) is yet to be finalised (and is the focus of this Paper).
    d. The allocation of Class B shares will be reviewed and adjusted on an ongoing basis. The triggers for re-assessing the allocation of shares were discussed at the JWG meeting on 2 March 2026 (where a consensus was reached on the list of triggers).
7. Subsequent to the 13 February meeting, staff were tasked with explaining in further detail the options available for allocating Class B shares, which includes the option to allocate Class B shares on the basis of net assets.

Proposed Principles to Allocate Class B Shares

8. In considering which option to adopt for the allocation of Class B “economic” shares we are seeking the JWG agreement around proposed principles to guide the decision of the allocation of Class B Shares:
    a. The valuation method must be fair between the parties. Both Councils must be able to demonstrate to their ratepayers that no value transfer has occurred between the parties as a consequence of the method selected to allocate Class B shares.
    b. The valuation method should recognise the likely future direction of waters reform and the increasingly explicit role of the economic regulator. Waters reform is currently at a nascent stage, but it is likely to be guided by the journey that Watercare has followed for its water and wastewater businesses, and the framework developed by the regulator over time for electricity distribution businesses.
    c. The valuation approach should be based on an accepted and recognised methodology (which may be a commercial basis). This reflects that the new WO will be governed by a commercial board of directors who will pursue operating and capital efficiencies for the benefit of water users.
    d. Depending on the methodology for allocating Class B shares, this may give rise to accounting implications, with a preference that the chosen approach does not trigger adverse accounting implications

Explanation of allocating Class B shares on the basis of net assets

9. In the event net assets are used as the basis for allocating Class B, we have answered the following questions:

    a. When would Class B shares be recognised?

    b. How will the quantum of net assets be determined?

    c. When will the quantum of net assets be determined?

    d. How would the net assets approach work if another Council joins the WO?

When would Class B shares be utilised?

10. The Class B shares would be relevant in the following circumstances:

    a. Payment of Dividends or other distributions to the shareholders

    b. Sale or Dissolution of the Water Organisation

    c. One of the shareholders electing to exit the Water Organisation

    d. Addition of a new Council to the Water Organisation

    e. Allocation of Shared Costs within the entity

How will the quantum of net assets be determined?

11. By engaging a single independent valuer to value the water assets of both Councils using the same valuation methodology, and the same key input assumptions. The valuer will need to be sufficiently qualified and experienced to exercise judgement in relation to the value of any unique asset categories, and to fairly adjust for the condition of the respective sets of assets. Both Councils would commission a separate peer review of the valuation as a final confirmation that the valuations have been robustly and fairly conducted.

12. Assets based on the independent valuation would be adjusted for year-end work in progress and then subject to the year-end audit process for confirmation. Net assets values would then be confirmed in conjunction with the adoption of the Annual Report by 31 October 2027.

When will the quantum of net assets be determined?

13. The valuations will be as at 1 July 2027 being the date on which the new WO is to be established. The valuation process can be carried out 3 or 4 months in advance of this date, with forecasts made where necessary (consistently across both Councils) to ensure the valuation is struck at the agreed date.

How would the net assets approach work if another Council joins the WO?

14. Assuming ring-fencing is still in place, the valuation process described in paragraphs 9 and 10 above would be repeated, with all three sets of water assets being valued by a single independent valuer as at the date on which the new Council joins the WO. This will ensure that a consistent valuation approach is adopted over time, and in response to changing circumstances.

15. All of the WO assets, including any new assets will be able to be identified by location (GIS mapping reference). These records will enable the assets to be identified even if ring-fencing has ceased

List of options for Class B Share Allocation

16. The options available for the allocation of Class B shares are as follows:

    a. **Option A: Net Assets:** Shares issued proportionate to the net assets each shareholding council transfers to the WO on 1 July 2027. The shares in the WO would be allocated to each council based on the total value of the council's assets (minus agreed debt and other agreed liabilities) transferred to (or assumed by) the WO.
    This approach aligns ownership proportions with balance sheet asset values at transfer and provides a clear linkage to existing audited valuations. It offers a relatively straightforward accounting treatment and is readily understood from a financial reporting perspective.

    However, this option places primary weight on historical investment patterns and valuation timing, and does not explicitly recognise differences in service demand, growth pressures, or future capital requirements across council areas. We note however that the agreed asset revaluation cycle will ensure that capital spend is reflected in future periodic revaluations.

Accounting implications

- This approach is accounting neutral at establishment.
- Assets and liabilities transferred are matched by an equivalent value of shares received.
- No material accounting gain or loss arises on transfer, subject to final valuations and agreed assumptions.

- Note – there is no loss or gain on the transfer of assets from an accounting perspective.

Strengths

- Clear, auditable, and readily understood.
- Minimises accounting complexity and audit risk at establishment.
- Aligns ownership strictly with balance sheet contribution.

Limitations

- Reflects historical investment patterns rather than current or future service demand.
- Does not explicitly recognise differences in population served, growth pressures, or scale of service delivery.

We note that this is the only option that supports all of the proposed four principles set out above.

b. **Option B: Discounted Cash Flow:** It is possible that over time this will become the primary valuation methodology for the WO. Watercare has used this valuation approach for several years. This methodology involves creating a set of long-term cash flows, encompassing revenue (pricing), operating cost, capital spend and funding cost assumptions. The resulting cash flows are discounted to the appropriate valuation date using a weighted average cost of capital that reflects the risks of the organisation.

However, due to the difficulty in creating credible long-term cash flows, particularly during the proposed ring-fenced period and prior to understanding the evolving role of the economic and water quality regulators, the estimation of future cash flows has ahigh degree of uncertainty, would require significant assumptions and may be less practical or transparent.

c. **Option C: Population or Connections:** Shares issued proportionate to the population of each council's service area, or the number of water connections each shareholding council has at the transfer date.

This approach may be used as a proxy for water services use in certain residential communities but does not reflect such usage in a larger city with different housing types such as apartments or retirement villages and with major industrial and commercial users. It

may be simple to understand and communicate to the extent that connections are similar eg primarily single house properties such as in WBOPDC. However, it becomes less appropriate when considering the disparate usage profiles for multi- user connections and larger commercial and industrial operations.

This methodology does not directly reflect differences in asset condition, historical investment, or debt levels. and may require supplementary governance mechanisms if used on a standalone basis to ensure balance between financial risk and service representation.

This approach does not fully meet the proposed principles set out above and is likely to result in a transfer of value from one council to another which will be recorded through its accounting impact. IThere would be implications for accounting gains to one council and losses to the other and for public reporting and accountability outcomes.

Central to the rationale for these valuation approaches is that they are not reflective of economic value, and connections or population are not equal – for example no allowance is made for the differences between residential, commercial and industrial users.

d. **Option D: Hybrid:** Shares issued based on a hybrid model comprised of one or more of the above metrics (being net assets, population, connections[1]).

Under this option, Class B economic shares would be allocated using a combination of two or more metrics, such as net assets, population, and/or connections, with agreed weightings. (This could extend to operating revenue which is not an option explored in this report).

A hybrid approach seeks to rebalance net asset value from contributing councils against differing community profiles which do not directly reflect asset value. It is argued by WBOPDC that no single metric fully captures “value” in a publicly owned water monopoly and allows councils to negotiate a proportionate and context specific outcome.

This option requires upfront agreement on the selected metrics, weightings, and rationale, and would need to be clearly documented to ensure transparency and auditability.

Accounting implications

- A hybrid methodology is unlikely to align with net asset values
- As a result, one or both councils would recognise an accounting gain or loss on transfer.

[1] Although staff see the previous metrics (net assets, population and water connections) as the most logical factors to feed into a hybrid model, the hybrid model does not need to be restricted to those Metrics and could take other factors into account, such as the level of LGFA debt that each party brings to the WO.

- It introduces policy or political factors to valuation.
- This approach does not fully support the proposed principles

Summary

TCC Position on valuation of Class B shares

17. The basis for allocating Class B shares should be net assets, given that it is not possible to reliably produce a discounted cash flow analysis. It meets all four principles and the requirement for financial prudence under the Local Government Act. There is no justifiable basis on which to recognise a reduced value of shares for its shareholding in the WO.

WBOPDC alternative proposal for valuation of Class B shares

18. WBOPDC has agreed to the net assets approach. However, the team notes both the hybrid and connections bases could be supported despite not meeting accounting standards of value. In its view the following factors provide justification for a different approach. It has also suggested that the % for connections could be adjusted so that the potential accounting implications could be minimised.

Factors from WBOPDC perspective

- Better reflects service scale, demand, and community benefit.
- Recognises that "value" in a public water monopoly is not solely balance sheet based.
- May be perceived as more equitable by its communities and elected members.

Limitations of alternative proposal

- Introduces accounting gains or losses at establishment.
- Requires clear explanation to auditors, councillors, and the public.
- Requires careful documentation of rationale, weightings, and assumptions

19. Because the hybrid option would involve some weighting assigned to population, connections (or both), it would create unfavourable financial accounting implications.

20. **On balance, both Councils recommend option A, that Class B (economic ownership) shares be issued based on net assets.**