

Three Waters Reform – Feedback to Minister of Local Government

September 2021

Thank you for this opportunity to provide feedback on Government's Three Waters reform direction to date.

Western Bay of Plenty District Council (WBOPDC) met on 23 September 2021 and identified significant concerns with the proposal.

Our motivation in providing this feedback is to express our concerns and suggest that the current proposals be replaced with proposals that would likely be acceptable to the majority of our ratepayers.

The significant concerns relate to:

- the proposed governance framework, including:
 - overall complexity
 - how the local voice can influence decisions of the new entity
 - who will influence the planning hierarchy and levels of service for three waters to safeguard the best interests of the Western Bay of Plenty District
 - the lack of clarity and assurance provided around asset ownership and control at a local level
 - how will Entity B's growth opportunities be prioritised and the consequences for Western Bay's growth opportunities
 - how will Entity B prioritise maintenance and renewal of existing infrastructure and the consequences for Western Bay's existing networks
 - the requirement for 75% support for a decision of the Regional Representative Group.
- Government's financial projections under reform
 - the credibility of the financial projections and modelling, and how they relate to our Council in particular
 - concerns about how debt and funding mechanisms and transfers, including financial contributions, will be treated
- transition risks to Council as a borrower/guarantor of the Local Government Funding Agency Limited (LGFA) if:
 - all existing loans related to WBOPDC water assets were assigned to Entity B; or
 - the LGFA having a substantive role in either assisting the new Entities with arranging financing or lending directly to them (subject to any legislative amendments required)

- other transition risks, including stranded overheads and continuity for employees in terms of employment location, remuneration and roles
- the need for assurance that non-council owned, and operated facilities would be excluded from the new entities.

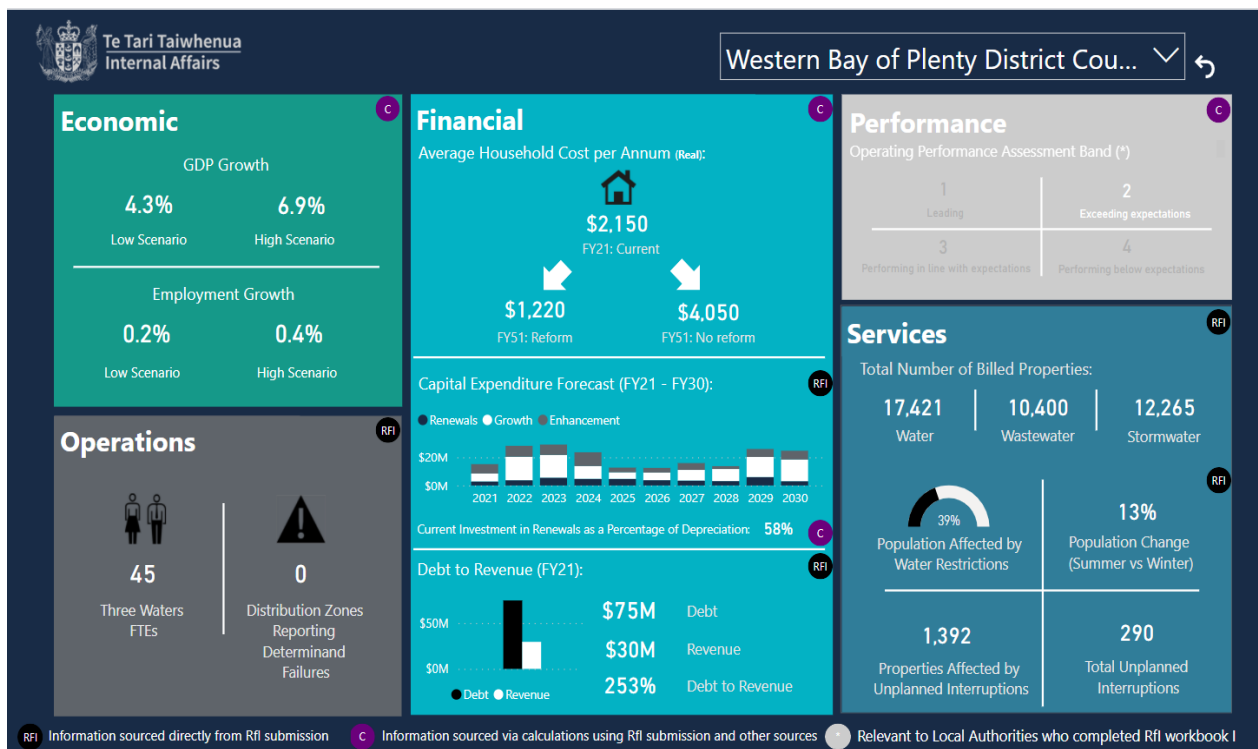
Reform process and public communication

Council is disappointed with Government’s public communication campaign which has resulted in local government having to shoulder the responsibility of explaining the reform direction to communities. The advertising campaign has undermined our performance record, the reputation of local government and made future consultation on a firm proposal more difficult.

To enable Council to have a credible proposal to take to the community for consultation, the concerns raised here need to be addressed, and answers provided to our queries.

WBOPDC’s Three Waters context

The analysis of the information provided by WBOPDC through the RFI process last summer confirms that WBOPDC is performing above average in this service. The dashboard for our Council, based on information supplied in January 2021, is shown below:



This “exceeding expectations” performance has been possible because Council has taken hard decisions in the past to charge appropriately for the cost of providing the Three Waters networks. To manage demand and improve environmental outcomes, the water supplies to almost all connected properties are metered.

Council's Long Term Plan 2021–2031 (LTP) contains \$212 million (uninflated) capital expenditure funding commitment to further invest in Three Waters networks over the next 10 years. This is to service expected growth of 3,700 dwellings and meet higher performance standards for Three Waters, particularly in the wastewater and stormwater services. WBOPDC's current and future level of service and funding commitment is based on 100% compliance with the Drinking Water Standards NZ.

Detailed feedback on the Government's policy direction

In recent weeks, Council has undertaken an assessment of two future scenarios in 2031:

- no reform and Council delivers Three Waters services alone, investing as indicated in the LTP
- reform occurs and Council's Three Waters assets transfer to Entity B as modelled in August 2021, with 800,000 connected population.

The assessment highlighted areas of concern and where further clarity in the proposals is needed. These are outlined overleaf, together with solutions or suggestions for mitigation where appropriate.

The comments regarding implications for Mana Whenua are provided based on workshops held with our two representative roopu representing the iwi and hapū of Tauranga Moana and Te Arawa ki Tai.

Matters of concern or requests for information

| Topic | Details | Potential solution or mitigation |
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| Public participation in decision-making about the reform proposals | | |
| <ul style="list-style-type: none"> - about opting in or out | <p>WBOPDC has not sought public input during this eight-week window, however staff addressed public meetings in July to outline the direction of the reform as then understood. In recent weeks we have heard from many members of the public concerned about their lack of opportunity to influence the significant decisions being taken by Government which will affect their control of assets the community has paid for. Some are demanding a referendum on the matter, others want to influence in the decision-making in a more general way. Many are concerned about the governance arrangements and are questioning the reliability of the case for reform. Council shares these concerns.</p> | <p>Communication by central government to the public about the drivers for reform and the important issues and trade-offs has been poorly conceived. The transparency of decision-making and wealth of information on the DIA Three Waters Reform website is commendable, but the public has been let down by government's efforts to bridge the gap between this information and what the public needs to know about the reasons for the reform proposal and its key features. It would be beneficial for Government to focus its efforts on addressing this gap as part of the next steps in the reform process.</p> |
| <ul style="list-style-type: none"> - about the role of mana whenua in the new entity's governance framework | <p>Some members of the community are concerned about mana whenua having an undue influence over the decisions of the representative group (being six council representatives and six mana whenua representatives).</p> | <p>Council notes that equal representation by mana whenua and local authorities is one of Government's key principles for the new entity's governance¹.</p> |

¹ (Cabinet minute 11 on 14 June 2021 CAB-21-MIN -0227) at [https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/\\$file/cabinet-paper-two-and-minute-designing-the-new-three-waters-service-delivery-entities-30-june-2021.002.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/$file/cabinet-paper-two-and-minute-designing-the-new-three-waters-service-delivery-entities-30-june-2021.002.pdf)

| Topic | Details | Potential solution or mitigation |
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| <p>Governance framework: Community’s ability (directly or through their Council) to influence decisions of the Representative Group and decisions of the Board of Entity B, post-reform</p> | | |
| <p>– Local priorities for enabling growth</p> | <p>WBOPDC knows the frustration and community harm that results from partners in infrastructure not being able to deliver on their commitments in a timely and coordinated way. Council has already experienced this with Waka Kotahi shifting priorities and its inability to fully commit to projects with a medium term lead-time. WBOPDC fears that with another large entity to deal with, the difficulties of aligning priorities and holding to them will multiply. Given the proposed governance structure, and that in Entity B, 22 local authorities will have six representatives, there is concern that without legislative obligations, individual councils will not have enough influence over the Entity Board to ensure that spatial planning commitments made with the Entity are met.</p> | <p>Even without Three Waters Reform there is an urgent need for urban planning frameworks to be linked to funding decisions. This is to ensure that where planning takes place in good faith, commitments for funding the implementation should be mandatory to ensure all planning partners live up to their commitments. We understand that the Strategic Planning Act will recognise the new Water Services Entities, but mechanisms should be put in place to ensure their funding decisions reflect their participation in planning decisions. Investment decisions made by Entity B should be objective, free of political influence, supported by robust business cases and implemented using fully hypothecated funding.</p> |
| <p>– Integrated planning for stormwater and urban design</p> | <p>WBOPDC is concerned that integrated spatial planning will be more difficult when stormwater and urban design are being done in different organisations. The result could mean compromised environmental and amenity outcomes or slower urban development while conflicts are resolved.</p> | <p>RMA and spatial planning reform needs to be carefully coordinated with Three Waters Reform to ensure that the resulting framework is coherent and effective. This will be critical during transition of both legislative frameworks because it coincides with a period of rapid urban growth driven by the shortage of housing exacerbated by shortage of skills in both the public and private sectors.</p> |
| <p>– Local opportunities</p> | <p>Many Three Waters assets (particularly stormwater) are used for amenity and recreation as well as their primary Three Waters</p> | <p>Good working relationships and coordination of asset management and service delivery between Councils</p> |

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| <p>for combined use of public assets</p> | <p>purpose. Often the recreation function develops in response to a community initiative and may be managed by a community group.</p> <p>There is concern that close working relationships between the community and the managers of Three Waters assets will no longer exist. This would inhibit full use of the assets for community well-being.</p> <p>In the governance framework proposed by Government, the only direct relationship between communities and the Entity Board appears to be through “consultation requirements for entities when developing documents on strategic direction, investment plans and proposed prices and charges”. There does not appear to be an obligation on the entity to respond to grass roots community initiatives that would not be part of the Strategic and Performance Expectations document that the Regional Representative Group would produce.</p> | <p>and the new Entity will be needed at grass roots level. This should be mandated in the governance framework.</p> |
| <p>– Pricing and revenue decisions, both transition pricing and on-going cross-subsidisation</p> | <p>WBOPDC has relatively high charges for three waters services, not due to inefficiency, but because we have invested in the network to improve standards and keep the assets in good condition. Without reform, we would expect other provincial councils’ pricing to increase to levels similar to ours in the near future, as tighter regulation of standards takes effect.</p> <p>We understand that part of the purpose of the reform is to enable areas that benefit from economies of scale due to urban density to cross-subsidise less densely populated areas. In that case, fairness suggests that from day one of the new entity, the prices paid by each customer for services they receive should be the same irrespective of the prices paid in the past. We have not heard any proposals for how pricing would be determined other than there would be an economic regulator.</p> | <p>DIA has consistently talked of the projected “average household cost” in making the case for reform, stressing that the amount is different to the expected price.</p> <p>It would be helpful if pricing principles (both for transition and the longer term) could be made public as soon as possible. Consideration could be given to mandating pricing changes in the lead-up to 1 July 2024 to shorten any period of transition.</p> |

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| | <p>While it is reasonable to argue that a period of transition in pricing is necessary until the new entity learns the true cost of its services, any transition pricing should not continue to reward the communities that have underinvested in their assets and charged less than the cost of service, at the expense of other communities.</p> | |
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| Risk of loss of skilled staff | | |
| <p>- Transition risks and long term employer relations</p> | <p>One of WBOPDC’s priorities is to ensure staff affected by the reforms are no worse off. For many staff the new entities will provide different opportunities for career development to the ones they currently enjoy. Younger staff will particularly benefit from the new opportunities.</p> <p>Government has announced that all staff mainly involved in Three Waters services will be guaranteed employment in the new entity at the same salary, position and location as they currently have. This is helpful, but without a commitment for how long that will last, the guarantee only provides greater certainty for the period up to 1 July 2024. Obviously the new entity will be required by law to be a good employer, but there is a risk that highly skilled younger staff could be motivated to sit out the period of uncertainty elsewhere, including the private sector, particularly once international borders open.</p> <p>The uncertainty of the workplace location for senior Three Waters staff is also another concern.</p> <p>During the transition period, young up and coming staff may want to position themselves in larger, more visible councils to gain a reputation that could help them in the bigger entities. It may become difficult for smaller councils to hold onto their key staff in the interim, and in extreme cases services could be put at risk.</p> | <p>We suggest the DIA transition team consider early strategies (including retention incentives) to secure the forward commitment of skilled staff, while maintaining continuity of services at smaller councils.</p> <p>Longer term, there is a risk that the sheer size of the new entities and the small pool of decision-makers could create a monopoly employer situation in some parts of the country with limited opportunities for individual negotiation. This should be recognised and mitigating processes put in place when the entities are established.</p> |

| Topic | Details | Potential solution or mitigation |
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| How mana whenua can effectively influence decisions of the Representative Group and decisions of the Board of Entity B | | |
| <ul style="list-style-type: none"> - Te Mana o Te Wai statements | <p>Mana whenua representatives have told us they need to better understand the role and power of the Te Mana o Te Wai Statement in influencing the decisions of the Board of Entity B, and how hapu can effectively influence the content of the Te Mana o Te Wai Statement itself.</p> <p>There is concern that their voices will not be heard, particularly given the size of Entity B and the complex mana whenua relationships within the entity's jurisdiction.</p> | <p>DIA should urgently engage with hapu representatives in the Western Bay of Plenty District and put in place channels of communication that reach the grass roots.</p> |
| <ul style="list-style-type: none"> - Local issues and priorities | <p>Mana whenua representatives have told us they are concerned that their local priorities will not be given due consideration and their priorities may be overshadowed by issues concerning larger districts and iwi groups.</p> <p>We have heard that proposing four entities is challenging for mana whenua and that seven entities would better reflect the extent of their traditional responsibilities and influence over water resources.</p> | <p>DIA should engage with hapu at grass roots level to explain the structures and tools they can use to influence local priorities and bottom lines relating to the delivery of Three Waters services. If DIA believes it has engaged adequately with mana whenua leaders in the Western Bay of Plenty District, then support and capacity is needed to ensure the advice and information is filtering down to the people on the ground.</p> |
| <ul style="list-style-type: none"> - Resourcing to build capacity to respond to the opportunities and obligations in this framework | <p>Mana whenua of this area need assistance to enable their immediate participation in the reform discussions and longer term capacity building so they can play an effective part in the reforms, the transition, and post 1 July 2024. This is essential for the success of Entity B, assuming the reform goes ahead.</p> | <p>DIA should provide mana whenua of the Western Bay of Plenty with information about how to access support to build their capacity to participate in the reform discussions and to play an effective part in the transition and launch of Entity B.</p> |

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| Clarity sought on financial matters | | |
| <ul style="list-style-type: none"> financial contributions and developer agreements | <p>For growth councils, development contributions (or in WBOPDC's case, financial contributions) are a significant source of funding to extend Three Waters networks to new or more intense developments.</p> <p>It is not clear how similar arrangements are intended to work during transition, or as an ongoing funding principle for the new Entities. WBOPDC believes it is important that developers pay their fair share of the cost of extending services to the land they are developing.</p> <p>We have heard from DIA staff that we can expect the new entities to assume the responsibilities and obligations of Council in development agreements, as far as they relate to Three Waters assets and liabilities.</p> <p>We are concerned that a one-size-fits-all approach to managing transition with developers may overlook the implications for councils that use less well-known tools for funding.</p> | <p>Start an early conversation will councils so that we can help manage developers' expectations, implement processes that capture the right records, and avoid entering into developer agreements that may be difficult to honour and administer later.</p> |
| <ul style="list-style-type: none"> Treasury, internal debt allocations and transition | <p>For councils that run Treasury management portfolios rather than dedicated external loans for Three Waters financing, more clarity is needed about how these will be treated.</p> <p>Similarly, clarity is sought as to how hedging arrangements such as interest rate swaps intended to cover the underlying Council borrowing would be treated. This would help staff to understand and plan for their transition obligations and identify the impact on their borrowing activities during the transition period.</p> | <p>Early discussions with DIA and the LGFA in this regard would be helpful. While 1 July 2024 is a fair way off, the treatment of treasury portfolios may have an impact on the remaining operations of council and councils need to understand what this could be.</p> |

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| | <p>Concerns have been raised by the Local Government Funding Agency Limited (as Council’s primary lender, and in WBOPDC’s capacity as a shareholder/guarantor) about the impact of debt transfers between Council and the new entity, the implications on the guarantor system should the LGFA lend to the new entity and wider funding implications for water.</p> <p>In the scenario where LGFA does not lend to the water entities, there is a transition risk around how the transfer of debt would be implemented with a consequential reduction in the LGFA’s balance sheet. This introduces the risk of higher interest rate costs to local government.</p> <p>In the alternative scenario where LGFA does lend to the water entities there are transition and ongoing financial risks. WBOPDC is both an 8.3% shareholder in the LGFA and a guarantor, meaning that Council faces the proportionate sharing of liabilities in the event of default by any other borrower under the LGFA foundation policy. Given the proposed capital investment in infrastructure, the company’s balance sheet and the loans that WBOPDC guarantees could rise from the current \$14.5bn to greater than \$180bn. WBOPDC needs greater clarity on how this would affect the current shareholder structure along with assurances that risks to shareholders and guarantors are at acceptable levels.</p> | |
| <p>– Assumptions underpinning the WICS’ forecasts for capital expenditure</p> | <p>If participating in the reforms remain voluntary, Council will have to consult with its community about whether to opt in or out. To do this, councils will need to make a positive decision on a proposal one way or the other, which they need to be able to explain and justify.</p> | <p>If participation remains voluntary, councils have a moral obligation to consult with their communities on such a significant decision. To do so, greater transparency, justification, and assessment of WICS assumptions at a council level will be needed. Resourcing for smaller councils to enable</p> |

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| <p>over 30 years and borrowing capacity of stand-alone councils for Three Waters investments</p> | <p>For WBOPDC, the WICS forecasts are significantly different to forecasts made in our 30 year Infrastructure Strategy (part of the 2021-31 LTP). While we acknowledge WICS international experience and respect their understanding of the journey other jurisdictions have taken toward meeting higher water standards, we cannot say whether we believe their forecasts for Western Bay of Plenty District are reasonable, or not. This is largely because the drivers for the capital expenditure they assume to be required are not transparent.</p> <p>While WICS' methodology and macro-level assumptions have been peer reviewed by Beca and Farrierswier, we do not believe the peer review was designed to address whether the forecasts at a council level were reasonable as to direction or scale.</p> | <p>credible reconciliation between council's current 30 year forecasts and WICS' assumptions would be required.</p> <p>Ideally this would be done for each council by an independent party, using common methodology and funded by DIA as part of the "no worse off" package.</p> |
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Yours sincerely



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