

Mā tō tātou takiwā
For our District

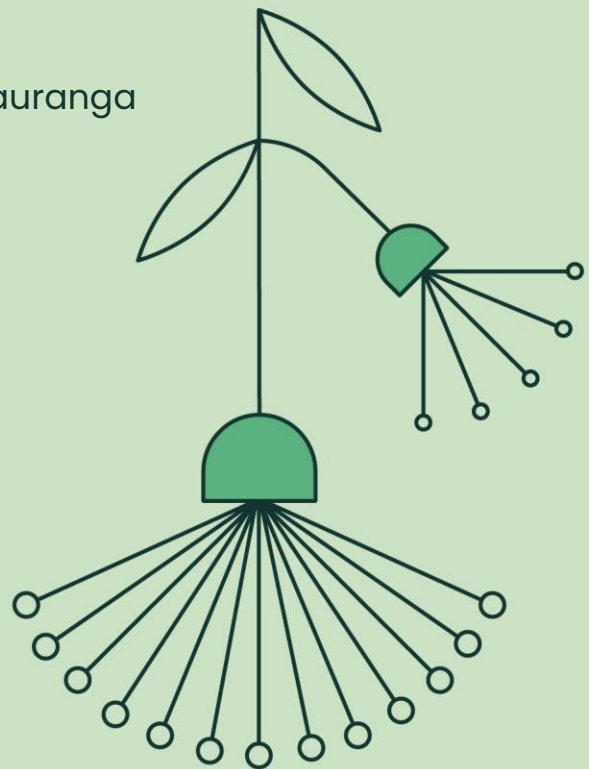
Strategy and Policy Committee

Kōmiti Rautaki me Kaupapa Here

SPC23-2

Thursday, 13 April 2023, 11.00am

Council Chambers, 1484 Cameron Road, Tauranga



Strategy and Policy Committee

Membership:

Chairperson	Mayor James Denyer
Deputy Chairperson	Cr Richard Crawford
Members	Cr Tracey Coxhead Cr Grant Dally Cr Murray Grainger Cr Anne Henry Cr Rodney Joyce Cr Margaret Murray-Benge Deputy Mayor John Scrimgeour Cr Allan Sole Cr Don Thwaites Cr Andy Wichers
Quorum	Six (6)
Frequency	Six weekly

Role:

- To develop and review strategies, policies, plans and bylaws to advance the strategic direction of Council and its communities.
- To ensure an integrated approach to land development (including land for housing), land use and transportation to enable, support and shape sustainable, vibrant and safe communities.
- To ensure there is sufficient and appropriate housing supply and choice in existing and new urban areas to meet current and future needs.

Scope:

- Development and review of bylaws in accordance with legislation including determination of the nature and extent of community engagement approaches to be deployed.
- Development, review and approval of strategies and plans in accordance with legislation including
- determination of the nature and extent of community engagement approaches to be deployed.
- Subject to compliance with legislation and the Long Term Plan, to resolve all matters of strategic policy outside of the Long Term Plan process which does not require, under the Local Government Act 2002, a resolution of Council.

- Development of District Plan changes up to the point of public notification under the Resource Management Act 1991.
- Endorsement of the Future Development Strategy and sub-regional or regional spatial plans.
- Consider and approve changes to service delivery arrangements arising from service delivery reviews required under the Local Government Act 2002 (provided that where a service delivery proposal requires an amendment to the Long Term Plan, it shall thereafter be progressed by the Annual Plan and Long Term Plan Committee).
- Where un-budgeted financial implications arise from the development or review of policies, bylaws or plans, recommend to Council any changes or variations necessary to give effect to such policies, bylaws or plans.
- Listen to and receive the presentation of views by people and engage in spoken interaction in relation to any matters Council undertakes to consult on whether under the Local Government Act 2002 or any other Act.
- Oversee the development of strategies relating to sub-regional parks and sub-regional community facilities for the enhancement of community wellbeing of the Western Bay of Plenty District communities, for recommendation to Tauranga City Council and Western Bay of Plenty District Council.
- Consider and decide applications to the Community Matching Fund (including accumulated Ecological Financial Contributions).
- Consider and decide applications to the Facilities in the Community Grant Fund.
- Approve Council submissions to central government, councils and other organisations, including submissions on proposed legislation, plan changes or policy statements.
- Receive and make decisions and recommendations to Council and its Committees, as appropriate, on reports, recommendations and minutes of the following:
 - SmartGrowth Leadership Group
 - Regional Transport Committee
 - Any other Joint Committee, Forum or Working Group, as directed by Council.
- Receive and make decisions on, as appropriate, any matters of a policy or planning nature from the following:
 - Waihi Beach, Katikati, Ōmokoroa, Te Puke and Maketu Community Boards.
 - Community Committee.

Power to Act:

- To make all decisions necessary to fulfil the role and scope of the Committee subject to the limitations imposed.

Power to Recommend:

- To Council and/or any Committee as it deems appropriate.

Power to sub-delegate:

- The Committee may delegate any of its functions, duties or powers to a subcommittee, working group or other subordinate decision-making body subject to the restrictions within its delegations and provided that any such sub-delegation includes a statement of purpose and specification of task.
- Should there be insufficient time for Strategy and Policy Committee to consider approval for a final submission to an external body, the Chair has delegated authority to sign the submission on behalf of Council, provided that the final submission is reported to the next scheduled meeting of the Strategy and Policy Committee.

Notice is hereby given that a Strategy and Policy Committee Meeting will be held in the Council Chambers, 1484 Cameron Road, Tauranga

on:

Thursday, 13 April 2023 at 11.00am

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1 PRESENT**2 IN ATTENDANCE****3 APOLOGIES****4 CONSIDERATION OF LATE ITEMS****5 DECLARATIONS OF INTEREST**

Members are reminded of the need to be vigilant and to stand aside from decision making when a conflict arises between their role as an elected representative and any private or other external interest that they may have.

6 PUBLIC EXCLUDED ITEMS**7 PUBLIC FORUM**

A period of up to 30 minutes is set aside for a public forum. Members of the public may attend to address the Board for up to five minutes on items that fall within the delegations of the Board provided the matters are not subject to legal proceedings, or to a process providing for the hearing of submissions. Speakers may be questioned through the Chairperson by members, but questions must be confined to obtaining information or clarification on matters raised by the speaker. The Chairperson has discretion in regard to time extensions.

Such presentations do not form part of the formal business of the meeting, a brief record will be kept of matters raised during any public forum section of the meeting with matters for action to be referred through the customer contact centre request system, while those requiring further investigation will be referred to the Chief Executive.

8 PRESENTATIONS

9 REPORTS

9.1 SUBMISSION ON THE WATER SERVICES LEGISLATION BILL AND WATER SERVICES ECONOMIC EFFICIENCY AND CONSUMER PROTECTION BILL

File Number: A5259900

Author: Ariell King, Strategic Advisor: Legislative Reform and Special Projects

Authoriser: Rachael Davie, General Manager Strategy and Community

EXECUTIVE SUMMARY

1. For the information of the Strategy and Policy Committee, this report presents a submission made by the Western Bay of Plenty District Council on the following matter:
 - (a) Submission on the Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill.

RECOMMENDATION

1. That the Strategic Advisor: Legislative Reform and Special Projects report dated 13 April 2023 titled 'Submission on the Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill' be received.
2. That the submission, shown as **Attachment 1** to this report, is received by the Strategy and Policy Committee and the information is noted.

ATTACHMENTS

1. **Final Submission on WSL Bill and WSEEC Bill 2023 - signed by Mayor Denyer**  



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Organisation: Western Bay of Plenty District Council
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Western Bay of Plenty District Council submission to the Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill

Finance and Expenditure Committee,

Western Bay of Plenty District Council (Council) thanks the Select Committee for the opportunity to submit on the Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill.

We note that we were originally provided with an extended submission date of 15 March 2023. This extension was intended to provide a reasonable amount of time to allow for our elected members and staff to consider the bills and provide feedback that reflects the views of our community and elected members. It was also intended to provide time to genuinely engage with our mana whenua partners and understand their thoughts and views and support them in Council's submission.

We were disappointed that the committee decided to amend the submission deadline to 6 March 2023. This reduction in time, coupled with the coincidence of the submission period for these bills, the Natural and Built Environment Bill (NBE), the Spatial Planning Bill (SPB) and the draft report on the Future for Local Government, over the Christmas and summer holidays, has not illustrated a true collaborative approach to the water services legislative framework. It has also made it very difficult to engage with our stakeholders to understand their views.

The reform process is intended to create 'once in a lifetime' change that provides all New Zealanders with 'safe, affordable and reliable drinking water, wastewater and stormwater'. Our submission (and the submissions of others) highlights numerous issues to be resolved before the legislation would meet the intended outcomes. It appears the three reform processes, whilst concurrent, have been progressed in relative isolation from each

other, and there are gaps and inconsistencies in the proposed arrangements and processes.

In order for reform to be successful, timeframes should enable meaningful and effective engagement to address potential implementation challenges to be identified and resolved. In our view, this reform programme is being undertaken too quickly and as a result effective implementation is at risk.

We support the potential for a 'refocus' of the reform programme as articulated by Prime Minister Hipkins. We would also encourage cross-party collaboration so that greater certainty on the reforms can be achieved.

We would like to reiterate the point made in our submission to the Water Services Entities Bill that there is a broad range of views on the merits of the overall reform and concern at the model chosen by this government, both across our community and around our Council table. While we hold differing opinions, we are committed to seeing that any change delivered is workable and benefits our community.

If the bills proceed, we request that a further iteration of the bills be the subject of further submissions to allow consideration of the amendments made and to consider the implications of such.

We would encourage the government to provide certainty and clarity to the community regarding the proposed changes and opportunities for input. There is still a high level of uncertainty and misinformation within our community as to the progress and intention of the reforms. It is imperative that the government explains to the community the intended changes and benefits anticipated from the reforms. We would also encourage cross-party collaboration so that greater certainty in the reforms can be achieved.

We are concerned that the level of funding that has been set aside for the various transfers and arrangements is insufficient. We request that these costs are fully covered by the Water Services Entity. We also request that a claims process is established to allow Councils to claim back fair costs for other transition costs that may not have been originally anticipated.

As you will be aware, Councils within Water Service Entity B, sought legal support and advice on the two bills from Simpson Grierson. Council generally supports the submission points raised by Simpson Grierson in attachment one and two.

We also generally support the submissions made by Taituarā and Local Government New Zealand.

Please note that we do **not** wish to speak to our submission.

Water Services Legislation Bill submission points and proposed amendments**Clarity of roles, responsibilities, and functions**

There is a lack of clarity and uncertainty across the two bills in terms of functions, roles, and responsibilities. This will negatively affect the implementation of the water services entities and the ongoing efficient and effective operation of Councils. It will also have implications for our community and will likely affect the achievement of outcomes intended by the reforms.

The issue of clarity extends to alignment with other legislative reform. In our submission to the Select Committee on the NBEB and SPB we note that this is an issue of paramount importance. The Three Waters reform, the Future for Local Government (FFLG) review and the RMA reform all impact one another.

The premise of centralising or regionalising territorial authority functions is at odds with the findings of the FFLG review, which places importance on localism and the principle of subsidiarity. It seems illogical that these processes, whilst concurrent, are so at odds in their fundamental approach to structure and function. It would have been beneficial for the recommendations of the FFLG review to be finalised and for legislative change to be enacted prior to the completion of the three waters reform.

We draw the Committees attention to the points raised in Topic 2 of attachment one.

Integrated planning

Planning for our communities should not operate within a vacuum. We are concerned that there has not been enough consideration of how the intended changes arising from the RMA reform will be integrated with future water infrastructure requirements and the ongoing operations of the water services entities. Integrated planning and alignment of priorities should also extend to the other utility providers such as power and telecommunications.

We submit that the WSE should be a mandatory member of the Regional Planning Committees envisioned as part of the RMA reform. This would assist in ensuring alignment between three waters infrastructure within spatial planning processes.

Integrated planning is also important if we are to adapt and mitigate the ongoing effects of climate change. Recent weather events have illustrated the susceptibility of our infrastructure and a sustainable solution will require everyone working together. This highlights the need for the Climate Change Adaptation Bill to be considered alongside the reform of three waters and the RMA.

The ongoing and future investment in our country's infrastructure needs to account for the different risk profiles that each community has when planning for redevelopment and

growth. We question how this investment will be prioritised for three waters infrastructure in the absence of a national direction on adaptation.

Capacity and capability

The suite of bills and acts that provide for the water service entities anticipates a significant number of plans, strategies, agreements, and policies for the entities to develop and review. We question whether this is better than what we have now?

Council and Mana Whenua are invited to participate in the development and review of most of these documents. We are concerned that there is not enough capacity to participate and provide meaningful feedback when we combine this requirement with the requirements arising from the RMA reform and the FFLG review. Our capability to engage will also be affected as most technical staff are likely to transfer to the new entity. There are also potential timing conflicts with other processes e.g., Annual Plan, LTP that we have a legislative responsibility for.

We are also concerned that in the recruitment of staff from local government to build the capacity and capability of the Water Services Entities, that local government will no longer be able to function effectively. This could have a financial implication for local government if there are prosecutions that arise from noncompliance with our legislative responsibilities that can be directly attributed to a lack of staff. There is also concern that we will not have staff available to engage with the WSE in the numerous proposed plans, strategies, and agreements.

We emphasise the need for funding to support mana whenua in the ongoing development and future requirements arising from the three waters and RMA reform. Funding should also be set aside to facilitate capacity building and provide training opportunities.

Stormwater

We are not convinced that stormwater functions should transfer to the water services entities at this time (and possibly not at all). We would draw the Committee's attention to the matters raised in Topic 1 of the Simpson Grierson submission points in attachment one.

There seems to be a disconnect between the interaction of stormwater from the rural and urban environments, overland flow paths and the transportation network. This ties back to our comments about the value and need for an integrated planning approach and consistency with the changes anticipated by the RMA reform and the potential requirements of the Climate Change Adaptation Bill.

The current approach is ambiguous as to where the Council's responsibility starts and finishes, especially the demarcation line between where stormwater 'leaves' our system and enters the WSE stormwater system. We also question where the treatment of

stormwater is intended to occur, the associated costs and where these will fall. For example, is it intended that the cost of treatment will fall on the transport activity purely by default as this is where the stormwater will most likely enter the WSE stormwater system?

We understand that the WSE will develop its own development code. We are keen to understand how this will interact and align with Council's development code. We also support a discussion and potential inclusion of urban design principles.

Specifically, we note the following:

- The definition of stormwater needs to be clarified.
- The potential challenges identified with the development of stormwater management plans (s253 and s257) as noted in Topic 2 in attachment one.
- The potential for conflict between the stormwater network rules and land use rules under the RMA (or NBEA).
- Conflict between the stormwater environmental performance standards, existing and future discharge consents issued by a Regional Council and the directives of Taumata Arowai.
- The stormwater management plans do not have a requirement to articulate the level of service and the level of risk mitigation is weak.
- We suggest that the stormwater management plans should be subject to a six yearly review to align with the three yearly reviews of asset management plans and Infrastructure Strategies (rather than the five yearly reviews proposed under section 466)
- We oppose section 342 that provides that in certain cases a WSE is exempt from rates. We also oppose any amendments to the Local Government (Rating) Act that would provide an exemption from paying rates. These costs would then fall directly on our community with no benefit or justification provided.

Amendments to Water Services Entities Act 2022 (WSEA)

We support the amendments to Part 5 regarding partnering and engaging with Mana Whenua, reporting on how specific documents give effect to the Treaty of Waitangi and Te Mana o te Wai. We also support the use of Te Tiriti o Waitangi within the legislation.

We also support the replacement of section 13 of the WSEA that includes functions to partner and engage with its territorial authority owners, mana whenua and a range of other functions including collaboration, support, facilitation etc. in a number of areas. This support is tempered with our general comments regarding the number of plans, processes, strategies that are created and the overall capacity and capability of Mana Whenua to have a genuine opportunity for meaningful engagement in the myriad of requirements.

Section 13, an amendment to section 18, and the replacement of Schedule 5 with a new Schedule 2, provides the entities with the ability to own and operate subsidiaries. As we understand it subsidiaries are a new concept that has been included in the Bill.

It would be useful to understand what is envisioned by providing for subsidiaries. We note that the entities can transfer infrastructure to the subsidiaries and subsidiaries are also able to pay shareholders a dividend. Where the shareholders are only the various Councils, the expectation would be that the dividends would be used to offset costs of the water entity or to invest in technology that assists the water services entities to achieve their objectives.

We are concerned with the ability to distribute dividends to other shareholders as this seems contrary to the intent of the public ownership model that has been communicated to date.

Part 6 – Provisions relating to water services infrastructure.

Subpart 1 provides for work on water services infrastructure on or under land (including Māori reservation and Māori land) and sets out the required processes before the work can be undertaken. We think there is an opportunity for improved drafting with these provisions to provide clarity and certainty of the process.

We generally agree with the points raised by Simpson Grierson in attachment one (Topic 3). We do not agree that the rights of appeal to the District Court or Māori Land Court should be removed.

We are not convinced that the tone and implications of these provisions will lead to the best outcome in terms of access and undertaking required works. Examples include a landowner being able to provide reasonable conditions, the heavy reliance on implied consent and the confrontational nature of court processes. The requirements do not seem consistent with a partnership approach under Te Tiriti o Waitangi.

From an iwi and hapū perspective, we understand that the terminology used is inaccurate in terms of who may agree to access and is used interchangeably specifically within sections 208 and 209. We understand that our iwi/hapū forums, Te Kāhui Mana Whenua o Tauranga Moana and Te Ihu o Te Waka o Te Arawa, will canvas this in their submission on the Bills.

The requirements for access and proposed works do not seem to have been considered in conjunction with any other regulatory requirements such as those under the current RMA (or proposed in the NBE). Given the myriad of requirements for consultation it would be logical to combine processes and requirements where possible.

We think there may be a drafting error in section 208. The section title references carrying out work under section 200(1)(a), but then goes on to say the section applies to work described in section 200(1)(a) where the land is owned by more than 10 people, and then references work carried out under section 200(1)(b) or (c) where the underlying land is marae, urupā, reservation, owned by 10 people. Should the section title only reference Section 200(1)?

Works under section 208 require a longer notice period and the notice requirements are more stringent but for marae, urupā, reservation, owned by more than 10 owners, these requirements only apply to (b)(c) which largely covers routine operational maintenance/renewal. We think that the more stringent requirements should also apply to the more significant capital works carried out under section 207.

Section 219(2) appears to be trying to bulk “legalise” historic water infrastructure that has been installed within land, potentially without all the right paperwork in place to prove that it was installed legally. This is not an appropriate mechanism to address this issue and could lead to further issues.

Section 224 applies if a water services entity is seeking to create an easement on the record of title in relation to land on which a marae or an urupā is situated or that is a Māori reservation. The section specifically directs that sections 315 to 326 will apply “as if it were land to which Part 14 of that Act applies”. That is to say that the land will be treated as if it were Māori freehold land, Māori customary land or general land owned by Māori. We understand that these classes of land are offered lower protection from alienation than Māori Reservation land, which marae and urupā are often situated upon.

Council does not consider it appropriate to seek easements over marae, urupā or Māori reservation as it is wāhi tapu for Māori. In 2021, Council undertook to upgrade/establish wastewater connections for almost all the marae within our district. Where Council mains were installed on marae land, no easements were sought. Council considered that we could attain a similar level of protection of our assets by agreement with the marae trustees. This approach recognised both the need of the marae to have well functioning wastewater systems and that the land is taonga tuku iho for the mana whenua and will not be sold or transferred.

We suggest that section 224 is deleted, and **if** for some reason an easement is required, that this is sought in accordance with the current provisions of Te Ture Whenua Māori Act 1993.

Subpart 2 sets out the requirements for work on infrastructure on or under roads. Section 222 also provides for the road owner to require water services infrastructure to be moved. We support these provisions but would like to comment on alignment of works with other utility providers. We suggest that a clause is added requiring consultation with other utility providers when work is required on waters infrastructure on or under roads.

Part 7 – Controlled drinking water catchments

We support section 232(5) that requires engagement with territorial authorities, mana whenua, consumers, and communities in the service area.

There is potential for misalignment between the WSL Bill, spatial planning, and the relevant RMA processes in terms of designating a controlled drinking water catchment. We

10 INFORMATION FOR RECEIPT