

REPORTS

OPTION TO PREPARE AN ANNUAL PLAN 2024/25

Department: Civic and Finance

EXECUTIVE SUMMARY

- 1 On 16 February 2024, the Water Services Acts Repeal Act 2024 (the Repeal Act) was enacted. The Repeal Act provides transitional options for local authorities to consider in terms of the preparation of their 2024-34 Long Term Plans. It includes the ability to prepare an enhanced Annual Plan for the 2024/25 year, followed by the completion of a 9 year plan for the period 2025-2034.
- 2 This report seeks a decision from Council on the option to complete an Annual Plan for the 2024/25 year, and then complete a 9 year plan covering the 2025-34 years. The following 10 year plan 2027-37 would be completed two years later, bringing the three yearly planning cycle back into line.
- 3 Deferring the 10 year plan is recommended, to enable a better understanding of revenue streams, rating impacts, investment returns, debt – both group and council, and interest costs. A more meaningful Financial Strategy would be developed, addressing Council's unbalanced budget and providing greater confidence in our outlook over the 9 year period 2025-34.
- 4 While there is likely to be some community disappointment that the 10 year plan may be delayed, the improved understanding and strategic alignment will lead to better consultation and engagement with the community and ideally, to a 9 year plan that better represents the aspirations and expectations of both Councillors and the community.

RECOMMENDATIONS

That the Council:

- a) **Approves** the preparation of an Annual Plan 2024/25 for community consultation, followed by a 9 year plan 2025-34.
- b) **Extends** the life of the current Development Contributions Policy to 30 June 2025.

BACKGROUND

- 5 On 14 December 2023, the Minister of Local Government (the Minister) announced a “New direction for water services delivery” and the intention to repeal the previous government’s water services legislation.
- 6 At that time, the Minister provided information about the key aspects of the Government’s plan, to ensure that councils had clarity and certainty needed to develop their 10 year plans. The Minister also indicated that the statutory deadline for adopting 10 year plans would be extended by three months to 30 September 2024, should councils choose to do so. A copy of the letter from the Minister to Mayor Radich is at Attachment A.
- 7 On 13 February 2024, the Minister introduced the Water Services Acts Repeal Bill (the Bill). Council was notified of this via an email from Michael Lovett, the Deputy Chief Executive of the Department of Internal Affairs. Mr Lovett advised that the Bill included a new option, to prepare an ‘enhanced’ Annual Plan for the 2024/25 financial year, followed by a 9 year plan for the period 2025-34. This new option had not been signalled earlier. A copy of the email is at Attachment B.
- 8 The Bill was enacted on 16 February 2024. It made amendments to various Acts, including the Local Government Act 2002 (LGA). The Repeal Act, through an amendment to the LGA, provides that a decision to prepare an enhanced Annual Plan needs to be made by 30 April 2024, otherwise a deferral may be authorised by an Order in Council. An Annual Plan is not audited.
- 9 Legal advice was obtained on the implications of the Water Services Acts Repeal Act, and this is provided at Attachment C.
- 10 If prepared, an “enhanced” Annual Plan must include the following additional information:
 - Groups of activities
 - Capital expenditure categorised between growth, new capital, and renewals
 - Statement of service provision (including levels of service, measures, targets, and any material change to the cost of a service)
 - Funding impact statements for groups of activities (includes sources of funding, amounts, and application of funding (i.e. spend)
 - A resolution related to balancing the operating budget (required for non-balanced budgets only).
 - A resolution to extend the development contributions policy is required if Council does revise its current policy by 1 July 2024
 - Consultation, in accordance with section 82 of the Local Government Act, is also mandatory.
- 11 If Council decides to defer the 10 year plan 2024-34, then a nine year plan covering the period 2025 – 34 must be adopted by Council no later than 30 June 2025. A 10 year plan 2027–37 would then be adopted within the following two years, by 30 June 2027, bringing the three yearly planning cycle back into line.

DISCUSSION

- 12 Development of the draft 10 year plan 2024-34 (draft 10 year plan) is in progress. Its development has been supported by 10 workstreams, each responsible for delivering specific areas of the draft 10 year plan. Overall, the draft 10 year plan content is at various stages of completion.
- 13 Over the past six months, Council has made decisions that have contributed to the draft 10 year plan's development, for example, approval of significant forecasting assumptions, groups of activities and community outcomes.
- 14 The announcement that an Annual Plan could be prepared instead of a 10 year plan is an attractive option. With a change of Government, and more legislative changes signalled to come, we have an increased level of uncertainty in our information in years 2 – 10 of the draft 10 year plan.
- 15 While we have made significant forecasting assumptions to progress the development of the draft 10 year plan, with the signalled legislative changes to come, there is a high chance that if Council decides to continue with the 10 year plan 2024-34, a full amendment to that plan would be required. This would involve a full consultative process and audit, resulting in additional compliance costs.
- 16 Council now has the option to prepare an Annual Plan 2024/25, followed by the preparation of a 9 year plan. Several matters should be considered in making this decision, and they are discussed below. Further matters for consideration are presented in the confidential attachment to this report.

Capital budgets

- 17 A 10 year plan requires a capital budget that covers the 10 year period. While year one of the draft capital budget is complete, years 2 -10 are challenging, given the uncertainty around significant asset groups such as the future of 3 waters and the level of co-funding that Council may receive from NZTA Waka Kotahi towards its transport activities. These concerns are discussed below.

3 Waters

- 18 The Minister has advised that following the enactment of the Repeal Act, further legislation will be introduced to implement Local Water Done Well. This will be progressed in a two-stage approach.
- 19 The first bill, establishing the framework and transitional arrangements for a new water services system, will be passed by the middle of 2024. The framework proposes establishing foundational information disclosure requirements as a first step to economic regulation and enabling Council's to shift the delivery of water services to newly established council controlled organisations, should they chose to do so.
- 20 A second bill providing for the long-term replacement regime will be introduced in December 2024, and is expected to be passed by mid-2025. It will provide a range of structural and financing tools, including a new class of financially independent council controlled organisations. A legislation plan, provided by DIA that shows the key components of two bills, is at Attachment D.

- 21 This Council has made no decision about a possible council controlled organisation option, and is progressing on the basis of 3 waters continuing to be delivered in house. The signalled legislative changes will need to be considered to see if they provide a better option for Council. This has a potential impact on capital budgets.
- 22 Clarity on what the council controlled organisational structure may look like will not be available until the release of the first bill in mid-2024. In the meantime, staff are considering potential options for regional/inter-regional co-operation around 3 Waters services.
- 23 Given the lack of information at this time, deferring the 10 year plan for 12 months would allow for better planning and information to be included in a 9 year plan.

Transport

- 24 The level of NZTA Waka Kotahi funding that may be available over the next three years, and the projects that may attract this funding are highly uncertain. The draft Government Policy Statement on land transport 2024 (the draft Statement) sets out the Government's priorities for land transport investment. Consultation on the draft Statement closed in September 2023. The final Statement must be released by July 2024.
- 25 The new Government has indicated that it has different priorities to that of the former government, and that there are certain transport activities that will not attract co-funding, e.g., cycleway development. A decision to defer the 10 year plan for 12 months would provide an opportunity for Council to assess its transport programme against the Government Policy Statement for land transport 2024, when released in July 2024.
- 26 Much of the current transport capital programme has been premised on receiving NZTA Waka Kotahi funding. With the expected changes in priority, we do not fully understand what funding will be available for those projects.
- 27 Deferring the 10 year plan would allow more time for Council to assess its transport programme against the Government Policy Statement for land transport, and the availability of co-funding.

Zero Carbon

- 28 Council considered initial zero carbon options in September 2023, based on very draft capital budgets. Those capital budgets have since been refined as part of the development the draft 10 year plan. The zero carbon options have been revised to align with the refined capital programme.
- 29 Due to timing, staff have a degree of confidence in year 1 of the capital programme, but further work is needed for years 2 – 10 of the 10 year plan as discussed above.
- 30 A key component of the zero carbon plan relies on changes in the transport area. The uncertainty with the NZTA Waka Kotahi funding now means that many of the projects that form part of the initial zero carbon plan are now likely to be unsubsidised. The programme would benefit from further work to understand the changes in co-funding. This will enable a more accurate programme to be presented to council for consideration as part of a 9 year plan. Further, it will enable us to have a more robust conversation with our community about what is affordable and achievable.

Levels of Service

- 31 As part of the development of the 10 year plan, levels of service statements have been revised, to focus on measurability, plain language and clear descriptions of the services and activities that council delivers. A decision to have an Annual Plan 2024/25 would mean that the new levels of service would not be introduced until the adoption of the 9 year plan 2025-34.
- 32 Deferring the introduction of new levels of service would allow future alignment with the refresh of the Strategic Framework as it progresses.
- 33 If Council decides to defer the 10 year plan, it is recommended that the revised levels of service be used as a basis for reporting to Committees, and enabling testing to ensure measurability and data integrity.

Investment Plan

- 34 A draft Investment Plan will be presented to the 12 March 2024 Council meeting for consideration. If the Annual Plan option is approved, deferring the 10 year plan would allow time to develop a detailed implementation plan including governance structures, oversight groups, and strategy development. Implementation proposals could then be budgeted and consulted on as part of the 9 year plan.

Infrastructure Strategy

- 35 In August 2023, the Infrastructure Services Committee approved the exclusion of 3 Waters from the Infrastructure Strategy. The announcement on 14 December 2023 that water service delivery legislation would be repealed resulted in the need to include the 3 waters activity in the draft Infrastructure Strategy.
- 36 Given the short timeframe to include 3 waters in the draft Infrastructure Strategy, a deferral of the 10 year plan would provide further opportunity to ensure alignment of the Infrastructure Strategy with the Future Development Strategy and draft capital budgets. It would also allow more time to ensure alignment of asset management plans (prepared under repealed legislation) with the strategies and draft capital budgets.

Community Expectation

- 37 The community will be expecting that a 10 year plan 2024-34 is produced and consulted on. If the decision is made to complete an Annual Plan, clear information will be provided to the community, explaining the reasons for deferring the 10 year plan and advising that a 9 year plan 2025-34 will follow.

Development Contributions Policy

- 38 Council's Development Contributions Policy is required to be reviewed every three years as part of the 10 year plan process. A review of this policy is in progress.
- 39 With the option to complete an Annual Plan and defer the 10 year plan for 12 months, the Repeal Act enables local authorities to extend their current development contribution policies for one year through to 30 June 2025. It is recommended that if the decision is made to prepare an Annual Plan 2024/25, then a decision is also made to extend Council's Development Contribution Policy to 30 June 2025.

- 40 A revised Development Contribution Policy would be completed for inclusion in the 9 year plan 2025-34, and would be based on the capital programme included in that plan.

Timeframes

- 41 Adoption of the 10 year plan 2024-34 has been planned for 1 July 2024. However, recent events have meant that there is a real risk that the audit would not be completed in time to achieved the planned adoption date.
- 42 A rates resolution can only be passed following the adoption of a 10 year plan or Annual Plan. Council charges its rates in four equal instalments throughout the year. A delay in passing a rate resolution may result in the first instalment being based on the 2023/24 rate requirement. With an anticipated increase in rates for the 2024/25 year, the remaining instalments would be higher than the first instalment. This would cause confusion for ratepayers.
- 43 If council decides to prepare an Annual Plan 2024/25, timeframes would be achievable as there is no audit requirement. Budget reports would be presented to the 12 March 2024 Council meeting. The Annual Plan would be consulted on in April, hearings and deliberations would be held in May and the Annual Plan would be adopted by 30 June 2024.
- 44 Further, staff would review the project structure, and roles and objectives to develop a new work programme for completing the 9 year plan 2025-34. The new work programme would be presented to Council at a future date, for its consideration.

Reports for March 2024 Council Meeting

- 45 If a decision is made to proceed with an Annual Plan 2024/25, then reports presented to the 12 March 2024 Council meeting will focus on the Annual Plan with topic specific reports such as Dunedin Railways Ltd and the Investment Plan.
- 46 Reports specific to a 10 year plan such as the Infrastructure Strategy, Financial Strategy, and Revenue and Financing Policy, will not be presented. The deferral of a 10 year plan provides additional time to revise and provide better information on these key strategies and policies, in time for completing a 9 year plan 2025-34.

OPTIONS

Option One – Prepare an Annual Plan 2024/25, with a 9 year plan to follow - Recommended Option

- 47 This option involves preparing an Annual Plan for the 2024/25 year, and then preparing a 9 year 2025-34 plan for adoption by 30 June 2025. Work completed to date on the 10 year plan would not be wasted, but be used in the preparation of a 9 year plan.
- 48 Along with the advantages and disadvantages presented below, this option would allow time to progress key strategic work that would inform the 9 year plan, including work on the Zero Carbon Plan, strategic refresh, climate adaptation plan, and investment plan recommendations. It would also allow time to consider the Government's proposals for 3 waters.

- 49 The three matters discussed in the confidential memorandum support the preparation of an Annual Plan, for the reasons outlined in the memorandum.

Advantages

- Greater certainty and better quality information would be provided in a 9 year plan.
- Levels of service can be aligned to strategic refresh work and budgets.
- Lower risk of needing to do a 10 year plan amendment.
- More robust information for decision making on zero carbon options.
- Opportunity to develop and consult on an Investment Plan Implementation Plan.
- Ability to meet adoption timeframes.
- Rates instalment clarity.
- No audit required, saving time and money.
- Community engagement will still be undertaken.

Disadvantages

- Levels of service would remain unchanged from the current 10 year plan and would be reported on in the 30 June 2025 Annual Report.
- Community expectation for a 10 year plan not met.

Option Two – Defer the 10 year plan for 3 months to September 2024

- 50 This option provides for continuing with the draft 10 year plan 2024-34, but adopting it by 30 September 2024. This option would not enable significant progress to be made on key strategic work discussed above, that would inform a 9 year plan. The current plan that staff had been working to adopted the 10 year plan in July 2024, so this is effectively the status quo position.
- 51 The level of uncertainty and new information, including the material in the confidential memorandum means that the timetable would need to be recast to meet the timeframe.

Advantages

- Use of updated Levels of Service.
- Ability to meet the 30 September 2024 timeframe.
- Meet community expectations.
- Increased cost and complexity.

Disadvantages

- Rating confusion with different instalment amounts

- Higher risk of needing to do a 10 year plan amendment, given matters listed in the confidential memorandum.
- Less certainty and quality of information with partial information available.
- Difficulty in meeting timeframes as Annual Report preparation and audit clashes with the 10 year plan preparation and audit.

NEXT STEPS

- 52 If Council decides to prepare an Annual Plan 2024/25, budget reports will be presented to the 12 March 2024 Council meeting. Consultation, deliberations, and hearings will run through April/May and the plan will be adopted by 30 June 2024.
- 53 A new project plan will be prepared for completing the 9 year plan, and be presented to Council for its consideration.
- 54 If council decides to continue with a 10 year plan, then staff will revise its timeframe based on the new information received recently, and provide an update to council on the revised timetable at the March 2024 Council meeting. This will involve liaison with audit to understand their requirements.

Signatories

Author:	Sharon Bodeker - Special Projects Manager Carolyn Allan - Chief Financial Officer
Authoriser:	Sandy Graham - Chief Executive Officer

Attachments

	Title	Page
↓A	Letter of 14 December 2023 re new water services delivery	36
↓B	Email re Ministerial announcement on water services - 13 February 2024	40
↓C	Legal advice on the implications of the Repeal Act	43
↓D	Legislation Plan for implementing Local Water Done Well	53

SUMMARY OF CONSIDERATIONS

Fit with purpose of Local Government

This decision enables democratic local decision making and action by, and on behalf of communities. This decision promotes the social, economic, environmental and cultural well-being of communities in the present and for the future.

Fit with strategic framework

	Contributes	Detracts	Not applicable
Social Wellbeing Strategy	✓	<input type="checkbox"/>	<input type="checkbox"/>
Economic Development Strategy	✓	<input type="checkbox"/>	<input type="checkbox"/>
Environment Strategy	✓	<input type="checkbox"/>	<input type="checkbox"/>
Arts and Culture Strategy	✓	<input type="checkbox"/>	<input type="checkbox"/>
3 Waters Strategy	✓	<input type="checkbox"/>	<input type="checkbox"/>
Spatial Plan	✓	<input type="checkbox"/>	<input type="checkbox"/>
Integrated Transport Strategy	✓	<input type="checkbox"/>	<input type="checkbox"/>
Parks and Recreation Strategy	✓	<input type="checkbox"/>	<input type="checkbox"/>
Other strategic projects/policies/plans	✓	<input type="checkbox"/>	<input type="checkbox"/>

10 year plans and Annual Plans contribute to all of the objectives and priorities of the strategic framework as it describes the Council's activities and provides a long term focus for decision making and coordination of the Council's resources, as well as a basis for community accountability.

Māori Impact Statement

Annual Plans and 10 year plans impact broadly across all Dunedin communities including Māori. The adoption of Te Taki Haruru – Māori Strategic Framework signals Council's commitment to mana whenua and to its obligations under the Treaty of Waitangi. Mana whenua and Māori will have an opportunity to engage with 10 year plan or Annual Plan consultation processes.

Sustainability

The current 10 year plan, and draft 10 year plan 2024-34 contains content regarding the Council's approach to sustainability. Major issues and implications for sustainability are discussed in the Infrastructure Strategy and financial resilience is discussed in the Financial Strategy. An Annual Plan would be based on the current 10 year plan.

LTP/Annual Plan / Financial Strategy /Infrastructure Strategy

This report considers the preparation of either an Annual Plan or 10 year plan. Levels of service would be included in either option.

Financial considerations

Financial considerations would be included in both an annual plan or 10 year plan.

Significance

This report is considered of low significance under the Significance and Engagement Policy. The 10 year plan or Annual Plan processes will include public consultation.

Engagement – external

The 10 year plan or Annual Plan processes will include community engagement and public consultation.

SUMMARY OF CONSIDERATIONS

Engagement - internal

Staff from across council are involved in the development of the 10 year plan and the Annual Plan.

Risks: Legal / Health and Safety etc.

The option to prepare an Annual Plan reduces the risks around the level of uncertainty in the information that would be provided in a 10 year plan.

Conflict of Interest

There are no known conflicts of interest.

Community Boards

Community Boards will be consulted on the 10 year plan 2024-34 or Annual Plan 2024/25.

Hon Simeon Brown

MP for Pakuranga

Minister for Energy

Minister for Auckland

Minister of Local Government

Minister of Transport

Deputy Leader of the House



Mayor Jules Radich
Dunedin City Council
Email: jules.radich@dcc.govt.nz

cc. Sandy Graham Chief Executive
Email: sandy.graham@dcc.govt.nz

Dear Mayor Radich

New direction for water services delivery

This morning I announced that earlier this week Cabinet agreed to repeal the previous government's water services legislation. I also signalled next steps for implementing our plan for water services, Local Water Done Well.

I wish to provide you with further information about three key aspects of our plan, to ensure you have the clarity and certainty you need as you develop your council's 2024-34 long-term plan and prepare for your next financial year:

1. Repeal of the previous government's water services legislation
2. Options to help your council complete its 2024-34 long-term plan
3. Local Water Done Well – key principles of our future direction for water services.

I want to acknowledge that councils across the country are facing multiple challenges, including pressures with water infrastructure. I also want to acknowledge that many councils have done a good job of managing their water infrastructure, and that there is not a one size fits all solution to moving to more financially sustainable water services.

The Government is committed to addressing the longstanding challenges this country is facing with our water services infrastructure.

Our Local Water Done Well approach recognises the importance of local decision making and flexibility for communities and councils to determine how their water services will be delivered in future. We will do this while ensuring a strong emphasis on meeting rules for water quality and investment in infrastructure.

1. Repealing the previous Government's water services legislation

Cabinet has agreed to introduce a repeal bill that will restore council ownership and control of water infrastructure and services. The bill makes the following changes:

- All legislation relating to water services entities will be repealed (Water Services Entities Act 2022, Water Services Entities Amendment Act 2023, and Water Services Legislation Act 2023).

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- Previous legislation related to the provision of water services will be reinstated (including local government legislation). This will restore continued council ownership and control of water services, and responsibility for service delivery.
- The Northland and Auckland Water Services Entity (the only entity that had been legally established under the Water Services Entities Act 2022) will be disestablished and any outstanding work on the entity's set-up will cease.
- Councils will need to add and integrate information about water services into their 2024 long-term plans. Some transitional support options are available to assist you (below).

The repeal bill is expected to be introduced in February 2024 and enacted as soon as possible.

2. Options to help your council complete its 2024-34 long-term plan

I have heard that councils are seeking legislative certainty for your 2024-34 long-term plan and are seeking direction and support for how to continue to plan for and finance water services.

I am also conscious that different councils will have different needs and preferences and will be at various stages of developing their long-term plans.

To provide flexibility for these local circumstances, Cabinet has agreed the repeal bill will include temporary modifications to local government legislation for the transitional period affecting the 2024 long-term plans. Once the bill is passed, these options will be available for councils to use, as appropriate.

I recognise a few councils are preparing an unaudited three-year plan, with a focus on cyclone recovery, rather than a standard 10-year plan. As such, some of the proposed modifications may be less relevant to you.

If your council is...	Options available
Starting to prepare or consult on long-term planning material that includes water services information – ahead of the repeal bill being enacted	<p>The enacted provisions clarify that the council can include water services material in the final plan, without re-consulting, but:</p> <ul style="list-style-type: none"> • Must include new/updated information on water services in its final plan – to reflect the continuation of its responsibilities; • Must consider the views and preferences of affected and interested persons as it considers appropriate; and • Does not have to delay the adoption of its long-term plan past 30 June 2024 (in order to provide opportunities for public consultation on its revised proposals). <p>Transitional provisions will also help ensure the risks of future legal challenge (associated with concerns about possible issues in process) will be minimised.</p>

If your council is...	Options available
Needing more time to develop and consult on long-term planning material	The statutory deadline by which the 2024 long-term plan must be adopted will be extended by three months – to 30 September 2024.
	This flexibility may be desirable to smaller councils with fewer resources, or those councils that would prefer to wait until the repeal legislation is enacted before starting consultation.
	The deadline for adopting the 2023/24 annual reports will also be extended, to reflect the possible overlap in auditing processes if councils are taking longer than usual to finalise the long-term plan.
	Councils will be permitted to have unaudited long-term plan consultation documents.
	This would allow auditing of the final long-term plan to proceed in tandem with consultation, to help achieve statutory deadlines.

3. Local Water Done Well – key principles of our future direction for water services

With Local Water Done Well we are going to do things in a way that recognises the importance of local decision making and flexibility for communities and councils to determine how their water services will be delivered in future. We will do this while ensuring a strong emphasis on meeting rules for water quality and investment in infrastructure.

We want to enable councils and communities to determine what works best for them, while establishing clear expectations and bottom lines.

Key principles of our future plan for the delivery of water services include:

- Introducing greater central government oversight, economic and quality regulation.
- Fit-for-purpose service delivery models and financing tools, such as improving the current council-controlled organisation model and developing a new class of financially separate council-owned organisation.
- Setting rules for water services and infrastructure investment.
- Ensuring water services are financially sustainable. Financial sustainability means revenue sufficiency, balance sheet separation, ring-fencing and funding for growth.

I intend to work with all councils on the development of our Local Water Done Well policy to ensure it reflects your local needs and circumstances.

I look forward to working with you in the New Year to refine our approach to water services delivery.

Yours sincerely,



Hon Simeon Brown
Minister of Local Government

From: [Sandy Graham](#)
To: [Sharon Bodeker](#)
Subject: FW: Ministerial announcement on water services
Date: Tuesday, 13 February 2024 03:04:52 p.m.
Attachments: [image002.png](#)
[Implementing Local Water Done Well - Legislation plan \(Feb 2024\).pdf](#)

From: Michael Lovett <Michael.Lovett@dia.govt.nz>
Sent: Tuesday, 13 February 2024 12:33 p.m.
To: Hamish Riach <hamish.riach@adc.govt.nz>; Phil Wilson <Phil.Wilson@aucklandcouncil.govt.nz>; fiona.mctavish@boprc.govt.nz; steve.gibbling@bdc.govt.nz; geoffh@cdc.govt.nz; doug.tate@chbdc.govt.nz; Peter.Kelly@codc.govt.nz; paul.eagle@chathamislands.govt.nz; Richardson, Mary <Mary.Richardson@ccc.govt.nz>; steve.hill@cluthadc.govt.nz; Sandy Graham <Sandy.Graham@dcc.govt.nz>; stefanie.rixecker@ecan.govt.nz; wilma.falconer@es.govt.nz; Guy.Holroyd@fndc.govt.nz; Nedine.Thatcher-Swann@gdc.govt.nz; sparry@goredc.govt.nz; paul.morris@greydc.govt.nz; CEO@hcc.govt.nz; nigelb@hdc.govt.nz; Langley@hauraki-dc.govt.nz; Nic.Peet@hbrc.govt.nz; michael.mccartney@horizons.govt.nz; moniqued@horowhenua.govt.nz; ceo@hurunui.govt.nz; Jo Miller <Jo.Miller@huttcity.govt.nz>; michael.day@icc.govt.nz; will.doughty@kaikoura.govt.nz; jmarris@kaipara.govt.nz; darren.edwards@kapiticoast.govt.nz; russell.george@kaweraudc.govt.nz; angela.oosthuizen@mackenzie.govt.nz; shayne.harris@mdc.govt.nz; Mark.Wheeler@marlborough.govt.nz; kym.fell@mstn.govt.nz; Don McLeod <DMcLeod@mpdc.govt.nz>; Louise.Miller@napier.govt.nz; nigel.philpott@ncc.govt.nz; gareth.green@npdc.govt.nz; jong@nrc.govt.nz; stacel@odc.govt.nz; Richard.Saunders@orc.govt.nz; tanya@otodc.govt.nz; waid.crockett@pncc.govt.nz; wendy.walker@porirua.govt.nz; mike.theelen@qldc.govt.nz; kevin.ross@rangitikei.govt.nz; geoff.williams@rotorualc.govt.nz; clive.manley@ruapehudc.govt.nz; sharon.mason@selwyn.govt.nz; Fiona Aitken <Fiona.Aitken@stdc.govt.nz>; susan.law@southwaikato.govt.nz; janice.smith@swdc.govt.nz; Cameron.McIntosh@southlanddc.govt.nz; shanne@stratford.govt.nz; steve.ruru@trc.govt.nz; bryan.nicholson@tararua.govt.nz; leonie.rae@tasman.govt.nz; jgardyne@taupo.govt.nz; marty.grenfell@tauranga.govt.nz; aileen.lawrie@tcdc.govt.nz; Nigel.Trainor@timdc.govt.nz; geoff.swainson@uhcc.govt.nz; gavin.ion@waidc.govt.nz; Chris.McLay@waikatoregion.govt.nz; jeff.millward@wmk.govt.nz; stuart.duncan@waimatedc.govt.nz; Garry.Dyet@waipad.govt.nz; kitea@wairoadc.govt.nz; aparmley@waitaki.govt.nz; Ben.Smit@waitomo.govt.nz; barbara.mckerrrow@wcc.govt.nz; Nigel.Corry@gw.govt.nz; darryl.lew@wrc.govt.nz; john.holyoake@westernbay.govt.nz; simon.bastion@westlanddc.govt.nz; Steph.OSullivan@whakatane.govt.nz; david.langford@whanganui.govt.nz; Simon.Weston@wdc.govt.nz
Subject: Ministerial announcement on water services

Kia ora koutou

Yesterday the Prime Minister and Minister of Local Government provided an update on progress and outlined the plan for the next 12-18 months to implement Local Water Done Well.

The Government will pass a bill that will repeal the previous Government's water services legislation by 23 February 2024. Further legislation to implement Local Water Done Well will progress in a two-stage approach. The first bill, which will establish the framework and transitional arrangements for the new water services system, will be passed by the middle of 2024. A second bill to provide for the long-term replacement regime will be introduced in

December 2024.

I've attached a copy of the legislation plan here for your information, showing the different components expected to be included in each bill.

The Minister also announced the establishment of a Technical Advisory Group to provide expert advice to the Department and the Minister on the implementation of Local Water Done Well. You can find out more about the Technical Advisory Group on the DIA website, [here](#).

The Minister's press release is available on the [Beehive website](#).

Prior to the introduction of the repeal bill and recognising that councils are currently planning for the year ahead, I wanted to provide a heads-up about two aspects in the bill that may be of interest to you.

1. An additional option that will enable councils to defer their 2024-34 long-term plan by 12 months

In December 2023 the Minister communicated directly with mayors and council chief executives regarding options that will be available in the bill to assist councils to include water services in their 2024-34 long-term plans.

In addition, the bill will provide a further option that will enable councils to defer their 2024-34 long-term plan by 12 months, and to prepare an 'enhanced' annual plan for the 2024/25 financial year instead.

If a council chooses this option, it will be required to include additional information (about groups of activities and capital expenditure) in the 2024/25 annual plan, and to consult on that plan. A council will be able to exercise this option by resolution by 30 April 2024, or if authorised to do so by an Order in Council, after that date.

2. Transitional provisions that enable councils to defer the review of water services bylaws

The bill will also include transitional provisions that enable councils to defer the review of water services bylaws (similar to the approach previously provided through the water services legislation).

The bill allows councils to defer a review, if that review would ordinarily be required between 15 December 2022 and the end of 2025. If there is a deferral, the review would need to be completed by 1 July 2026 at the latest.

I will keep you updated as we continue to support the Government in implementing Local Water Done Well.

The Department is continuing to work with Taituarā to ensure councils receive timely information and guidance regarding legislative changes impacting councils' work.

In the meantime, please contact me directly if you have any questions.

Ngā mihi

Michael

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Te Tari Taiwhenua
Internal Affairs

Thriving local communities, together



Our advice

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Date	15 February 2024

PRIVILEGED AND CONFIDENTIAL

Options and implications arising from the Water Services Acts Repeal Act

Background	<p>The Water Services Acts Repeal Bill (Bill) has, as of 14 February 2024, passed through the House. The Bill is expected to receive Royal Assent this week and will come into force before the end of the month.</p> <p>The Bill repeals the key legislation related to the previous government’s “Affordable Water Reforms” and introduces transitional provisions¹ that are most relevant to territorial authorities. This includes provisions related to the inclusion of water services content in long-term plans (LTP), which is reintroduced as a requirement of the Local Government Act 2002 (LGA).</p> <p>While the usual LTP content requirements are reinstated by the Bill, several procedural options are made available to local authorities. The explanatory note to the Bill² provides more detail on these options, but in summary they include:</p> <ul style="list-style-type: none"> • Provision for the inclusion of water services content after consultation has already commenced; • Allowance for unaudited long-term plan consultation documents, which are required to include water services; • The ability to adopt the 2024-34 LTP by no later than 30 September 2024 (a three-month extension to the statutory deadline); • The ability to defer the LTP by 12 months, and adopt an “enhanced” annual plan (AP) for the 2024-25 financial year instead. <p>This advice considers the AP option and the associated legal and practical implications.</p>
Key questions and summary of advice	<p>Q1: What process needs to be followed for deferral of the LTP, and what does the “enhanced” AP involve?</p> <p>The enhanced AP has additional content requirements (namely, some</p>

- 1 Amendments that insert new Part 8 into Schedule 1AA of the Local Government Act 2002, as set out in Schedule 2 of the Act.
- 2 See [Water Services Acts Repeal Bill 13-1 \(2024\), Government Bill Explanatory note – New Zealand Legislation](#)

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content which is normally in the LTP), and mandatory consultation (in accordance with section 82). If an enhanced AP is adopted for 2024-25, and the deferred LTP for 2025-34, the next LTP must follow 2 years later (2027-37) so that the standard 3-yearly cycle for LTPs nationwide is maintained.

We set out the process requirements below.

Q2: Does the Bill address the potential for an LTP amendment, if the “enhanced” AP option is adopted?

No. If an LTP amendment is required, then the usual LGA process and statutory requirements will apply.

Q3: When is an LTP amendment required?

An LTP amendment is required where the Council proposes to make a decision captured by section 97 of the LGA, and that decision is not already explicitly provided for in the LTP. This is a mandatory obligation but it can be a matter of judgment whether the trigger criteria are satisfied. In practice, this can only be assessed by considering all of the details of the proposed change.

There is a more conservative argument that proposals that amount to significant changes from what is in a current LTP can also require an LTP amendment, but that is both context and proposal dependent. A council’s significance and engagement policy may refer to additional context in which a LTP consultation may be indicated for specific proposals. These situations would need to be addressed in terms of that policy, although section 80 could apply.

The Bill does not change the circumstances in which an LTP amendment is required. An “enhanced” AP has the same status as a normal AP i.e. inclusion of a matter in the enhanced AP does not modify the need for an LTP amendment if that is otherwise required.



Reasoning explained

Process for deferring an LTP

1. Clauses 48 to 53 of new Part 8 to Schedule 1AA of the LGA set out the process steps for deferral of the LTP by 12 months. Deferral is optional.
2. A council wanting to defer its LTP for 12 months beyond the statutory timeframe in section 93 must:
 - 2.1 resolve to do so no later than 30 April 2024, although there is provision for an Order in Council to be made that authorises a deferral;³
 - 2.2 adopt an enhanced AP by no later than 30 June 2024;⁴
 - 2.3 include in the enhanced AP the information specified in clauses 50 to 52, which is in addition to the normal content of an AP;⁵
 - 2.4 consult on the enhanced AP in a manner that gives effect to the requirements of section 82,⁶ which will also involve the preparation of a consultation document.
3. We address the enhanced AP process and requirements further below.

There are various consequences of deferring a LTP

4. In terms of the legal and practical consequences, if the 2024-34 LTP is deferred for 12 months:
 - 4.1 the 2021-31 LTP will continue in force until 30 June 2025;⁷
 - 4.2 a resolution will need to be passed to extend any development contributions and financial contributions policy (DCP), if the Council wishes to do that (i.e. it is not ready, or does not want, to make a decision on its reviewed DCP by 1 July 2024);⁸
 - 4.3 the deferred LTP must be adopted by no later than 30 June 2025, and then a further LTP must be adopted another two years later, by no later than 30 June 2027. This requirement is designed to

³ Bill, clause 48.

⁴ Clause 46 extends the time-frame to adopt a 2024-34 LTP to no later than 30 September 2024 but does not change the requirement in section 95(3) that an annual plan must be adopted before the commencement of the year to which it relates.

⁵ Bill, clause 49(1)(f) and (g).

⁶ Bill, clause 53(b), which overrides section 95(2A) of the LGA. For reference, section 95(2A) provides that consultation is not required if the proposed annual plan does not include significant or material differences from the content of the long-term plan for the financial year to which the proposed annual plan relates.

⁷ Bill, clause 49(1)(d)

⁸ Bill, clause 49(1)(e)



bring the deferred LTPs into line with all other LTPs that were adopted in 2024.⁹

5. While clause 49 expressly provides for the extension of a DCP so that it continues to apply alongside the LTP, there is no description of what process is to be followed to extend a DCP, and no explicit provision that provides for the extension of other section 102 policies that are normally adopted alongside, the LTP. However, this omission is probably explained by the fact that (unlike a DCP) these policies do not normally have an expiry date and therefore do not need to be “extended”.
6. The most important of these other section 102 policies is the revenue and financing policy (**RFP**). Although the RFP must be included in the LTP, it is adopted as a separate document. Sections 102 and 103, which relate to the RFP, do not state or imply a fixed “life” for the RFP - unlike the DCP there is no requirement to review the RFP within a specified period of time. In our view, an RFP remains in force until replaced.¹⁰ Therefore, if there is no new RFP until the deferred LTP is adopted in 2025, the current RFP will continue to apply in the meantime. For completeness, changes to rating systems, including ones that require a RFP amendment, do not require an LTP amendment.
7. Of note, the Bill does not include any other provision that streamlines or relaxes the LGA statutory requirements for the LTP. There is no exemption from having to comply with section 97 if an enhanced AP is progressed instead of a LTP. What this means is that if the Council proposes to make a decision which is caught by section 97, inclusion of that decision in the enhanced AP will not amount to compliance with section 97. An LTP amendment will still be required to provide for the relevant proposal or decision.

Additional content is required for an “enhanced” AP, and consultation, but there is no audit requirement

8. If a council resolves to defer its LTP, the enhanced AP will need to include additional information usually found in an LTP (as well as the usual AP content) and it must be consulted on.
9. The additional information requirements are specified in clauses 50 to 52 of the Bill. We have highlighted in the appendix the additional information required by the Bill for an enhanced AP.
10. In relation to consultation, clause 53 makes it mandatory to consult “in a manner than gives effect to the requirements of section 82”, before adoption of an enhanced AP.
11. This is a modification of the usual approach for APs, as section 95(2A)

⁹ Bill, clause 49(1)(a) and (c)

¹⁰ Unless the RFP itself says that it expires on a certain date.

	<p>does not require consultation if a proposed AP does not include “significant or material differences from the content of the long-term plan”. For completeness, there is no requirement to use the special consultative procedure, but a council could resolve to consult in that manner.</p>
	<p>12. As the enhanced AP option is an annual plan, and not an LTP, there is no audit requirement. The subsequent annual report will, of course, be subject to audit as usual.¹¹</p>
If, as part of adopting an enhanced AP, a LTP amendment is required, the consultation document would need to be audited	<p>13. New Part 8 of the LGA does not alter any of the statutory requirements that apply to LTP amendments.</p> <p>14. What this means is that if an enhanced AP is opted for and a LTP amendment is required, the usual statutory requirements (including consultation using the special consultative procedure) will need to be satisfied.</p> <p>15. This includes:</p> <p>15.1 Preparing and publishing a consultation document for a LTP amendment that complies with section 93D;</p> <p>15.2 Audit of the consultation document;</p> <p>15.3 Consultation using the special consultative procedure; and</p> <p>15.4 Adoption of the LTP amendment, and further audit.¹²</p> <p>16. In our view, the final audit report required by section 94(2) relates to the LTP as amended, and not to the amendments themselves.</p>
An LTP amendment is only mandatory when section 97 is triggered	<p>17. As per subsections 96(1) and (2) of the LGA, an LTP provides a statement of the Council’s intentions, but does not constitute a decision to act on matters included in a LTP. Section 96(3) clarifies that a local authority can make decisions that are inconsistent with a LTP, “subject to section 80, and except as provided in section 97”.</p>
In other cases, not triggering section 97, if a proposed decision is significantly inconsistent with a	<p>18. Section 80 sets out a process that the Council must observe when making a decision that is significantly inconsistent with a plan or policy,¹³ but section 80 itself does not prevent the making of any decision.</p> <p>19. The enhanced AP has no special status under the Bill – it is still an AP.</p>

¹¹ LGA, s99.

¹² LGA, s94(2).

¹³ Identify the inconsistency, the reason for it, and explain what, if anything, the Council will do about it such as amending the policy or plan in the future.



**LTP, then section
80 will apply**

In particular, it is not regarded as a “de facto” LTP for 2024-25 (as if an AP is opted for, the current LTP will continue in force). This means that if for any reason the LTP is required to be amended, it will not be sufficient that that new content is included in the enhanced AP. The LTP must still be amended.

20. Section 95A of the LGA addresses the content of an AP consultation document and refers to “significant” (as well as “material”) differences from the content of the LTP. This suggests that the fact that what is proposed is significantly different from the LTP does not necessarily require an LTP amendment (as distinct from AP consultation). However, where the Council proposes to make a decision covered by section 97 of the LGA, and that decision is not already explicitly provided for in the LTP an LTP amendment is mandatory. It can be a matter of judgment whether an LTP amendment is required, and this can only be assessed by considering all of the details of the proposed change.
21. Section 97 decisions involve:¹⁴
 - 21.1 decisions to alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the local authority, including a decision to commence or cease any such activity; and
 - 21.2 a decision to transfer the ownership or control of a strategic asset to or from the local authority.
22. If the relevant decision captured by section 97 is not explicitly provided for in the current LTP, then an LTP amendment will first be required to make provision for the proposed decision. This will, due to section 93, require consultation using the special consultative procedure, and the preparation of a consultation document that satisfies sections 93D and 93E.
23. The Bill does not modify or streamline in any way the LGA provisions relating to an LTP amendment. What this means is that if a council that decides to opt for an enhanced AP and proposes a section 97 decision, it will also need to undertake an amendment to the LTP (with a combined consultation document, if the two processes are being carried out at the same time¹⁵).
24. If an LTP amendment is required, and while the process requirements are not as significant or complex as for a full LTP, the amendment (including consultation) will need to be completed and adopted so that the enhanced AP can be validly adopted. For any Council considering

¹⁴ LGA, s97(1).

¹⁵ LGA, s95B.

whether to choose the LTP deferral option, whether an LTP amendment is nevertheless required as well as the enhanced AP, and the timing of that process, will clearly be a key consideration.

25. While we have not identified any other mandatory statutory requirements for an LTP amendment, we note that a significance and engagement policy could include provisions indicating circumstances where an LTP consultation may be expected. The extent to which this may give rise to a mandatory obligation will be a matter of interpretation, but generally section 80 may apply to significant departures from a significance and engagement policy.
26. For completeness, if no amendment to the LTP is necessary, then any consultation on an enhanced AP will not need to use the special consultative procedure.

**What implications
may arise for a
deferral to the
LTP?**

27. Without knowing the full extent of the proposals that the Council is considering including in its consultation document for the upcoming LTP, there are several possible implications of opting for a deferral of the LTP.
28. These include:
 - 28.1 If the Council is proposing to make a section 97 decision, then an LTP amendment would need to be progressed with the enhanced AP. This would necessitate a combined consultation document and single SCP process, with some duplication of content between the two documents due to the additional information requirements for the AP, but this is largely a process / documentation implication that is, in our view, manageable.
 - 28.2 The next LTP after the deferred LTP would follow relatively shortly afterwards, only 2 years later. This is a process risk and would involve an increased resourcing burden for Council's. If the enhanced AP requires an LTP amendment in any case, then there would be added resource burden due to the requirement to complete a combined AP / LTP amendment in 2024, and then a LTP in 2025 and 2027.
 - 28.3 The potential impact on other policy processes, for example the Future Development Strategy (FDS) under the NPS-UD, whose statutory role includes "informing" preparation of the LTP. The first FDS is required to inform the 2024 LTP,¹⁶ however if an LTP is deferred we consider that would likely be interpreted as referring to the 2025 LTP. In those circumstances, there will still be

¹⁶ Clause 4.1(2) of the NPS-UD.



opportunity for the current FDS to inform the next LTP, albeit later than anticipated. What may be more problematic is that after the deferred LTP is adopted, there will be a tighter timeframe within which to complete the review and update of the FDS under clause 3.16 of the NPS-UD (if an update is required at all).

28.4 Although the Council could choose to extend the life of its DCP to mirror that of the LTP, if it wishes to make changes to the DCP with effect from 1 July 2024 that require consultation (e.g. to increase the amount of its development contributions beyond those authorised under section 106(2B) and (2C) of the LGA, or to capture new projects that are to be funded by DCs), the normal DCP amendment process will have to be used. The Bill provides that a council “may extend” a DCP, but does not expressly contemplate any review or amendment to the DCP as part of that extension. If any amendment to a DCP is required, then that would need to occur separately, but could happen at the same time as the enhanced AP process.

Appendix: additional information requirements for an enhanced AP as required by clauses 50-52 of the Bill

Schedule 10	Local Government Act 2002	Version as at 23 December 2023
2	Groups of activities	
(1)	A long-term plan must, in relation to each group of activities of the local authority,—	
	(a) identify the activities within the group of activities;	
	(b) identify the rationale for delivery of the group of activities (including the community outcomes to which the group of activities primarily contributes);	
	(c) outline any significant negative effects that any activity within the group of activities may have on the social, economic, environmental, or cultural well-being of the local community;	
	(d) include the information specified in clauses 4 and 5—	
	(i) in detail in relation to each of the first 3 financial years covered by the plan; and	
	(ii) in outline in relation to each of the subsequent financial years covered by the plan.	
(2)	In this schedule, each of the following activities is a group of activities:	
	(a) water supply;	
	(b) sewerage and the treatment and disposal of sewage;	
	(c) stormwater drainage;	
	(d) flood protection and control works;	
	(e) the provision of roads and footpaths.	
(3)	Despite subclause (2), a local authority may treat any other activities as a group of activities.	
	Schedule 10 clause 2(1)(c): replaced, on 14 May 2019, by section 9(1) of the Local Government (Community Well-being) Amendment Act 2019 (2019 No 17).	
3	Capital expenditure for groups of activities	
(1)	A long-term plan must, in relation to each group of activities of the local authority and for each financial year covered by the plan, include a statement of the amount of capital expenditure that the authority has budgeted to—	
	(a) meet additional demand for an activity; and	
	(b) improve the level of service; and	
	(c) replace existing assets.	
(2)	For the purpose of this clause, capital expenditure budgeted for 2 or all of the purposes in subclause (1) may be treated as if it were made solely in relation to the primary purpose of the expenditure.	
	Schedule 10 clause 3(2): amended, on 8 August 2014, by section 72 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).	

Version as at
23 December 2023

Local Government Act 2002

Schedule 10

4 Statement of service provision

A long-term plan must, in relation to each group of activities of the local authority, include a statement of the intended levels of service provision that specifies—

- (a) any performance measures specified in a rule made under section 261B for a group of activities described in clause 2(2); and
- (b) the performance measures that the local authority considers will enable the public to assess the level of service for major aspects of groups of activities for which performance measures have not been specified under paragraph (a); and
- (c) the performance target or targets set by the local authority for each performance measure; and
- (d) any intended changes to the level of service that was provided in the year before the first year covered by the plan and the reasons for the changes; and
- (e) the reason for any material change to the cost of a service.

5 Funding impact statement for groups of activities

- (1) A long-term plan must, in relation to each year covered by the plan, include a funding impact statement in relation to each group of activities of the local authority.
- (2) The funding impact statement must be in the prescribed form and must identify—
 - (a) the sources of funding to be used by the local authority; and
 - (b) the amount of funds expected to be produced from each source; and
 - (c) how the funds are to be applied.

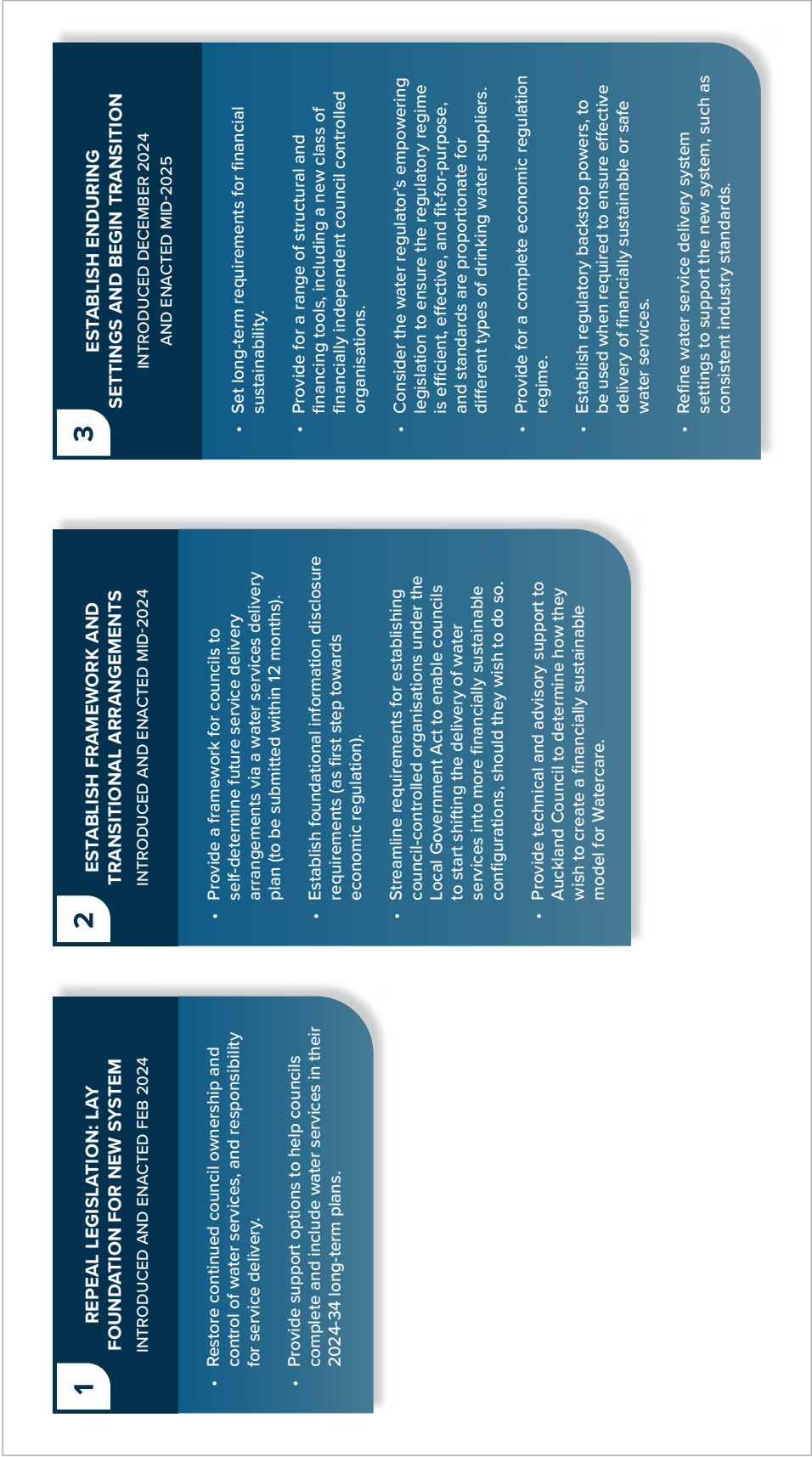
14 Statement concerning balancing of budget

If the local authority has resolved, under section 100(2), not to balance its operating budget in any year covered by the long-term plan, the plan must include—

- (a) a statement of the reasons for the resolution and any other matters taken into account; and
- (b) a statement of the implications of the decision.

Implementing Local Water Done Well: Three-stage legislation plan

Legislation to implement Local Water Done Well has three stages. Key components that are expected to be included in each bill are outlined below.



Note: All timeframes are subject to parliamentary processes and timelines.

