



Submission

Water Services Entities Bill
Three Waters Reform Programme
22 July 2022

About the Institute

The McGuinness Institute was founded in 2004 as a non-partisan think tank working towards a sustainable future for Aotearoa New Zealand. *Project 2058* is the Institute's flagship project focusing on Aotearoa New Zealand's long-term future. Because of our observation that foresight drives strategy, strategy requires reporting, and reporting shapes foresight, the Institute developed three interlinking policy projects: *ForesightNZ*, *StrategyNZ* and *ReportingNZ*. Each of these tools must align if we want Aotearoa New Zealand to develop durable, robust and forward-looking public policies. The policy projects frame and feed into our research projects, which address a range of significant issues facing Aotearoa New Zealand. The seven research projects are: *CivicsNZ*, *ClimateChangeNZ*, *OneOceanNZ*, *PandemicNZ*, *PublicScienceNZ*, *TacklingPovertyNZ* and *TalentNZ*.

About the cover

Water is going to be the new gold of the 21st century. This photo shows half a glass of water. It speaks to the question – is the glass half full or half empty – which is true? There are clearly many different views on this Bill, some believe it will lead to positive outcomes whereas others believe the opposite. Our concern is that without the necessary evidence and analysis, not even time will tell. There appears to be no agreed benchmark on where we are now. This means that future analysts will not be able to monitor and report back on progress over time.

1.0 Introduction

The Institute strongly supports the delivery of safe, reliable and efficient water services,¹ but remains unconvinced that the government has provided sufficient analysis and evidence to support the content of this Bill. Further, the Bill aims to deliver a co-governance model that has been untested and lacks sufficient detail to enable a detailed analysis of costs, benefits and risks.

History is littered with examples where legislation is rushed through government without sufficient checks and balances. This not only results in significant costs to the taxpayer (e.g. as legislation is reviewed and altered), but delivers uncertainty and inefficiency at a time when the machinery of government will be tested by challenges such as climate change, poverty, race-relations and international relations.

What New Zealand needs is durable public policy that is evidence based. To deliver durable policy decision-makers (in particular Ministers and officials) must provide their thinking and the evidence they have relied upon – they need to be transparent so that they too can be held accountable.

The Institute’s submission focusses on the process; what should the public expect from Ministers and policy makers when making strategic decisions about changes to our democracy and changes to control over public good assets. Key concerns exist over transparency and accountability.

Request to speak before the committee

The Institute would like to speak to this submission. Unfortunately, the Institute has been impacted by COVID-19, but we hope to provide more supporting evidence in the next month. We aim to provide further evidence to support our concerns, until then this submission is to act as a placeholder.

2.0 Key issues for consideration

A: Constitutional issues – Will the current process deliver durable constitutional change?

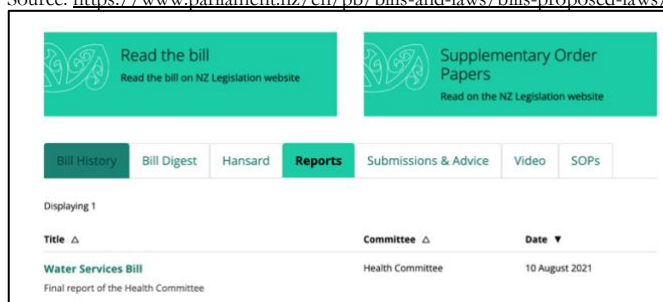
The introduction to the Bill states: ‘This bill establishes four publicly owned water services entities that will provide safe, reliable, and efficient water services **in place of local authorities.**’ [bold added]

Major changes to existing democratic processes (such as replacing key functions of local authorities) and change control over public assets (i.e. water infrastructure), should be supported by evidence (including referencing key reports). This provides a form of insurance policy that enables public policy to be tested, assessed and lessons to be learned. If Ministers and officials wish to promote transparency and accountability in decision making, they should role model it when making law.

For example, we note the Bill does not refer to any specific report as evidence to support the content or purpose of the Bill.

Figure 1: Image of Parliamentary website

Source: https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_99655/tab/reports



The screenshot shows a web interface with a navigation menu and a table of reports. The navigation menu includes 'Read the bill', 'Supplementary Order Papers', 'Bill History', 'Bill Digest', 'Hansard', 'Reports', 'Submissions & Advice', 'Video', and 'SOPs'. The 'Reports' tab is active. Below the navigation, there is a table with the following data:

Title	Committee	Date
Water Services Bill Final report of the Health Committee	Health Committee	10 August 2021

¹ See, for example, the publications listed in Appendix 1.

At a time when water is becoming the new gold, the Institute believes the public should not only have confidence that water continues to be publicly owned, but also operated on in a democratic manner. Decision making should be evidenced by analysis and accountability, not by ideology. We need accurate and robust data in order to have confidence that the right decisions are being made. Problems need to be defined, options identified, benefits valued, costs summarised, and risks assessed.

One of the biggest lessons from Brexit was the lack of independent analysis; this in the Institute's view led to Brexit being politicised and divisive. Because the problem was not well identified and insufficient effort and analysis was not progressed early in the process, decisions were in the end made on politics and ideology, not facts and figures. The misinformation about the purpose of the Bill and its inherent confusion over co-governance leads us to believe the resulting act is going to be an expensive failure at a time when we should be applying rigorous analysis to every decision. The country cannot afford to make poor decisions when faced with so many strategic challenges. Ernest Rutherford's quote "We haven't got the money, so we'll have to think" resonates.

B: Purpose – What is the problem the Bill is trying to solve?

The Institute remains unclear as to the purpose of the Bill, particularly in regard to co-governance.

Neither the Minister nor the Bill itself mentions the term co-governance; the closest narrative is contained in example 1 below, when the Minister mentions 'good governance in board selection processes'.

Example 1: Hon Nanaia Mahuta (Minister of Local Government) noted in the first reading that:

Water Services Entities Bill — First Reading: Hon Nanaia Mahuta
'As a Government, we've had four bottom lines when progressing this reform. They are: ensuring water assets remain in public ownership; ensuring balance sheet separation; ensuring that we give effect to Te Tiriti o Waitangi, the Treaty of Waitangi; and ensuring good governance **in board selection processes.**² [bold added]

However the summary from the Parliamentary website mentions 'co-governance arrangements that directly incorporate Māori representation' (see below). This is inconsistent.

Example 2: Explanatory note: General policy statement:

- The four publicly owned water service entities that this bill seeks to establish will improve three waters infrastructure in New Zealand by providing more efficient and better-funded services than local councils are currently able to offer.
- The bill aims to honour Te Tiriti o Waitangi by providing **for co-governance arrangements that directly incorporate Māori representation, such as the provision to ensure that half of the regional representative group will be iwi.**³ [bold added]

The Institute strongly believes that a clear purpose, and a set of high-level goals is necessary in order to scope the issue at hand (the problem to be solved). In this way, the costs, benefits and risks can be assessed. The explanatory note makes broad statements without specific detail; for example if the purpose of the Bill is to deliver 'safe, reliable, and efficient water services' it should be clear when water is not safe, what services are not reliable and what infrastructure is not efficient.

² See https://www.parliament.nz/en/pb/hansarddebates/rhr/combined/HansDeb_20220609_20220609_20

³ See Explanatory note: General policy statement, found on the pdf: https://www.legislation.govt.nz/bill/government/2022/0136/latest/LMS534587.html?search=y_bill%40bill_2022_bc%40bcurn_an%40bn%40rn_25_a&p=1

The explanatory note introduces another very different purpose (as noted in bold above) – to provide for a co-governance arrangement that directly incorporates Māori representation. This point has been picked up in the media because it introduces another significant purpose to the legislation. See discussion later.

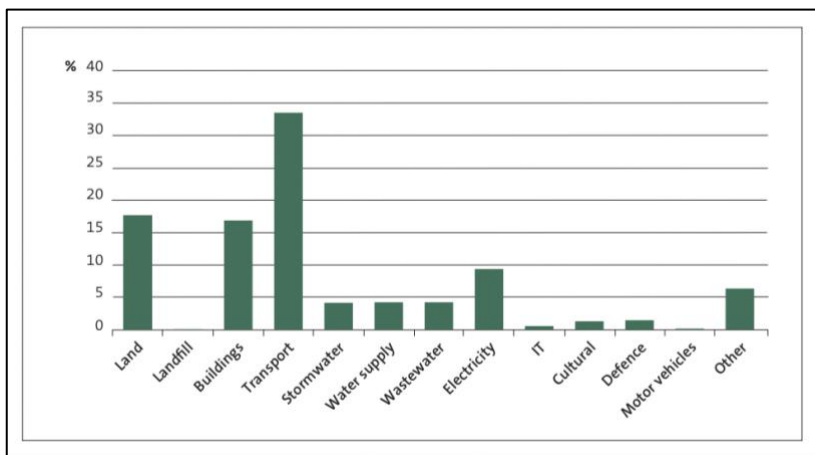
C: Ownership issues – If an asset is not controlled by the public, can it be called a public asset?

Economists and accountants think of assets differently. Generally, assets can be valued, described, sold, transferred or licensed. Public assets are assets owned and controlled by the public for the public. This is an emerging area of study, particularly in light of climate change.

Examples in the literature include the 2018 European Commission paper: *Public Assets: What's at Stake? An Analysis of Public Assets & their Management in the European Union*⁴ or the 2013 OAG's discussion paper *Managing public assets*.⁵ The latter publication is particularly interesting in that it estimates that public assets held by central government are only slightly larger than public assets held by local government (53%/47% respectively) and that in 2013 water infrastructure (including stormwater, waste water and freshwater infrastructure) represented approximately 12% of all public assets owned and controlled by central and local government.

Figure 2: Types of public assets, by value

Source: OAG (2013), *Managing public assets*, p. 12.



However, as illustrated in Figure 3 below, it was those public assets that were not regularly assessed. The question then becomes why has successive governments allowed this to continue? Why was more work not undertaken earlier? The problem was identified but government failed to seek out, require and provide the necessary assessments over key public assets. Lastly, how can the public legitimately have confidence that this new structure, being proposed under this Bill, will deliver better outcomes? It is not co-governance that will solve this problem, but governance more generally. We need to improve our reporting systems. Only then can we understand and design better structures. This illustrates the challenge – how do we design a dashboard to show whether the water assets are being managed better or not? It seems that we are moving into a new era without the data or evidence to explore and report on progress – what is working and what is not.

⁴ See https://ec.europa.eu/info/sites/default/files/economy-finance/dp089_en_public_assets.pdf

⁵ See <https://oag.parliament.nz/2013/managing-public-assets/docs/managing-public-assets.pdf>

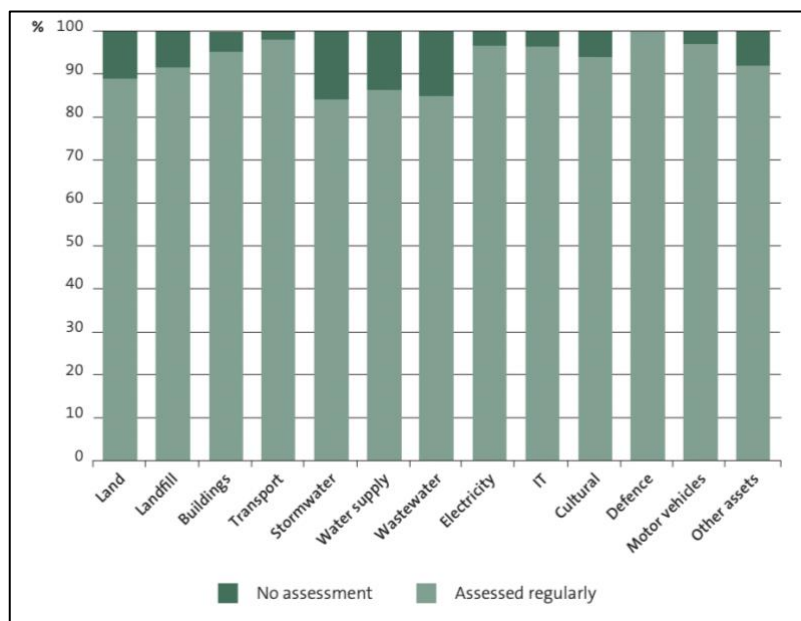
In 2013, the OAG noted:

‘Land, stormwater, water supply, wastewater, and other assets make up most of the assets that are assessed less regularly. However, we know that it can be difficult to assess the condition of some of these assets, such as underground water pipes.’ (p. 19)

However today, in 2022, technology can be used to deal with the many too difficult access public assets.

Figure 3: Percentage of assets with regular condition assessments, by type of asset

Source: OAG (2013), *Managing public assets*, p. 19.



Lastly, the Institute is not sure where the infrastructure assets discussed in the Bill will be reported – will they appear in the *Financial statements of the Government*⁶ or in each local government’s set of financial statements, or somewhere else. This is one of the details that seems missing from the dialogue to date.

D: Access issues – Is the Bill an obstacle to SDG 6: Access to clean water and sanitation?

In 2010, access to safe drinking water and sanitation was declared by the UN ‘a human right’. More recently, the 2015 *Transforming our World: The 2030 Agenda for Sustainable Development* pledged that no one will be left behind. The 17 Sustainable Development Goals (SDGs) and 169 targets demonstrate the scale and ambition of the new Agenda. SDG goal 6 was to ‘ensure availability and sustainable management of water and sanitation for all’ – of note is the emphasis on ‘for all’.

The Institute acknowledges the importance of this legislation and the need to provide access to clean water and sanitation to all New Zealanders. We also see water as a public good, not to be owned by any individual or group of individuals. Water is going to be critically important as we face the challenges climate change will deliver. It is currently completely undervalued and we need to protect and manage water infrastructure today so that future generations are able to access clean water and sanitation in the years to come. In our view this requires a democratic solution to water management and access.

⁶ See <https://www.treasury.govt.nz/publications/financial-statements-government>

Figure 4: Goal 6 of the SDGs

Source: <https://www.un.org/pt/sustainable-development-goals>



3.0 Concerns over the explanation in the general policy statement (GPS)

In New Zealand law, the general policy statement (GPS) is important as it sets out the context and purpose of the Bill. The *Standing Orders 2020* (see Chapter 5: Legislative procedures) states '[e]very bill as introduced must have an explanatory note that states the **policy that the bill seeks to achieve**, and may also explain the provisions of the bill.' [bold added]⁷ Given this, we make the following observations about the text in the GPS. Below we share four observations.

A: Evidence of one group of New Zealanders being privileged over other New Zealanders

Box 1: *Water services are an essential building block for communities. Public health and well-being, better environmental outcomes, economic growth and job creation, housing and urban development, climate change, resilience to natural hazards, and the rights and interests of iwi and Māori all depend on better outcomes for those services.* [GPS, Page 136-1] [bold added]

We believe the rights and interests of 'all New Zealanders' is dependent on the delivery of safe, reliable, and efficient water services (not just the rights and interests of iwi and Māori). The sentence in Box 1 infers one group of New Zealanders have more rights and interests than other groups of New Zealanders (i.e., no other groups of New Zealanders are mentioned). This statement in effect implies that the intent of the Bill is to privatise water, moving rights and interests from all New Zealanders to a select group.

To explain our concerns, if the interests of 'iwi and Māori' were replaced with 'dairy farmers' and read *'Public health and well-being, better environmental outcomes, economic growth and job creation, housing and urban development, climate change, resilience to natural hazards, and the rights and interests of [dairy farmers] all depend on better outcomes for those services'* imagine the outcry – why should dairy farmers be privileged over other New Zealanders?

By using the dairy farmers in the example above, we wanted to illustrate the distinction between mentioning only one group of New Zealanders (without referring to all New Zealanders). The intent may have been to emphasise the unique interests of a special group, but in our view, that could have been managed by referring to 'all New Zealanders' first, and then including a statement about the special relationship Māori, as a partner to our country's founding document, Te Tiriti o Waitangi, has with the

⁷ See <https://www.parliament.nz/en/pb/parliamentary-rules/standing-orders-2020-by-chapter/chapter-5-legislative-procedures>

natural world. Privileging iwi, above other groups and organisations that co-exist in New Zealanders, is problematic and may create a precedent for other non-Maori groups to be privileged.

B: Evidence of legislation being pushed before details are finalised.

Box 2: ‘... *this Bill paves the way for improved, effective, and efficient management of water services delivery and infrastructure so **that New Zealanders** will have access to safe, reliable and affordable drinking water, and wastewater and stormwater services that meet **their environmental and cultural expectations.***’ [GPS, Page 136-1]

*The entities will commence delivery of services on **1 July 2024.*** [GPS, Page 136-1]

*This Bill is just 1 component of **a comprehensive package** to reform water services that are currently provided by local authorities. The Bill will need to be followed by further legislation to provide for—*

- additional, detailed implementation arrangements for the entities and service delivery, including provisions relating to the transfer of assets, liabilities, and other matters from local authorities to new water services entities;*
- specific powers, functions, and responsibilities of the new water services entities, and pricing and charging arrangements;*
- economic regulation and consumer protection regimes relating to the new water services system;*
- any changes to Treaty settlement legislation that are required to ensure that settlement obligations are carried forward from territorial authorities to the new water services entities;*
- detailed changes to the Local Government Act 2002, the Water Services Act 2021, and other legislation to transfer service delivery arrangements to the new water services entities.* [GPS, Page 136-2]

[bold added]

The new system, under the Bill, is intended to become operational in 2 years’ time (commencing delivery on 1 July 2024). There is enough time to debate, develop and design a comprehensive package. The process being advocated here is going to make it difficult to correct or tweak later. This indicates the government is determined to push this through without taking the time to develop the comprehensive package.

We acknowledge this statement refers to ‘that New Zealanders’ implying all, so why is one group of New Zealanders privileged over others in the earlier statement (see Box 1 above).

Secondly, we note the GPS refers to this Bill paving the way, but as noted the amount of policy work required is significant. Given this Bill relates to 12% of public assets, the Institute is concerned about the lack of detail in the public arena. All MPs must be mindful of the legacy they leave when they do not actively seek out good processes. There seems to be no reason why the work, listed in Box 2 below could not be completed and the legislation for the comprehensive package passed mid next year – that would still enable 12 months before the delivery of services under the new entities.

C: Evidence of the (i) costs to maintain and (ii) the costs to upgrade the water infrastructure.

Box 3: ‘*The investment needed over the next 30 to 40 years to maintain and upgrade New Zealand’s water infrastructure to a standard required to address the infrastructure challenge **is unaffordable for most communities** under the current arrangements.*’ [GPS, Page 136-1]

The Institute has been unable to find a report/s that evidences the expected (i) costs to maintain and/or (ii) the costs to upgrade the existing water infrastructure for each community. The Institute believes that if such a report/s exist, it should be mentioned in the general policy statement or the text in Box 3 removed. Government, and importantly public trust in government, requires transparency.

We note DIA on their website under FAQ state the following but do not add a reference:

‘What will this cost to fix?’

The investment needed to fix our failing systems and to build and maintain the required infrastructure in the future has been estimated at between \$120 billion and \$185 billion over the next 30 years. This will be beyond the reach of many communities.'

The Institute also understand (via RNZ)⁸ that some studies were undertaken, and the current reforms were modelled on water reforms in Scotland. We believe this is important context to be included in the GPS. The history to a reform must be able to be discoverable. The reality is that government should not be making such statements in an explanatory note without providing the evidence.

The text in Box 3 raises more questions than it answers:

1. Why such a big gap between projections – a 25% difference is significant (10 years /40 years)?
2. What does 'maintain' New Zealand's water infrastructure mean?
3. What does 'upgrade' New Zealand's water infrastructure mean?
4. What is the 'standard required' to address the infrastructure challenge mean? Does a standard exist? Who set/s the standard?
5. What is the 'water infrastructure challenge' they are referring to – what is the problem they are trying to solve?
6. What communities can afford it and what ones cannot afford it – these should be listed? Most means a majority – but does that mean 51% or 99% - this is important information? When we look back at these reforms, will it be possible to measure success?
7. What does 'under the current arrangements' mean; is that territorial authorities in 2016 or 2022?
8. Who wrote the report/s that have been relied upon? Who paid for it/them? When was the report written? What information were the authors provided? Who/when did they consult? What was the authors level of expertise? How much were they paid? How much time was taken? What strategic options did they consider? What limitations did they identify? What risks did they identify?

General policy statements aim to set the context for the Bill. Without clarification of what information has been relied upon, the Minister, the Government and officials are not practicing what they are preaching; they need to actively seek out ways to make themselves accountable by showing their thinking and the information they have relied upon when making decisions.

D: An explanation of what a 'tangible expression of ownership' means in practice?

Box 4: *Water services entities are a new public service delivery model. Each entity will be a body corporate, and will be co-owned by the territorial authorities in its service area in shares to provide a tangible expression of ownership that is recognisable by communities and territorial authorities. [GPS, Page 136-2]*

The terminology used in this subsection 'Legal form and ownership by territorial authorities' is confusing. It is almost as if a paragraph or two have been removed. This subsection is at best mystifying, or at worst misleading. For example:

1. What is the difference between a 'tangible expression of ownership' (i.e. as compared to an 'intangible expression of ownership')?
2. When is something 'recognisable by a communities and territorial authorities' (i.e. as compared to 'unrecognisable by a communities and territorial authorities')?
3. What does 'co-owned by the territorial authorities' mean in practice – co-owned with whom?

4.0 2021 GDS Index

About the *GDS Index*

Government department strategies (GDSs) assist government departments in carrying out their roles by providing continuity despite ministerial and governmental change. GDSs drive and guide public policy.

⁸ See for example: <https://www.rnz.co.nz/news/national/443888/new-zealand-water-infrastructure-spend-could-reach-185b-by-2051-studies>

These strategy documents provide citizens with a window into the workings of government and act as critical instruments for policymakers in bringing about change. GDSs help build trust in government activities through transparency, accountability and public engagement. The preparation of GDSs is a significant public investment, and although a great deal of thought and effort goes into their creation, they are often difficult to find within the machinery. Effective strategy helps government solve challenging problems, which is why GDSs are important instruments in managing the long-term interests of New Zealanders.

The Institute regularly produces GDS Indexes – The *GDS Index* ranks each of the GDSs in operation by the essential information it contains. The *GDS Index* does not rate the strategy; it rates the extent to which essential information is provided in the strategy document so readers can go on and assess the quality of the strategic approach for themselves.

The *2021 GDS Index* aims to illustrate how Aotearoa New Zealand might strengthen GDSs to be more effective, responsive, measurable, comparable and durable through public consultation, engagement and ownership. If government departments make the content of GDSs more useful, the users of these strategies will be better able to assess their quality and, where appropriate, to work with government to deliver better outcomes more cost-effectively. The Institute regularly updates the GDS Index so that information can be measured, analysed and tracked over time.

Three Waters Reform Programme [GDS04-07]

As a GDS, the Three Waters Reform Programme was part of the *2021 GDS Index*. The Institute uses the radar chart to illustrate the score of one GDS compared with the average score of all operational GDSs (see Appendix 2). The Three Waters Reform Programme scored below average across 5 out of 6 elements. Consequently, the strategy was ranked 177th out of the 221 operational GDSs as at 31 December 2021. Furthermore, the strategy is extremely light on content (only one page long) and is not signed – therefore lacks accountability and responsibility to ensure its' success.

Insights resulting from the analysis of this strategy identifies that an evidenced lack of strategic capability and capacity regarding the Three Waters Reform Programme exists. This observation further reinforces the Institutes concerns around the lack of sufficient analysis and evidence to support the content of this Bill.

Appendix 1: Previous submissions by the Institute on the water or water-related issues

[Natural and Built Environments Bill Parliamentary paper on the exposure draft](#)

Written Submission (August 2021)

Oral Submission (September 2021)

[Submission to Environment Select Committee on the Resource Management Act Amendment Bill](#)

Written Submission (November 2019)

[New Zealand Productivity Commission Local government funding and financing](#)

Written Submission (August 2019)

[Submission on Urban Development Authorities](#)

Written Submission (May 2017)

[Submission on Clean Water: 90% of rivers and lake swimmable by 2040](#)

Written Submission (19 May 2017)

[Submission on the consultation on next steps for fresh water](#)

Written Submission (20 April 2016)

[Local Government Act 2002 Amendment Bill 2012](#)

Written Submission (July 2012)

[Local Government Reform in Wellington](#)

Written Submission (June 2012)

[Long Term Council Community Plans](#)

Written Submission (April 2009)

[Resource Management Amendment Bill](#)

Written Submission (April 2009)

Appendix 2: Three Waters Reform Programme scorecard from the 2021 GDS Index
 Source: GDS Index Handbook, 2022, p. 53⁹

GDS04-07

Three Waters Reform Programme

Purpose:

‘[T]o transform the delivery of three waters services.’ (p. 1)

Strategy (to achieve the purpose):

The approach is for Government to invite each council to enter into a non-binding MOU and invite stronger iwi/Māori involvement. (p. 1)

Key data

Publication date:	July 2020
Duration:	2020–2023
Number of pages:	1
Signed by:	Not signed
This GDS replaces:	Not applicable
Jointly held with:	Not applicable
Transferred from:	Not applicable
Strategy map:	Not found
Legislation:	Not applicable

2021 Scoring

Rank: 177 out of 221 GDSs

5 out of the 9 GDSs in the Department of Internal Affairs

19 out of the 25 GDSs in the Finance and Government Administration Sector

	Strategy score	Out of
1: Opportunities and Threats		
1.1 Does it identify potential opportunities going forward?	1.5	4
1.2 Does it identify potential threats going forward?	2	4
1.3 Does it contain a clear statement describing the problem that the strategy is trying to solve?	4	8
2: Capabilities and Resources		
2.1 Does it identify current and future capabilities?	1	4
2.2 Does it identify what capabilities it does not have and needs to acquire or work around?	0	4
2.3 Does it identify current and future resources?	2.5	4
2.4 Does it identify what resources it does not have and needs to acquire or work around?	1.5	4
3: Vision and Benefits (Purpose)		
3.1 Does it provide a clear aspirational statement as to what success would look like?	2	8
3.2 Does it identify who the beneficiaries are and how they will benefit?	1	4
3.3 Does it describe how success will be measured and over what time frame?	1.5	4
4: Approach and Focus (Strategy)		
4.1 Does it break down the purpose into a number of strategic goals/objectives that are tangible, specific and different from each other?	2	4
4.2 Does it identify a range of strategic options to solve the problem?	0.5	4
4.3 Does it clearly describe the chosen approach, outlining what it will and will not do?	1	4
4.4 Does it highlight the risks, costs and benefits of the chosen pathway/approach?	2.5	4
5: Implementation and Accountability		
5.1 Does it identify who is responsible for implementing the GDS?	0	4
5.2 Does it identify who will report on its progress?	0	4
5.3 Does it explain how progress will be reported and over what time frames?	0	4
5.4 Does it discuss whether the GDS will undergo a review while it is active or once it is completed?	0	4
6: Alignment and Authority		
6.1 Does it discuss predecessors to the strategy and identify any lessons learnt from these?	0.5	4
6.2 Does it align with its department's SOI?	3	6
6.3 Does it align with its department's annual report?	6	6
Total	32.5	96

04: Department of Internal Affairs—Te Tari Taiwhenua 53

⁹ See <https://www.mcguinnessinstitute.org/other-publications>