



Public Excluded Meeting of Council

02 March 2026

Report no: HCC2026/1/50

Tiaki Wai Limited - Shareholder Guarantees

Purpose of Report

1. The purpose of this report is to:
 - (a) summarise the terms of the New Zealand Local Governance Funding Agency (LGFA) Guarantee that will be required as a condition of the Tiaki Wai Limited (TWL) Accession;
 - (b) summarise the anticipated terms of further guarantees that are likely to be required in connection with TWL's future financing arrangements; and
 - (c) seek the Council's approval of those guarantee arrangements.
2. Elected members received a briefing by Simpson Grierson, legal advisors, on these matters on 4 March 2026. Refer Appendix 1 which provides a high level overview on the proposed arrangements.
3. The report is public excluded for the reason that the withholding of information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.

Recommendations

It is recommended that Council:

- (1) approves the granting of the New Zealand Local Government Funding Agency (LGFA) Guarantee and the Global Guarantee on terms materially consistent with the description set out in the report;
- (2) authorises the Chief Executive, on behalf of Council to:
 - (a) approve the final terms of the LGFA Guarantee and the Global Guarantee;
 - (b) approve the final forms of all documents, agreements, instruments, notices, resolutions, and communications, relating to or required in

connection with, the LGFA Guarantee and the Global Guarantee prior to their execution (Guarantee Documents);

- (c) enter into, execute, and deliver such Guarantee Documents; and
 - (d) do such other things, in connection with the Guarantee Documents, the LGFA Guarantee and the Global Guarantee, as the Chief Executive may consider necessary;
- (3) enters into and, following execution, delivers and performs its obligations under, all of the documents approved by the Chief Executive in connection with the LGFA Guarantee and the Global Guarantee, and that these documents may be executed by:
- (a) (in the case of agreements) the Chief Executive; and
 - (b) (in the case of deeds) a Council officer with power of attorney, on behalf of Council;
- (4) authorises the Chief Executive, on behalf of Council to
- (a) approve the terms of any amendments to the Partners' Agreement required to reflect the LGFA Guarantee and the Global Guarantee;
 - (b) approve the final forms of all documents, agreements, instruments, notices, resolutions, and communications, relating to or required in connection with, the relevant amendments (Amendment Documents); and
 - (c) enter into, execute, and deliver such Amendment Documents; and
 - (d) do such other things in connection with the Amendment Documents as the Chief Executive may consider necessary.

Background NZ Local Government Funding Agency (LGFA)

4. The LGFA is a limited liability company owned by central government and local authorities. It was established to borrow funds and then on-lend those funds to local authorities and (now) council-controlled organisations (CCOs) (including eligible water organisations) at lower margins than those local authorities and council-controlled organisations would otherwise pay.
5. It is proposed that TWL will join the existing financing programme operated by LGFA as a CCO (TWL Accession). Council is currently a borrower under the LGFA financing programme, and following the TWL Accession, TWL will be able to borrow funds directly from LGFA by issuing securities to LGFA.

LGFA Guarantee arrangement

6. Water organisations will access LGFA funding by way of joining LGFA's existing financing programme. This programme is regulated under the "Multi-issuer Deed" which contains the core borrowing terms, including

standard representations, undertakings and events of default for each of the Councils and CCOs.

7. As a condition to the TWL Accession, LGFA will require:
 - (a) TWL to grant a security interest over all of TWL's water services charges and related revenue (Water Charges Security); and
 - (b) each Shareholding Council to grant LGFA the LGFA Guarantee.
8. These requirements are similar to the existing security that Councils are required to provide when joining the existing LGFA financing programme as borrowers, being:
 - (a) a security interest over rates and rates revenue, which is granted under a Council's debenture trust deed; and
 - (b) a guarantee from participating Councils of LGFA's obligations to its creditors.
9. These security arrangements are critical to ensuring that Councils and CCOs can access LGFA debt financing.
10. While the final form of the LGFA Guarantee is currently being negotiated between TWL, the Shareholding Councils, and LGFA, the LGFA Guarantee will be granted:
 - (a) by the Shareholding Councils on a 'joint and several', rather than completely 'several', basis (but with agreed fixed liability allocations for each Shareholding Council, and a 'demand cascade' based on each Shareholding Council's agreed proportion of liability); and
 - (b) as a separate, bilateral, guarantee from Shareholding Councils in favour of LGFA only (ie not shared with other financial creditors of TWL).

Joint and several liability and demand cascade

11. The Partners' Agreement for TWL contemplates (at clause 9.2(b)) that "a several guarantee from each Shareholder" will be granted by each of the Shareholding Councils (in agreed proportions) to LGFA.
12. Under a several guarantee, if a demand was made by LGFA, each Shareholding Council would be liable only for its agreed proportion of the demanded amount only. By contrast, under a joint and several guarantee, each Council is jointly liable for the full demanded amount.
13. However, LGFA have advised that each Shareholding Council's proportionate liability under the LGFA Guarantee will be allocated as follows:
 - (a) the LGFA Guarantee will set out an initial fixed percentage allocation for each Shareholding Council's liability (Initial Allocation); and
 - (b) the Initial Allocation for each Shareholding Council may be updated in the future if agreed between LGFA, TWL and the Shareholding Councils to LGFA (Updated Allocation).
14. LGFA have confirmed that the form of guarantee will provide for a 'demand cascade' based on each Shareholding Council's Initial Allocation (or Updated

Allocation, as applicable at the time of the demand). On this basis, the anticipated process that will apply to a call under the TWL guarantee will be as follows:

- (a) A demand for payment will be able to be made under the guarantee by LGFA if/when TWL defaults on its payment obligations to LGFA.
- (b) While each Shareholding Council will be liable on a 'joint and several' basis, this liability will be further regulated under the terms of the guarantee, which will provide that the demand may only be made against each Shareholding Council on a proportionate basis based on their Initial Allocation (or Updated Allocation, as applicable at the time of the demand). The proportion of the total amount demanded from a Shareholding Council under the guarantee is their "Relevant Proportion" under the guarantee.
- (c) If, following a demand being made under the guarantee, one of the Shareholding Councils does not pay its Relevant Proportion within an agreed timeframe, LGFA may make further demands on the Shareholding Councils that have paid their Relevant Proportion to cover the shortfall (referred to as a "Shortfall Amount"). If those further demands are not complied with by one or more Shareholding Councils, LGFA can make further demands on the other Shareholding Councils who have paid the additional amount to recover that further shortfall. Each demand relating to a Shortfall Amount must again be proportionate, with a Shareholding Council required to pay their Relevant Proportion of each Shortfall Amount. This process can be repeated against complying Shareholding Councils under the original demanded amount is paid in full.
- (d) As such, a Shareholding Council may be required to pay more than their initial Relevant Proportion if one or more other Shareholding Councils do not pay following a demand (but any additional amount will again be spread proportionately across the paying Shareholder Councils).
- (e) However, each Shareholding Council which is required to pay more than their initial Relevant Proportion due to the failure of another Shareholding Council to pay its own Relevant Proportion will have its own claim against the Shareholding Council that fails to pay for the additional amounts required to be paid by the paying Shareholding Council.

15. The structure of the LGFA Guarantee is therefore not entirely consistent with the Partners' Agreement, given that, regardless of the agreed proportions of liability, a Shareholding Council can (because of the joint and several nature of the LGFA Guarantee, and the operation of the 'demand cascade') be required to pay more than 'its share'.

16. However:

- (a) any such further liability only arises in the (presumably remote) case of another Shareholding Council defaulting on its payment obligations under the LGFA Guarantee; and
- (b) any Shareholding Council that pays an additional amount will have the right to recover that amount from the non-paying Shareholding Council.

17. A 'joint and several' guarantee, and the demand cascade set out above, is consistent with the existing form of guarantee that councils have provided in respect of LGFA's borrowings (and which all of the Shareholding Councils are a party to), which provides for participating Councils (including the Shareholding Councils) to guarantee the payment obligations of LGFA to LGFA's creditors on a joint and several basis. The existing guarantee contains a similar demand cascade mechanism, under which, if a guaranteeing Council does not pay its proportionate share of the demanded amount when called, other guaranteeing Councils will be called on to pay the additional amount.

Mitigants against likelihood of demand

18. However, there are a number of factors that should mitigate the likelihood of any demand being made under the LGFA Guarantee. The mitigations include (but are not limited to):
- (a) TWL will put in place an internal treasury policy which will include measures and tests designed to ensure that TWL remains compliant with the LGFA financial covenants.
 - (b) LGFA has recognised that not all water CCOs will be able to comply with financial covenants upon establishment and has advised that a phase-in period of up to five years may be agreed between LGFA and a CCO during which relaxed interim financial covenants will apply.
 - (c) Even after the initial phase (when TWL will be expected to comply with enduring financial covenants), in the event of a breach of those covenants LGFA would be expected to work with TWL to enable the default to be remedied over time. This might include committing to actions to remedy the underlying issues (e.g. price increases or cost reductions).
 - (d) The Crown also has statutory intervention rights if there is a significant problem, such as the ability to appoint a facilitator or commissioners to TWL. These steps could also be taken with a view to addressing any problem before a council guarantee is called.
 - (e) TWL will also be required to grant Water Charges Security. This means that, in the event of a default, if a remedial plan is not successful (e.g. if TWL does not or cannot put in place the required remedial steps), LGFA would have the right to appoint a receiver to TWL to collect the debt directly from TWL. The receiver would also have the right under the Local Government (Water Services) Act 2025 to set its own 'special' water charge in order to generate new revenue to repay amounts owing to LGFA.
19. These steps and protections are likely to mean that, in practice, the prospect of the LGFA Guarantee being called might be considered very low. LGFA has not (as far as the Council is aware) called on any guarantee or uncalled capital support from any council in relation to any of the eight existing CCO borrowers to date.

Security for LGFA Guarantee

20. Each Shareholding Council will need to grant security stock (under their existing Debenture Trust Deeds) in favour of LGFA in order to secure the guarantee liability.
21. This means that, if a Shareholding Council does not pay under the LGFA Guarantee when required, LGFA could seek to enforce its security rights over the Shareholding Council's rates and rates revenue (including through the appointment of a receiver who could set a new 'special rate' under section 115 of the Local Government Act 2002) to collect the water debt.
22. Equivalent security will have been granted by each Shareholding Council in favour of LGFA to security the guarantee that councils have provided in respect of LGFA's borrowings.

Separate bilateral guarantee

23. The Term Sheet (refer Appendix 2) provides that the LGFA Guarantee will be granted by the Shareholding Councils on a bilateral basis (i.e., granted directly by the Shareholding Councils in favour of LGFA and not shared with any other creditors of TWL).
24. In the future, it is contemplated that TWL may wish to enter into financing arrangements with other financiers (such as banks, swap providers, and bondholders). It is anticipated that those other financiers are likely to request a guarantee from the Shareholding Councils so that they are in the same position as LGFA. However, given LGFA's requirements, separate guarantee arrangements will be required in respect of additional financiers who may request a guarantee from the Shareholding Councils. In this regard:
 - (a) there will be an administrative burden, and execution risk, if new guarantees are sought for each new financier from all Shareholding Councils at the relevant time they provide new finance; and
 - (b) the inability to provide a guarantee to a new financier (or risk of the same) may make it challenging for TWL to seek the best possible terms in financing markets, making it unduly reliant on existing financiers (including LGFA).
25. In order to manage this issue, it is proposed that the Shareholding Councils provide a further guarantee in favour of all other financiers who participate in TWL's financing from time to time (Global Guarantee). The Global Guarantee would be granted by Shareholding Councils at the same time as the LGFA Guarantee (on broadly similar terms, as set out below), but with the ability for TWL to confer the benefit on relevant financiers through a subsequent letter at the time that a new financier accedes to TWL's financing arrangements, without having to go back to Shareholding Councils. There will however be controls put in place as to when and in what circumstances the benefit of the guarantee could be extended to a new financier.

Next steps

26. The next step in relation to the guarantees will be for guarantees to be finalised and approved for execution in accordance with the proposed delegation to the Chief Executive.

27. TWL's board requests that each Shareholding Council approves the proposed LGFA Guarantee (and Global Guarantee) and the documents and steps contemplated by them.
28. All other remaining documents relating to the TWL Accession are currently being negotiated between TWL, the Shareholding Councils, and LGFA. These will need to be finalised and approved by TWL and the Shareholding Councils. Any further such documents requiring execution by the Council can be considered and approved by the Council, once available, as part of the broader package of documents required to establish TWL (for example, the Transfer Agreements), once finalised. The TWL Accession must be completed, and LGFA Guarantee (and Global Guarantee) in place, prior to 1 July 2026.

Options

23. Approval of the security arrangements is required now to ensure effective financing arrangements are in place for Tiaki Wai to meet the required operational commencement date of 1 July 2026. Not doing so would put this in jeopardy.

Climate Change Impact and Considerations

24. LGFA has a climate change impact programme which Tiaki Wai will be able to access and gain benefits, such as reduced cost of funding.

Consultation

25. There are no specific public consultation requirements.

Legal Considerations

26. Legal advisors have assisted in the preparation of this report and the associated advice. Further legal advice will be sought throughout the next stages of the process.

Financial Considerations

27. There are no further financial considerations.

Appendices

No.	Title	Page
1	Appendix 1: Tiaki Wai Shareholder Guarantees overview slides	
2	Appendix 2: Indicative Term Sheet	

Author: Jenny Livschitz
Group Chief Financial Officer

Reviewed By: Bradley Cato
Chief Legal Officer

Approved By: Jo Miller
Chief Executive

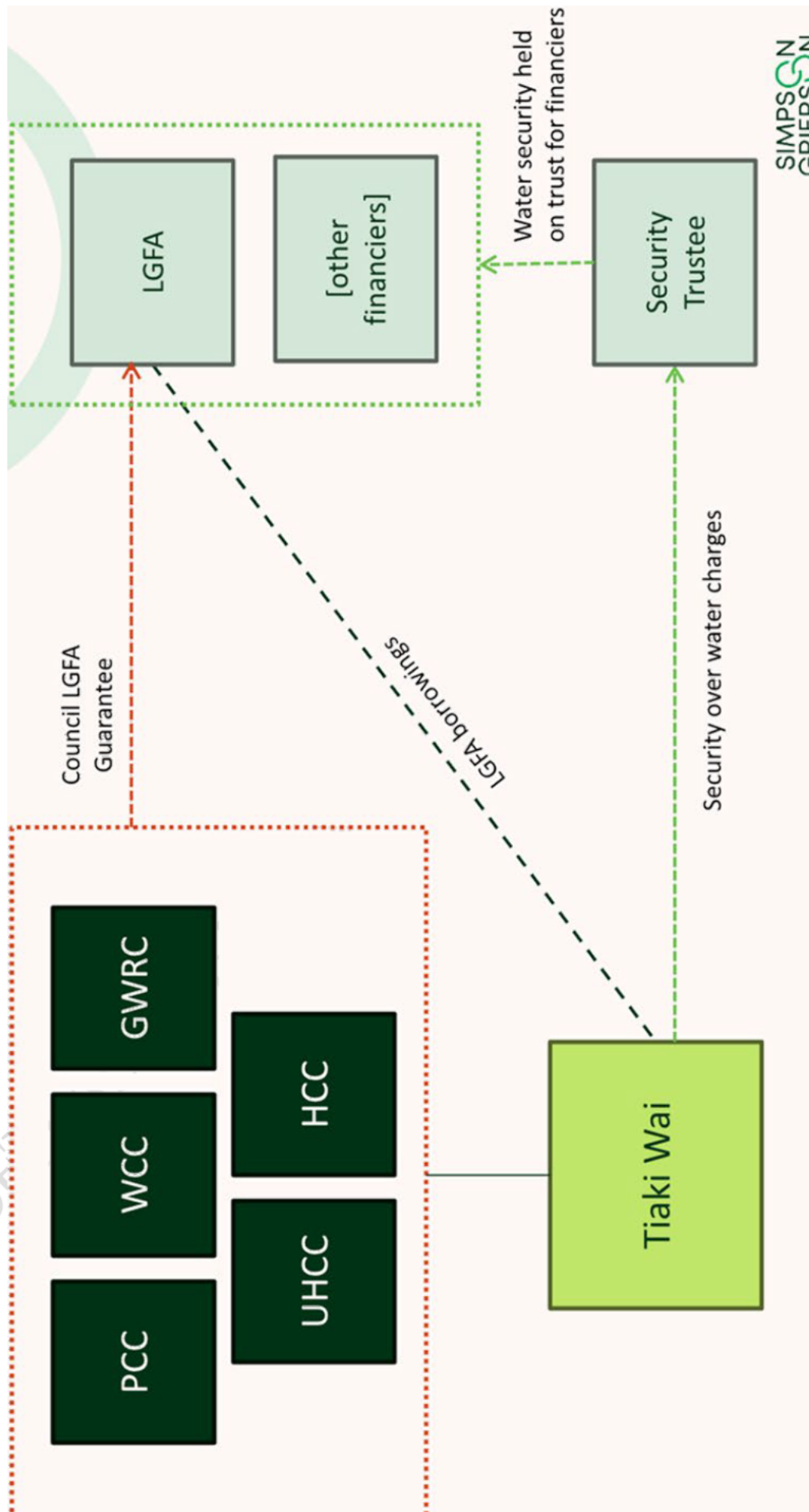
RELEASED AS PUBLICLY AVAILABLE INFORMATION



Overview of LGFA guarantee

- As a condition of Tiaki Wai's accession to the LGFA borrowing arrangements, all shareholding councils of Tiaki Wai will provide a joint and several guarantee to LGFA of Tiaki Wai's obligations.
- The guarantee will be bilateral (ie, granted directly to LGFA).
- Each Council's liability under the guarantee will be calculated by reference to agreed fixed proportions (which may be updated semi-annually between the Councils, LGFA and Tiaki Wai).
- The guarantee includes a 'demand cascade', so that if any Council does not pay its agreed proportion when called, the other Councils may be called to cover the unpaid amount (in the same proportions).

SIMPSON
GRIFFITHS



Mitigants against LGFA guarantee being called

- Tiaki Wai internal treasury policy
- Phase-in period for financial covenants
- Discussions between LGFA and Tiaki Wai if financial covenants were breached
- Crown statutory intervention rights
- Water charges security

Overview of global guarantee

- As the LGFA guarantee will be granted bilaterally, any guarantees granted to other financiers of Tiaki Wai (ie banks, swap providers, bondholders) must be documented separately.
- To ensure further guarantees do not need to be documented individually, it is proposed that the shareholdings councils grant a separate 'global guarantee' at the same time as the LGFA guarantee.
- The global guarantee will be prepared on the same form as the LGFA guarantee, with the ability for Tiaki Wai to confer the benefit of the guarantee on relevant financiers as they accede to Tiaki Wai's financing arrangements.
- Controls will be agreed between Tiaki Wai and the Council to restrict when and in what circumstances the benefit of the guarantee can be extended to a new financier.

SIMPSON
GRIFFITHS

