

Supplementary agenda for a meeting of the Waikato District Council to be held in the Council Chambers, District Office, 15 Galileo Street, Ngaruawahia on **FRIDAY, 24 FEBRUARY 2023** commencing at **9.30am**.

Supplementary agenda for late Item 5.6 which was not available when the agenda was circulated and must be considered prior to the next scheduled Council meeting on Wednesday, 13 March 2023

5. REPORTS

5.6 Water Services Legislation Bill Submission

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GJ Ion
CHIEF EXECUTIVE

TERMS OF REFERENCE

COUNCIL

Chairperson:	Her Worship the Mayor
Deputy Chairperson:	Deputy Mayor
Membership:	The Mayor and all Councillors
Meeting frequency:	Six weekly – or as required
Quorum:	Half of the members (including vacancies)

Purpose

1. To provide leadership to, and advocacy on behalf of, the people of the Waikato District.
2. To define and represent the total communities' interests, ensuring ongoing community and economic development, the effective stewardship of existing assets, sustainable management of the environment, and the prudent management of the communities' financial resources.

Terms of Reference

The Council's terms of reference include the following powers which cannot be delegated to committees, subcommittees, officers or any other subordinate decision-making body:

1. The power to make a rate.
2. The power to make a bylaw.
3. The power to borrow money, or purchase or dispose of assets, other than in accordance with the Long-Term Plan.
4. The power to adopt a Long-Term Plan, Annual Plan, or Annual Report.
5. The power to appoint a Chief Executive.
6. The power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the Long-term Plan or developed for the purpose of the local governance statement, including the Council's Infrastructure Strategy.
7. The power to adopt a remuneration and employment policy.
8. The power to approve or amend the Council's Standing Orders.
9. The power to approve or amend the Code of Conduct for elected members, and consider any recommendations made in relation to a complaint lodged under the Code.
10. The power to appoint and discharge:
 - a. members (including chairpersons) of Council committees and subordinate decision-making bodies, subject to the Mayor's powers under section 41A Local Government Act 2002; and
 - b. elected member representatives on external organisations.
11. The power to establish a joint committee with another local authority or other public body and appoint elected members as representatives on such committees or bodies.
12. The power to make the final decision on a recommendation from the Ombudsman where it is proposed that Council not accept the Ombudsman's recommendation.
13. The power to approve or change the District Plan, or any part of that Plan, in accordance with the Resource Management Act 1991.

14. The power to amend or replace the delegations in Council's Delegations Register (except where expressly permitted in the Delegations Register).

To exercise the following powers and responsibilities of Council, which the Council chooses to retain:

1. To approve a proposed policy statement or plan under the Resource Management Act 1991.
2. To approve changes to boundaries of the District under the Resource Management Act 1991 or any other legislation.
3. In respect of District Plan decisions:
 - a. To appoint independent commissioners to a panel for hearings of a Proposed District Plan;
 - b. To approve the recommendation of hearings commissioners on a proposed plan, plan change or variation (including private plan change); and
 - c. To approve a proposed plan or a change to a district plan under Clause 17, Schedule 1 of the Resource Management Act 1991.
4. To adopt governance level strategies, plans and policies which advance Council's vision and strategic goals (e.g. Hamilton to Auckland rail), other than where expressly delegated to a committee.
5. To approve Council's recommendation to the Remuneration Authority for the remuneration of elected members.
6. To approve the Triennial Agreement.
7. To approve resolutions required to be made by a local authority under the Local Electoral Act 2001, including the appointment of an electoral officer and reviewing representation arrangements.
8. To approve any changes to the nature and delegations of any Council committees or subordinate-decision making bodies.
9. To approve the Local Governance Statement.
10. To approve funding requests not allowed for within budgets, in accordance with Significance & Engagement Policy parameters.
11. To approve any additional funding decisions required for the Watercare Services contract.
12. To approve development agreements as recommended by the Development Agreements Subcommittee where infrastructure is not allowed for within the Long Term Plan.
13. To receive six-monthly reports from each Community Board on its activities and projects.

To	Waikato District Council
Report title	Water Services Legislation Bill Submission
Date:	24 February 2023
Report Author:	Deron Sharma, Three Waters Reform Project Manager
Authorised by:	Gavin Ion, Chief Executive

1. Purpose of the report

Te Take moo te puurongo

To seek Council approval on the draft submission for the Water Services Legislation Bill (“**the Bill**”) that staff have prepared to submit to the Finance and Expenditure Select Committee (“**the Committee**”).

2. Executive summary

Whakaraapopototanga matua

The Bill, introduced to Parliament on 8 December 2022, is an omnibus bill designed to establish the water services entities (“**WSEs**”) by setting out their functions, powers, obligations, and oversight arrangements.

The Bill is currently with the Committee, who is accepting public submissions to prepare a report for the House, which will include recommendations on changes to the Bill.

The Committee had initially set a closing date for submissions of 17 February 2023, but granted Council an extension up to 6 March 2023, owing to the impacts of the Auckland Anniversary weather event and Cyclone Gabrielle.

Staff have drafted a submission to the Committee (**Attachment 1**) with the intention of advocating for our district and our people. The draft submission is congruent with the previous submission made on the Water Services Bill 2021 and the contents of the waters induction workshop held in 2022.

The draft submission illustrates that Council has already undertaken a journey to improve the delivery water services to our communities through the Operations and Maintenance contract with Watercare Services Limited. It is articulated that, while Council welcomes the opportunity to improve three waters service provision through the benefits the WSEs can unlock, the current contract should remain in place until the WSEs are fully operational.

Staff support the draft submissions provided by Water New Zealand (**Attachment 2**) and Taituarā (**Attachment 3**), with the former providing technical feedback and the latter providing perspectives on matters of policy. For efficiency, staff have focussed on explaining Council's background and advocating for Council's needs rather than technical amendments on specific clauses.

Staff consider the decisions of this report to be of **medium significance** and confirm that the report, and recommendations contained therein, comply with Council's statutory requirements.

Staff recommend that Council accepts **Option One** as this option presents direct advocacy of Council's priorities for its people and the district as a whole.

3. Staff recommendations Tuutohu-aa-kaimahi

That the Waikato District Council:

- a. **accepts Option 1 (Council accepts the draft submission on the Bill to be sent to the Committee);**
- b. **notes that the events of the past month have significantly constrained waters resources;**
- c. **notes that the cost to prepare this submission will be recovered from the Three Waters Reform Transition Support Package; and**
- d. **delegates to the Mayor, authority to sign off on the draft submission.**

4. Background Koorero whaimaarama

While staff have generally agreed to the stipulations made by the Bill, recommendations have been made to the Committee to report on the lack of clarity around certain provisions to the House.

The Bill purports provides the WSEs with the necessary legislative functions, responsibilities, and powers to be fully operational by 1 July 2024. The draft submission outlines some barriers that Council believes would challenge the WSEs to be fully operational.

This Bill will establish the detailed powers, functions and duties of the WSEs, which are necessary for them to deliver water services to communities in place of Council.

It also encompasses transfer of assets and liabilities. It is said to provide WSEs with powers to carry out work in relation to water services infrastructure on or under land. However, the draft submissions outlines that the Bill does not, in comparison to the Local Government Act 2002, adequately contemplate the powers that the WSEs would require to achieve this to the level Council currently can. This poses a risk to residents as Council currently has powers to carry out works on critical public infrastructure, irrespective of location, to maintain levels of service or to prevent failure.

The Bill will also contain:

- Provisions to recognise and respect the Crown's responsibility to give effect to the principles of Te Tiriti o Waitangi.
- A compliance, monitoring and enforcement regime.
- Regulatory functions and powers, which will replace and modernise the existing bylaws framework.
- Provisions to protect vulnerable consumers.
- Provisions regarding transfers of local-government-owned mixed-use rural water supplies.

5. Discussion and analysis Taataritanga me ngaa tohutohu

5.1 Options Ngaa koowhiringa

Staff have assessed that there are two reasonable and viable options for the Council to consider, which are set out below.

Option One:

Council accepts the draft submission on the Bill to be sent to the Committee.

Option Two:

Council does not accept the recommendations of this report and does not proceed with the draft submission.

Staff recommend **Option One** as it ensures that Council's priorities and concerns regarding significant three waters reform legislation are made clear to the House.

5.2 Financial considerations Whaiwhakaaro puutea

The cost to undertake this exercise will not be funded by ratepayers, rather it will be covered from the Department of Internal Affairs through the Three Waters Reform Transition Support Package – Tranche 1.

5.3 Legal considerations Whaiwhakaaro-aa-ture

Staff confirm that the decisions in this report comply with the Council's legal and policy requirements. Staff have not sought external, legal advice on the submission.

5.4 Strategy and policy considerations

Whaiwhakaaro whakamaaherehere kaupapa here

The report and recommendations are consistent with Council's policies, plans, prior decisions, and vision of "Liveable, thriving and connected communities - He noohanga aahuru, he iwi whai ora, he haponi tuuhono tahi."

Furthermore, the report and recommendations are congruent with Council's community outcomes and goals of:

- Supporting our communities through advocacy.
- Providing value for money by recovering costs from the Department of Internal Affairs.

5.5 Maaori and cultural considerations

Whaiwhakaaro Maaori me oona tikanga

Aside from advocating for the principles of Te Ture Whaimana o Te Awa o Waikato (Te Ture Whaimana) and mana whenua, staff do not consider the recommendations of this report to have any Maaori or cultural implications.

5.6 Climate response and resilience considerations

Whaiwhakaaro-aa-taiao

Staff have outlined the need for the Bill to hold the WSEs more accountable for climate change and resilience, particularly considering recent weather events that have tragically affected the country.

5.7 Risks

Tuuraru

Staff do not consider the recommendations of the report to carry any associated risks.

6. Significance and engagement assessment

Aromatawai paahekoheko

6.1 Significance

Te Hiranga

The decisions and matters of this report are assessed as of medium significance, in accordance with the Council's [Significance and Engagement Policy](#).

AND

The following criteria are particularly relevant in determining the level of significance for this matter:

- The degree to which the issue has a financial impact on Council or the rating levels (both targeted and general) of its communities.
-

- The likely impact on present and future interests of the community, recognising Māori Tikanga (culture values) and their relationship to land and water.
- The proposal affects the level of service of a significant activity.
- The community interest is likely to be high.
- The likely consequences are controversial.

6.2 Engagement

Te Whakatuutakitaki

Highest level of engagement	Inform ✓	Consult <input type="checkbox"/>	Involve <input type="checkbox"/>	Collaborate <input type="checkbox"/>	Empower <input type="checkbox"/>
<i>Tick the appropriate box/boxes and specify what it involves by providing a brief explanation of the tools which will be used to engage (refer to the project engagement plan if applicable).</i>	Staff have not sought public engagement on the draft submission as the Committee was also accepting public submissions.				

Stakeholders have been or will be engaged with:

Planned	In Progress	Complete	
<input type="checkbox"/>	✓	<input type="checkbox"/>	Internal
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Community Boards/Community Committees
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Waikato-Tainui/Local iwi and hapuu
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Affected Communities
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Affected Businesses
<input type="checkbox"/>	<input type="checkbox"/>	✓	Other (Please Specify) Waters Governance Board Department of Internal Affairs Crown Infrastructure Partners

7. Next steps Ahu whakamua

The next steps for staff would be to submit the feedback to the Committee.

8. Confirmation of statutory compliance Te Whakatuuturutanga aa-ture

As required by the Local Government Act 2002, staff confirm the following:

The report fits with Council's role and Terms of Reference and Delegations.	Confirmed
The report contains sufficient information about all reasonably practicable options identified and assessed in terms of their advantages and disadvantages (<i>Section 5.1</i>).	Confirmed
Staff assessment of the level of significance of the issues in the report after consideration of the Council's Significance and Engagement Policy (<i>Section 6.1</i>).	Medium
The report contains adequate consideration of the views and preferences of affected and interested persons taking account of any proposed or previous community engagement and assessed level of significance (<i>Section 6.2</i>).	Confirmed
The report considers impact on Maaori (<i>Section 5.5</i>)	Confirmed
The report and recommendations are consistent with Council's plans and policies (<i>Section 5.4</i>).	Confirmed
The report and recommendations comply with Council's legal duties and responsibilities (<i>Section 5.3</i>).	Confirmed

9. Attachments Ngaa taapirihanga

Attachment A:	Draft Waikato District Council Submission on the Water Services Legislation Bill.
Attachment B	Draft Water New Zealand Submission on the Water Services Legislation Bill.
Attachment C	Draft Taituarā Submission on the Water Services Legislation Bill.

SUBMISSION ON THE WATER SERVICES LEGISLATION BILL

INTRODUCTION AND BACKGROUND

Waikato District Council (“**the Council**”) welcomes the opportunity to provide a submission on the Water Services Legislation Bill (“**the Bill**”).

The Council wishes to thank the Finance and Expenditure Committee (“**the Committee**”) for granting an extension until 6 March 2023 in light of the flooding events during Auckland Anniversary weekend and the effects of Cyclone Gabrielle. The Council acknowledges the efforts of staff, the community, and local marae in responding to these events and laments the tragic loss of life.

Waikato District Council, classified as a tier 1 Growth Council, is located in the heart of an area referred to as ‘the golden triangle’ of Auckland, Hamilton, and Tauranga. The district, home to around 89,000 residents, covers an area of more than 400,000 hectares. The Council owns seven water, nine wastewater treatment plants, and services 1,185 km of pipes.

The Council’s vision is that we work together as a district to build “liveable, thriving, and connected communities” as our townships grow. Liveable communities reflect what is important to our residents and support a shared sense of belonging, both to the local community and the wider district. Thriving communities participate in Council decision-making and community-led projects, provide input into the management of their local assets, and sustain the local business sector, providing local employment. People in connected communities have access to fit for purpose services, amenities, and infrastructure that meet their social, health, education, and employment needs.

Waikato-Tainui are tangata whenua of the Waikato region, wherein thirty-nine of the sixty-eight Waikato-Tainui marae reside within the Council's boundaries. Following the Waikato-Tainui Raupatu Claims (Waikato River) Act 2010, a Joint Management Agreement (“**the JMA**”) between Waikato-Tainui and the Council was signed in March 2010. The JMA affirms the commitment between Waikato-Tainui and the Council to co-manage the Waikato River; to restore and protect the health and wellbeing of the river, and to provide an enhanced relationship between the parties on areas of common interest. The Council’s District Plan and waters service delivery gives effect to Te Ture Whaimana o Te Awa o Waikato (Te Ture Whaimana), recognising that the Waikato River is tūpuna awa to Waikato-Tainui.

The Nga Wai o Maniapoto (Waipa River) Act 2012 was enacted on 5 April 2012. Under this Act, there is a requirement for the Council to enter into a Joint Management agreement with Ngāti Maniapoto. The purpose of the Act is to “...restore and maintain the quality and integrity of the waters that flow into and form part of the Waipa River for present and future generations...” Waikato District Council, alongside Waipā District Council, Waitomo District Council, Ōtorohanga District Council, and the Waikato Regional Council signed the Waipā River Joint Management Agreement with the Maniapoto Māori Trust Board on 3 April 2013.

From 1 October 2019, the Council contracted the provision of three waters to Watercare Services Limited (“**Watercare**”), which saw all previous three waters staff transition to Watercare. Whilst the three waters assets and resource consents are owned by the Council, the Operations and Maintenance Contract between Watercare and the Council allows Watercare to deliver three waters services to the district. The outsourcing of water services to Watercare was consulted by Waikato District Council as part of the 2018-2028 Long-Term Plan process. This agreement between the two parties has been arranged to encourage the production of better environmental outcomes and more affordable water services for the community. The Council has previously written to the National Transition Unit Board to request that the Watercare Operations and Maintenance Contract continue for a further five years beyond the formation of the Water Service Entities (“**the WSEs**”) to ensure continuity of services and successful completion of large, capital projects.

The Council welcomes change for improved health outcomes and supports the overall intent and direction for the Bill. This is evidenced by the journey already undertaken by Council, in transitioning to Watercare, to fortify environmental outcomes and create more affordable water services for the community. However, the Council remains concerned about the lack of clarity and specificity required to precisely contemplate the details of transition within the specified timeframes.

The Council supports the technical feedback provided by Water New Zealand and the policy considerations highlighted in Taituarā’s draft submission to the Committee.

STORMWATER

The Council appreciates that stormwater systems often suffer from underinvestment and has the most regional variability owing to complex histories, out of the three waters. Currently, stormwater services are delivered by multiple owners as these assets service multiple functions, leading to overlaps with roading corridors, parks and reserves, and urban drainage schemes, to name a few.

Assuming that stormwater services are transferred to the WSEs, the Council supports the WSEs obligations to prepare stormwater management plans. However, Council recommends that the Bill provide clarity on whether the WSEs will develop a “strategic framework for stormwater network management” or provide a basis for long-term planning.

It is evident that the Bill contemplates collaboration between the Council’s stormwater service providers and the WSEs, however, clause 257(2) is unclear in stipulating the specific obligations on Council and its transport corridor managers to collaborate with the WSEs. The Council recommends that the Bill provide clearer guidance on the roles of these stakeholders and the extent to which collaboration would be required. To this end, the definitions of, and interface between, “transport stormwater system” and “stormwater network” needs clarification to avoid ownership disputes that currently exist for most territorial authorities.

Owing to ambiguity of stormwater asset ownership, the Council has previously undertaken an exercise to demarcate stormwater assets, illustrating which assets the Council would be responsible for. In the Bill, the current definition of stormwater infrastructure indicates that the Council may be responsible for managing rural and transport stormwater systems.

To this effect, the Council requests the Committee to recommend that the Bill defines how the different aspects of stormwater systems will be managed and clearly delineate overlapping responsibilities for mixed-use stormwater assets.

The Council notes that the Spatial Planning Bill and Natural and Built Environments Bill do not define a stormwater system or network. Given the interconnected nature of concurrent, legislative reforms, the Council recommends that the Committee advocate for consistency between these bills and other legislation to come.

ACCESS TO LAND

The Council notes that the Bill can be strengthened in providing the WSEs with land access powers. As water service providers, the WSEs need to have appropriate mechanisms to lawfully access infrastructure, irrespective of location, for the maintenance of assets, emergency responses, and preservation of levels of service.

The Council supports Water New Zealand's recommendations to remove the landowner's ability to impose conditions in sections 200(2), 200(3), and 202. The Council further recommends that land access rights for the WSEs match that of territorial authorities under section 181 and schedule 12 of the Local Government Act 2002 ("**the LGA**"). For example, sometimes, Council requires access to adjacent land to carry out works when it is impractical to carry out works on or under land that the asset resides within. Council recommends that the Bill clarify that access can be obtained to adjoining land for the purposes of undertaking works.

Furthermore, it seems that the Bill envisages the WSEs obtaining prior written consent of the owner or a Court order before it can construct or place water services infrastructure on or under land, which is a material change from the LGA, seemingly making the process much more onerous. Particularly in light of Council's experience with Cyclone Gabrielle, Council firmly urges the Committee to remedy this deficiency in the Bill.

PRICING AND CHARGING

The Council supports charges from establishment day to 1 July 2027 being aligned to current Council charging mechanisms. The Council also supports the obligation of the WSEs to prepare and adopt funding and pricing plans as this is congruent with the financial management requirements of territorial authorities. However, the Council recommends to the Committee that the WSEs set charges in accordance with the current funding and pricing plans, as there is currently no obligation to do so.

Moreover, the Council requests that the Committee advocate for the WSEs to have greater flexibility in setting charges as the WSEs will need autonomy to achieve their objectives and respond to the needs of their communities, for this generation and the ones to come. Specifically, Council foresees a risk with the charging principles in clause 331: restricting the WSEs board from setting charges based on affordability and equity could be the causative agent for steep changes to water bills.

The Bill contemplates that the Council may be required to collect charges on behalf of the WSEs up to 1 July 2029. Council recommends that the WSEs collect charges to keep balance sheets separated, thereby avoiding confusion for the consumer.

The Council does not agree with section 348 that the Crown be exempt from paying infrastructure contribution charges as Crown agencies often require the construction of significant public infrastructure.

Furthermore, the Council seeks justification for clause 341(4), which postulates that an owner of non-rateable land would be charged 50% of stormwater services, when the properties would be receiving stormwater services. The Council also recommends that the Bill provide a mechanism for varying stormwater charges based on type of land use.

The Council agrees with the intent of the Bill that successful delivery of three waters services will be contingent upon collaboration and information sharing with the WSEs, as per clauses 319-320. However, the Council believes that the use of this information by the WSE should be limited to carrying out statutory functions. Furthermore, the costs associated with preparing rating information should be shared. The Council's view is that section 43 of the Rating Valuations Act 1998 should be used as a guide if no other mechanism is developed for cost-sharing.

MANA WHENUA

The Council supports the Government's commitment to the Partnership/Pātuitanga principle of The Treaty/Te Tiriti, acknowledging the principles of Te Ture Whaimana o Te Awa o Waikato (Te Ture Whaimana). The Council recognises that Mātauranga Māori will be crucial for the WSEs to revive the mana in our waters and supports the inclusion of Te Mana o Te Wai statements as a strategic driver. To this effect, the Council would like to see the Bill set out how it will engage with mana whenua, beyond the stipulations made in section 13.

The Council recommends that mana whenua be empowered and resourced to be involved with the three waters reform programme during the establishment period.

Furthermore, the Council seeks clarity on the entity that monitors and regulates Te Mana o Te Wai obligations.

CLIMATE CHANGE

The unprecedented climate events that Aotearoa New Zealand has faced in the first two months of 2023 provide tragic examples of the effects of climate change and the pressures that it places on the waters industry. Just as the three waters reform programme is an intergenerational programme, so are the challenges of climate change.

In view of this, the Council is not adequately satisfied that the Bill challenges the status quo regarding climate change and resilience. The Council recommends that the WSEs be required to dedicate funding to climate change initiatives, publish a climate change response plan and carbon accounting statements, and other, appropriate climate related reporting.

ENGAGEMENT PRINCIPLES

The Council recognises the role it will continue to play in assisting the WSEs with effective delivery of three waters services and looks forward to the opportunities to create better outcomes for the district. The vast majority of the decision-making functions conferred on the WSEs require engagement with the Council, but there is no feedback loop which allows the Council to influence any decision-making on matters that involve/impact the Council.

Furthermore, sections 461 and 462 of the Bill do not adequately define what is meant by 'consult.' The Bill does not require the WSEs to respond to councils, mana whenua, consumers, or other stakeholders.

In closing, the Council recommends that the Bill provide more clarity on how the WSEs would engage with its stakeholders and impose clear timeframes and processes on WSEs to respond to its stakeholders.

The Council wishes to thank the Committee for the opportunity to provide comments on the Bill and extends its gratitude for the extension to enable this.

Should the Select Committee require any clarification from Waikato District Council, please contact Keith Martin – Waters Manager.

Xx February 2022

Chair
Finance and Expenditure Committee
By email: fe@parliament.govt.nz

Tēnā koutou katoa

SUBMISSION FOR WATER NEW ZEALAND ON THE WATER SERVICES LEGISLATION BILL

INTRODUCTION AND OVERVIEW

1. Water New Zealand (“Water NZ”) appreciates the opportunity to provide a submission on the Water Services Legislation Bill (“the Bill”).
2. Water New Zealand (Water NZ) is a national not-for-profit organisation which promotes the sustainable management and development of New Zealand’s water environment, particularly the three waters (drinking water, wastewater and stormwater). Water NZ provides leadership and support in the water sector through advocacy, collaboration, and professional development. Its ~3,000 members are drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies, academia and scientists.
3. Water NZ membership is drawn from across the entire water sector and is therefore interested in the entire Bill. Whilst this submission makes comments supporting or opposing particular provisions, this does not limit the generality of the overall interest in the Bill.
4. Generally, Water NZ supports the intent of the Bill to “ensure effective management of water services delivery and infrastructure so communities have access to safe, reliable and affordable drinking water and wastewater and stormwater services that meet their environmental and cultural expectations” and these submissions focus on areas that Water NZ consider could be improved or adapted to better meet the Bill’s intent.
5. The Bill follows on from the Water Services Entity Act 2022 and the Water Services Act 2021 and sets the framework for the establishment of the four water service entities. This is largest reform that the water sector has seen in decades. It has been Water NZ’s position throughout the reform programme to support initiatives that improve the delivery of water services to New Zealand communities.
6. Water NZ acknowledges that our members hold a variety of views in relation to water reform, including this Bill. Some of our membership hold strong and varied views in regard to reforms, governance and representation. For this reason, Water NZ focuses on technical excellence in the delivery result in the provision safe, reliable, and efficient water services. Accordingly, our submission has focused on ensuring the Water Service Legislation framework and transition is workable to this end.

7. Finally, it is important to note that this submission was drafted in collaboration with a dedicated group of Water NZ members from across a wide range of practices working with and for various water utilities from our largest to our smallest.

Overview of submission

8. In general, we support the bill.
9. Water NZ submission focusses on several themes:
- i. Stormwater
 - ii. Consistency
 - iii. Timing
 - iv. Continuous improvement
 - v. Cohesion with other legislation
 - vi. Provide recognition of relationship with iwi/Māori.
 - vii. Climate action
 - viii. Innovation
10. In some instances, specific changes are also recommended to address its concerns, and these are specifically included in the Relief Sought sections throughout this submission. Not every section has a Relief Sought section to avoid repetition as the submission is clear as to what is being sought.

The case for better coordination of stormwater systems nationwide is already clear.

11. Water New Zealand support fully Subpart 2—Stormwater provisions.
12. Water NZ welcomes the amendments to the WSE Act stormwater (and wastewater) networks powers and duties, functions and definitions following our submission to Select Committee in 2022.
13. Stormwater volumes, both current volumes and scenarios for future climate change impacts, often overwhelm networks, resulting in flooding and presenting risks to property. New Zealand's most common hazard is flooding –estimated to cost the country \$160 million per year. Climate change is increasing frequency and intensity of storm events, along with growth and intensification of our urban environment, all are increasing the risk of flooding. The recent flooding across the upper North Island also impacted all three waters simultaneously; drinking water availability, wastewater overflows and stormwater quality and quantity challenges.
14. The case for better coordination of stormwater systems nationwide is already clear. In 2021 the technical working group that advised on the stormwater aspect of the three waters reforms identified a host of complexity that these reforms should seek to untangle. These were identified, as:
- i. A “largely reactive” approach to managing stormwater, with limited understanding of the system or management of cumulative effects across the system.

- ii. A lack of national consistency around regional/local approaches to the management, regulation, and levels of services for both “hard” and “soft/green” infrastructure.
 - iii. Unclear accountabilities, variable management approaches, and poor incentives for joined up, catchment-based management approaches.
 - iv. A lack of formal legislative and policy links between the management and operation of stormwater systems, land use planning, and development.
 - v. Civil defence emergency management and forward planning is not always well coordinated.
15. Whilst some of these concerns have been addressed through the Government’s stormwater work programme, wider legislative changes and clauses in this Bill, there are further meaningful steps needing to be taken.
 16. The WSL bill objectives and direction for stormwater are constructive and provide strategic direction missing from the stormwater sector.
 17. The longer we continue to warm the climate, the heavier the storm rainfalls will get. The country’s stormwater system is designed for the climate we used to have – 50 or more years ago, in many places what has been built is for a one in five year event. Our systems are under-capacity. What we need is a stormwater system designed for the climate we have now, and the one we’ll have in 50 years from now.
 18. **Recommendation:** WaterNZ calls for a nationally consistent approach to stormwater flood hazard modelling and mapping, to inform design standards and freeboard levels, to be prescribed through the proposed water services government policy statement.
 19. **Recommendation;** Clause 256 be strengthened to prioritise and direct WSE investment and expenditure to focus on planning controls (e.g. setbacks, minimum floor levels, onsite detention, WSUD) and targeted capex investments to address service level shortfalls as part of Stormwater Management Plans.
 20. As well as a lack of any strategic and policy frameworks, the difference in operational and capital expenditure between stormwater and the other waters is significant. The [to be released] Water New Zealand 2022 National Performance Review, reveals stormwater networks receive, on average, a third of the funding the of wastewater or drinking water systems.
 21. A 2021 government report found dozens of communities at serious risk of flooding and are totally unprepared for it. Many of these at risk communities are in areas of high deprivation, the government and the WSE must work together as to how best protect these communities. Proactive co-investment in resilience now, will reduce longer-term community risk to tolerable levels.
 22. There is significant need for new, central funding arrangements to deliver the current and future levels of services for stormwater containment design standards.
 23. **Recommendation;** fast track government co-investment in flood protection and mandate funding associated with the flood protection projects identified in catchment management planning and stormwater asset management plans.

24. Investment in nature-based solutions is another way to proactively invest in building resilience. Natural solutions protect, sustainably manage, and restore natural and modified ecosystems – and offer multiple benefits, for example restoring coastal wetlands, absorbing impacts of increased storminess, providing biodiversity and act as carbon sink, while also providing cultural and recreational values. Such investments would be consistent with other, broader objectives that the Government has for the environment.
25. To protect the environment and meet legislative requirements, the principles of 'water-sensitive urban design' (WSUD) should be applied in new development, the retrofitting of stormwater systems and assets and in the assessment of resource consents. WSUD is an approach to water management in the built environment that addresses both water quantity and water quality issues.
26. **Recommendation;** The water services government policy statement, and appropriate stormwater clauses, should be amended to encourage and support WSE to invest in WSUD and nature-based solutions.
27. Regardless of who manages stormwater networks- WSE, councils-or other agencies stormwater networks such as Waka Kotahi- we firmly believe the statutory direction should be mandated for all stormwater networks.
28. Similarly, WSEs must have the power to impose stormwater network rules relating to works on any part of the stormwater network, not only the overland flow paths of a network (which represent only a portion of a stormwater network).
29. **Recommendation** There must be increased consistency of functions regarding stormwater - for example, transport corridor managers should be subject to stormwater network rules in respect of new or upgraded roads, and territorial authorities' bylaws must not be inconsistent with stormwater network rules applying in the same area.
30. There are currently institutional barriers (internally within councils departments, and between councils, and other agencies) to land use management and stormwater management. Whilst we support the purpose of stormwater management plans to guide the management and future planning of stormwater systems, we have concerns with a holistic stormwater catchment planning process being implemented- and other stakeholders complying with the plans.
31. **Recommendation:** that the s255 (and similar) stormwater catchment management planning provisions need to make sure is carried through into the Spatial Planning bill regional spatial strategy provisions and the Natural and Built Environment bill policy and consenting clauses.
32. There needs to be greater clarity on the definitions relating to stormwater. These definitions are central to the division of responsibility between WSEs, territorial authorities and transport corridor managers, and WSEs' duties and powers with regard to stormwater.
33. The uncertainty of considering them as two discrete systems will be challenging in terms of design standards, operations and managing and consenting under two different policy regimes (WSA and RMA). Specifically clause 260 (c) managing the

volume of stormwater and entry of contaminants into stormwater networks the introduction of contaminants.

34. Our members are concerned that the definition of stormwater network does not include a transport stormwater system (and that a transport stormwater network includes the overland flow path).
35. The definition of 'transport stormwater system' in clause 5 creates some ambiguity around those stormwater assets that will transfer to the WSEs - notably, that the infrastructure or processes *affecting* a transport corridor will not transfer. This is a wide scope that may lead to necessary assets not transferring to WSEs.
36. **Recommendation:** this definition be amended to replace "affecting" with "in".
37. Local and international research has shown that the relationship between road run-off and potential environmental effect is complex and location-specific. Across New Zealand catchments there are diverse issues including volume, velocity, sediment and risk of other contaminants and the sensitivity of receiving environments.
38. Roads are only small part of a catchment when it comes to contributing contaminants, yet roads acting as effective conveyance systems for the cocktail of contaminants from all surrounding landuses. It will be extremely difficult to separate out different contributing contaminant loads being introduced into a 'stormwater system'.
39. **Recommendation:** Water NZ propose the WSE take responsibility control of the water quality in both public stormwater networks and 'transport stormwater systems'. The Road Controlling Authority (RCA) remain owner and responsible for the asset management and funding of the assets. We believe the WSE will have the greater skills and capability to manage the water quality challenge. This could be enabled via the Relationship Agreements (clause 467).

Nationally consistent frameworks between entities and waters would be helpful

40. We note the new section 133(3)(a)(vii) provide that the government policy statement "may" also include expectations in relation to geographic averaging. However, there is no direction on how, where or when to apply geographic averaging.
41. **Recommendation** - Government produce national guidance for geographic averaging of residential water supply and wastewater service prices to allow WSE boards and Commerce Commission apply a nationally consistent approach.
42. The same clause of section 133(3)(a) (viii) allows the government policy statement may include information to address historical service inequities. This concept is not defined, or indication of who or how they could be addressed. Taking reasonable steps to address historic deficiencies, if for example, asset deficiencies have been causing sewage discharges, it is expected a WSE to have a plan to address these, including prioritised funding.
43. **Recommendation** – a description of historical service inequities be included in the government policy statement, and an outline of how and who shall do the work and how it should be funded. Recognising any unintended consequences of addressing such inequalities.

44. Whilst New Zealand has an array of civil defence emergency management resources and relationships which allow quick mobilisation and multi-function support, recent reviews and emergency responses have shown emergency management and multi-agency planning and preparedness are not always well coordinated.
45. **Recommendation** Greater clarity and transparency of CDEM Groups and Lifeline Utilities' roles and responsibilities in preparation, planning, and response is desirable for providing assurance to the public and emergency management sector.
46. **Recommendation:** the clauses in s217 will not be inconsistent with the forthcoming National Emergency Management Agency (NEMA) Bill objective of *an accessible, inclusive, modern, fit-for-purpose, well-coordinated, high-performing emergency management system that communities have trust and confidence in.*
47. Clause 467 requires WSE to enter into relationship agreements with local and regional councils and transport authorities to outline how they will engage, develop, operate, maintain, and enforce stormwater and land drainage. However, this does not go far enough to foster cooperation, information sharing, partnership or planning between local authorities and WSEs. It is unclear what status these agreements will have and whether they be legally enforceable.
48. **Recommendation;** Relationship agreements must be prepared in advance of the establishment date to ensure all parties are agreed upon and familiar with terms prior to their entry in force. We also suggest some form of dispute resolution (e.g. Ministerial direction or arbitration) be provided for to resolve issues that arise in the creation of relationship agreements.
49. **Recommendation:** the clause be strengthened to provide for coordination of water service and infrastructure delivery by WSEs, local and regional councils and transport authorities (and all Regional Spatial Strategy stakeholders) to facilitate planned and coordinated strategic urban development and growth.
50. **Recommendation:** provide clarification on the legal status of a relationship agreement
51. Water NZ support the new Part 9 (new sections 245 to 287), which set out the service provider assessment obligations for each community's access to drinking water supplies, wastewater and stormwater.
52. We consider this Part to be the most comprehensive and directive in fulfilling the Bills purpose. Replacing bylaws with plans, creating cross country consistencies for connections, planning and codes of practice modernises, coordinates and creates a much better system.
53. The network connection, design standards, stormwater rules, service agreements, trade waste plans, permits and certification, water conservation rules (clauses 245 to 287) are largely reflect to existing territorial authorities provision and policies, where available, with some smart drafting to bring it together and fill gaps. On that basis, the processes appear to be fit-for-purpose.
54. Technical guides are a pragmatic and enduring way of enabling knowledge transfer across organisations. Water New Zealand maintains a suite of technical guidelines whose development has been funded through a Water Services Managers Group levy, a collective of territorial authority water managers and their agents. The levy will

no longer exist following the establishment of new entities. The guidelines cover issues such as asbestos cement pipe management, fluoride dosing, and inflow and infiltration management.

55. The water sector also uses over 100 joint Australian New Zealand Standards. The development of industry standards is managed by Standards New Zealand. Standards New Zealand does not receive direct government funding and operates on a cost recovery basis. Due to the lack of funding several New Zealand Standards that establish essential operating protocols for the water sector that are currently out of date. A notable example is:
- *NZS 4404:2010 Land development and subdivision infrastructure* provides criteria for design and construction of land development and subdivision infrastructure, including stormwater, wastewater and water supply. Design criteria for water services are not keeping step with current operational conditions, meaning areas using the standard are delivering sub-optimal environmental outcomes. At current inflow and infiltration levels, 13% of wastewater networks constructed in accordance with New Zealand design standards for new developments, will fail to contain sewage overflows resulting from a storm event with a once annual recurrence interval.
56. Industry sectors are seldom able to fund the administrative costs associated with standards development, meaning many existing industry standards are disjointed, preventing New Zealand from having input to ensure local conditions are met.
57. The establishment of an industry levy would support the maintenance and development of Standards and industry guides.
58. **Recommend** the establishment of an industry levy on WSE to deliver on national collaboration on standards, good practice, customer education and support clause 13(m) to facilitate, promote, and support research, education, and training relating to water services.
59. Collaboration between the four WSEs is fundamental to ensure the water services sector operates as a cohesive whole across all of New Zealand. Our members have concerns for a potential for lack of consistency in performance between WSE. WSEs should have a continuous improvement approach to delivering water services. We have assumed any differences in performance or service will be identified in the reporting and monitoring via the Part 9 obligations, Taumata Arowai's annual Network Environmental Performance reporting and the Commerce Commission's regulations.
60. **Recommendation:** Clarify how consistency performance and continuous improvement between the entities will be enabled.
61. To enable nationally consistent, safe, reliable, and efficient water services we make the following recommendations:
62. **Recommendation:** to clause 245 (2) (e) assess the adequacy of drinking water and wastewater and urban stormwater services' add bullets:
- (v) Te Mana o Te Wai statements and cultural values
 - (vi) existing and potential urban stormwater flood risk
63. **Recommendation:** to clause 249 (2) 'notifying Taumata Arowai' add bullets

(c) any wastewater and stormwater considerations including but not limited to – dry and/ or wet weather overflows, WWTP compliance, discharge consent compliance, climate mitigation and adaptation risks.

64. Within Subpart 2, there are inconsistencies between the Bill and the Utilities Act and the National Code of Practice for Utility Operators Access to Transport Corridors.
65. **Recommendation** that a reference to the Utilities Act and the National Code of Practice for Utility Operators Access to Transport Corridors would be more appropriate than duplication of content in this legislation.

More clarity to provide certainty on timeframes.

66. Water NZ encourage the Government to give greater consideration to the timing and interconnections of clauses within this bill, with transition arrangements to the new entities and with other reform programmes to give certainty to all stakeholders.
67. **Recommendation:** We request the Government provide clarity on how the resource management reform tranches align with the new WSEs and makes amendments to the Spatial Planning Bill to clarify which transition tranche each region (and WSE) will be part of.
68. Part 2 clause 203 will remove the power to operate Wellington Bulk water supply as clause 203 consequentially repeals the Wellington Regional Council (Water Board Functions) Act 2005 and the Wellington Regional Water Board Act 1972.
69. **Recommend** the Wellington Regional Water Board Act 1972 is not repealed until July 2024, or after the WSE establishment date.
70. In the WSE Act the dates of possible transfer of small mixed-use rural water services is before 30 June 2024. This bill reads as transfer to community will be after July 2024.
71. **Recommendation: CHECK WSE Act**
72. We question clause 258 that a draft stormwater management plan, must (a) (ii) *no earlier* than 1 July 2028. Stormwater management plans are needed as a priority to inform, but not limited to, regional spatial plans, infrastructure strategies and pricing plans and climate adaptation/ managed retreat plans.
73. **Recommend:** amend the clause 258 (a) (ii) text to read ***no later*** than 1 July 2028.
74. The timeframe available to collaboratively develop and engage meaningfully on Asset Management Plans, Infrastructure Strategies, Funding & Pricing Plans is constrained (clause 461). The National Transition Unit aims to have first generation asset management plans for each WSE by November 2023 and approved by the WSE boards by February 2024.
75. **Recommendation:** consider streamlined consultation in relation to those plans between WSEs, Councils, communities and mana whenua given time period available.
76. We believe it to be a drafting error in clause 340 that charges for stormwater (4) (b) applies '*not before 2027*'.
77. **Recommendation:** amend the clause 340 4 (b) text to read ***no later*** than no later than 2027.

Pricing and charging clarity

78. Water NZ support the charging principles specified in section 331. The principles align with objectives and functions of the WSE Act, and vision of the reforms.
79. However, we believe there is a lack of consideration for different pricing models in the bill, and a lack of incentives to effectively fund infrastructure provision.
80. WSEs must have sufficient flexibility to charge as they see fit in order to meet their statutory objectives, with the Commission's oversight under the economic regulation regime operating as the constraint rather than the charging principles.
81. **Recommendation:** pricing and charging clauses must enable a WSE to meet the principles of the WSL bill.
82. **Recommendation:** The charging principles at clause 331 should include reference to equitability and/or affordability for consistency with clause 333, and to maintain the flexibility available to the WSE in charging to meet the requirements of its customers and service area.
83. The charges for stormwater services can be averaged geographically under clause 334, but there is no mechanism for varying stormwater charges based on type of land use, which means a WSE could not increase stormwater charges for areas that are scheduled for development, or to certain businesses which have a higher demand for reducing contaminants such as car scrapping yards. Also, there is no apparent justification for only charging the owner of non-rateable land 50% of charges for stormwater services under clause 341(4) when those properties receive stormwater services.
84. **Recommendation:** Water NZ suggest using stormwater pricing incentives to encourage nature-based solutions and green infrastructure services that delivers stormwater services to help address both stormwater quantity and quality issues.
85. Clause 334 allows for geographically averaged prices at different scales for different service types and different classes of consumers.
 86. **Recommendation:** Amend the bill definitions and interpretation to define "classes" of consumers, to ensure national consistency across WSE.
 87. As Water NZ submitted on the WSE Act, we believe the WSE should collect charges, not the councils, to maintain balance sheet separation and to avoid public confusion regarding accountabilities.
 88. **Recommendation:** From clause 336 Pass through billing, remove ~~(1) The chief executive of a water services entity may authorise the local authority or authorities in its service area to collect charges on behalf of the water service entity.~~
 89. Water NZ do not support the Crown being exempt from paying infrastructure contribution charges. Crown agencies are often major developers, requiring and constructing significant public infrastructure, to be vested and managed by councils and/or WSE.
 90. **Recommendation** Remove clause 348 in its entirety. ~~The Crown is exempt from paying any water infrastructure contribution charges.~~ Alternatively;
 91. **Recommendation** Reword clause 348 Crown accountable for water infrastructure contribution charges.

92. We note that clause 462 contains much prescription regarding consultation on WSE plans, strategies, contributions, but makes no requirements for consultation on water services charges.
93. **Recommendation:** add a bullet to 462 (1)
 (q) Sections 318 to 350 (relating to Charging)
94. **Recommendation:** The Part 11: pricing and charging clauses should include WSE financial reporting obligations equivalent to those in the Local Government (Financial Reporting and Prudence) Regulations 2014.

WSEs should have a continuous improvement approach to delivering water services.

95. Water NZ welcome the addition of objective (l) to build, maintain, and support the capability of the water services sector. A dedicated workforce is essential. Entities will be of such scale that is is fundamental their workforce has the capacity, capability and skills needed to deliver water services.
96. **Recommendation:** Water NZ encourages the Government and the future WSEs to work closely with ourselves, the tertiary sector, and other adjacent member bodies (such as the Engineering NZ, Association of Consulting and Engineering (“**ACE New Zealand**”) and the Institute of Public Works Engineering Australasia (“**IPWEA**”)) to put in place the workforce initiatives required to support the expansion of the sector to ensure the infrastructure deficit can be addressed (6000-9000 new roles over the next 30 years).
97. Water NZ believe concessions will be required in certain circumstances with regards to engagements with communities, notably that targeted consultation must occur to avoid 'consultation fatigue'.
98. The bill calls for engagement (versus consultation) on asset management plans, funding and pricing plans and infrastructure strategy. These documents are all technical documents, prepared to industry standards and guidelines. It should be noted, there is little consumers and communities can influence in term inputs to these plans- e.g. asset data, unit costs, risk management, engineering solution and project deliverability (materials, funding etc). Inputs such as strategic objectives and levels of service or to provide feedback on a programme or priority of works are parts of plans where communities will be able to have influence.
99. **Recommendation:** Clarification or concessions are likely to be required as to community ability to 'engage' on asset management plans, funding and pricing plans and infrastructure strategy.
100. Regards the transfer of small mixed-use rural water services, clause 239 requires an alternative operator to provide amongst other things and a business plan including an asset management plan, funding and pricing plan and drinking water safety plan relating to the transfer proposal.
101. Water NZ believe it easier to have these supplies transfer from a council to an alternative operator, missing out the step transferring to a WSE would be easier. These small suppliers predominantly supply water for stock and irrigation than human drinking water and the risk to safe drinking water is lessened. Also under the Water Services Act such owners or operators that provide drinking water to more

than one household will need to be registered Taumata Arowai and provide a drinking water safety plan before the supply begins to operate.

102. Water NZ believe that these small mixed use supplies should be able to opt out of the requirement to transfer to the WSE.
103. **Recommendation:** Reinstate the option for small mixed-use rural water services to opt out before transition to the WSE.
104. **Recommendation:** Rewrite clause 239 to require only drinking water safety plan relating to the transfer proposal. “a drinking water safety plan prepared in accordance with section 30 of the Water Services Act 2021”. Remove 239 (1) and (2) business plan, (3) asset management plan and (4) funding and pricing plan requirements.
105. Our members have significant concerns with the future ability of the WSE to access private property to access land on, or beneath which, three water assets are situated or to construct or place water services infrastructure on or under land under the new regime. We believe there could be future complication, restrictions or delay for entities being allowed access assets on to private property.
106. Under the current regime a Council will notify the respective owners of intent to access to execute, provide, and do works to the assets. Currently, where land owners do not give consent to access property or land, a request to put to a committee of council to adjudicate. This request and resolution approach is usually quick and inexpensive for both parties.
107. Clause 203 of the bill proposes this adjudication going to the District Court. The requirement of WSEs to either obtain consent from the landowner or otherwise gain a District Court order is unworkable. It would increase the time and cost of a project, especially when factoring in District Court delays. Also, most landowners would likely not engage with the legal process, there could be potentially unreasonable conditions landowners would impose and in some situations due to the often-large number of properties this would impact per project.
108. **Recommendation** We propose two potential solutions:
- Reinstate the status quo (section 181 and Schedule 12 of the LGA 2002) as a new clause of the bill.
 - Alternatively, clauses 203 and 204 should be changed to provide for appeals to the Environment Court instead of the District Court and for matters to be referred to in the first instance, a review panel or an Environment Court Commissioner.
109. **Recommendation** Along with the options above we propose amendments to remove the landowner's ability to impose conditions in sections 200(2), 200(3) and 202.
110. The current notification timeframe of 15 working days is too long and does not take into account the variance in the practicalities as to timing between different types of capital works and more operational type maintenance works.
111. **Recommendation:** In clause 201(2) the proposed timeframe of 15 working days should be changed to "a reasonable time", which would reflect the nature of the work.

112. In the event the district court clause is retained then changes need to be made to clause 204(2) to ensure that the matters within the Court's consideration are aligned with similar processes under the Resource Management Act (RMA) and Public Works Act (PWA). For example, it should be the WSE's decision whether the project itself is necessary or desirable.
113. **Recommendation:** The reference in 204(c) to determining the route to be preferable should be removed for consistency with the PWA equivalent (in s24(7)(b) of the PWA).
114. The provisions of a Court order granting access also need to be amended in clause 204(3). It is impractical to prescribe in advance the specific times and dates for entry and it may be impractical to detail the methodology depending on how advanced the project is at that time.
115. **Recommendation:** Amend clause 204(3) provisions to allow for more flexibility in terms of conditions and timing of access.
116. We do not believe a Court should be able to impose compensation conditions in the access order.
117. The compensation provisions are inconsistent with clause 218(1) which provides that compensation is to be determined as for injurious affection under the PWA (as currently applies under s181 of the LGA 2002), which is determined in the Land Valuation Tribunal as a separate matter.
118. **Recommendation:** Remove the provisions providing that the Court order may impose conditions around compensation.
119. It is imperative a WSEs' Infrastructure Strategy be consistent with the future development and infrastructure needs that will have been identified by the joint committees tasked with preparing Regional Spatial Strategies (RSSs) under the proposed Spatial Planning Bill (SP Bill).
120. There is currently a degree of assumption, or expectation, that funding will simply follow the development of RSSs. However, there is a risk that if there are not specific mechanisms to guarantee funding from infrastructure partners (including the WSEs, housing or transport partners) for implementation, risking the long-term outcomes that they are intended to achieve for regions and communities.
121. **Recommendation:** More prescription to commitment to funding to be given through both the Bill, and through the SPA.
122. Water NZ seeks to ensure that agility of decision making is maintained for small or isolated communities. This includes making sure these communities don't pay disproportionately more. The WSEs will need to balance a range of competing priorities and interests when making decisions. Not all of these will be capable of being reconciled with each other. A WSE should be obligated to articulate how it has resolved and weighted competing considerations when making a material decision that will result in a significant stakeholder group being disappointed with the outcome – including making its prioritisation/investment frameworks publicly accessible. This will help give smaller councils in particular assurance about how their communities' needs will be included in work programmes and priorities.

123. **Recommendation:** of the documents to be made publicly available, include a WSE's prioritisation/investment framework.
124. Technology, connecting data sources, analytics and intelligence are powerful ways to manage, operate and optimise assets across their lifespan. Digital asset management enables higher performance, optimal maintenance and design and more effective planning.
125. **Recommend** the clauses are more prescriptive to digitally enabled asset management, information management and data standards.
126. To conduct a comprehensive assessment of services, a WSE will require access to local authority building and resource consent records. The information required will go further than the invitation to local authorities and regional councils to participate in the assessment under 247.
127. It is essential that local authorities share property/building information with the WSEs to enable more accurate planning and asset management. Equally, WSE should be directed to share and receive data from other government agencies to reduce whole of system effort.
128. **Recommendation:** relevant territorial authorities should be required under 245 to provide the records of resource consents and building consents granted and applied for.
129. Water is a finite and non-substitutable resource. Despite this it has proven extremely difficult to recognise the value of water. The lack of 'value' is the main cause of water waste and misuse. This is especially problematic in times of growing scarcity and against the backdrop of population growth and climate change impacts on the water cycle.
130. Prescriptive legislative requirements to share documents with the public are unlikely on their own to sufficiently educate communities to understand the water services and to value water. Real success will need substantive, ongoing behaviour change.
131. **Recommend** Subpart 2 and Part 9 to include direction for a national water literacy education campaign supporting community behaviour change, regional collaboration, consistent national messaging and best-practice resources. National delivery of effective and efficient customer education could be supported through an industry levy.

Integration between the reforms is missing.

132. Water NZ acknowledges that these Bills will integrate decision-making across several Acts.
133. We are concerned there is little alignment and integration between this bill and the Water Services Economic Efficiency & Consumer Protection Bill (the WSEEC Bill).
134. **Recommend** ensure forthcoming economic regulatory arrangements are 'hand in glove' with WSE Bill and WS Act.
135. The lack of integration and alignment between this and other concurrent, significant reform programmes is of significant concern. This particularly applies to the Resource Management Reform and the Future for Local Government review. Not addressing

the lack of alignment and integration will lead to inefficient and ineffective outcomes, a lack of clarity around roles and responsibilities and the timely and cost-effective delivery of three waters infrastructure will be jeopardised.

136. Given the estimated \$120b-180b+ investment required in three waters over the next 30 years, the WSEs are predicted to be one of the biggest users of the Natural and Built Environments Bill (NBE Bill) regime. However, except for the *Amendments to Resource Management Act 1991* provisions, there no references to the NBE bill or the SP Bill, and the water related polices they contain, in this Water Service Legislation bill.
137. **Recommend** reviewing all terms, definitions and policy outcomes between reform bill to remove conflicts and inconsistencies and improve integration.
138. The long-life nature of water infrastructure, with pipes having design lives of 80-100years, mean WSE need to have an active role in long term and spatial planning conversations. Alas, neither three waters or the resource management reform process provides clarity about WSEs' role in the new spatial plan-making processes. Entities having a role will be critical for timely and strategic delivery of three waters infrastructure, as sought by both reforms.
139. The Bill assumes that current local government structures, roles and responsibilities, beyond the delivery of water and drainage services, will not change – it does not recognise the significant shift to regional land-use planning by joint committees, that there may be significant changes to the shape and structure of local government following the Future for Local Government review and the changes brought about by water services reform and the significant resource management reform agenda.
140. Councils will lose their three waters capability when the staff (and assets) transition to the WSE. Councils will have no skill or capability to be involved in three waters service delivery.
141. **Recommendation:** The DIA National Transition Unit/ WSE should have the primary responsibility for advocating for and participating in policy plan development in the interests of three waters infrastructure rather than councils.
142. **Recommend** for better integration of the Water Services Legislation bill with other legislation including NBE and SP bills, adding a new principle to powers and functions, planning and assessment clauses that requires all WSE decision-makers to have input into, and regard for statements, plans and strategies prepared under other legislation, or at least the Water Services Entities Act 2022.
143. There are many other key plans to be prepared under the WSE Act including, but not limited to, Te Mana o Te Wai statements, statement of intent, asset management plans and infrastructure strategies. These are all relevant to, and would add value and efficiency to, the RSS and NBE plan process.
144. **Recommendation:** There is no need to duplicate statutory planning processes. Each reform, their Acts and the plans and policies required under it should be used to inform the other reforms statutory planning.
145. A significant concern to Water NZ is how the concept of Te Mana o Te Wai integrate with the NBE bill outcomes and biophysical limits. Under the Bill WSEs are required to give effect to Te Mana o Te Wai statements produced by mana whenua. It is unclear

how the process prescribed in the WSL bill relates to the process in the RMA and the proposed NBE Bill given the purpose of Te Mana o Te Wai statements in the Bill are operational, whereas they are regulatory in the RMA regimes. We note that the regulatory requirements must prevail over the operational ones.

146. **Recommendation:** clarity and guidance is needed to describe the interaction of Te Mana o Te Wai between the various pieces of legislation.
147. **Recommendation:** Clarify what happens when a conflict arises between operating principles, statement of strategic and statement of intent, Te Mana o Te Wai statements and NBE environmental limits and also the WSEEC requirements. A hierarchy is required and needs to be reflected throughout the Bills.
148. The water services industry work has interaction with all NBE bill biophysical limits spheres (air, freshwater, biodiversity, estuary, coastal and soil) generally via consenting and compliance. NBE Bill environmental limits and targets will need to align with the environmental performance measures, targets and standards set by Taumata Arowai in accordance with the Water Services Act 2021. Integrated catchment planning is only way the interrelations of these biophysical limits can truly be achieved, and avoid conflict between outcomes.
149. **Recommendation** that the s255 (and similar) stormwater catchment management planning provisions need to make sure is carried through into the Spatial Planning bill regional spatial strategy provisions and the Natural and Built Environment bill policy and consenting clauses.

Recognition of relationship with iwi/Māori.

150. Water NZ supports the Government's commitment to giving mana whenua a greater and more strategic role in the new system. In particular, we support the inclusion of Te Mana o Te Wai in the Bill, and the proposed requirement to 'give effect to' the principles of Te Tiriti/the Treaty.
151. Strong partnerships with mana whenua is crucial for the future management of the environment and supporting communities' cultural wellbeing. WSEs will need to partner closely with mana whenua starting even before they are fully established. This will ensure that Te Mana o Te Wai statements are being woven into the work programmes in the transition to and from day one of the WSE start up.
152. There are ever-increasing pressures being placed on mana whenua, and their participation in the design and development of, transition to and implementation of these first generation TMOTW statements will exacerbate this demand.
153. Tina Porou (Poipoia) has advised¹ that 6,740 Mātauranga Māori / iwi practitioners are needed within 10 years to respond to three waters and resource management reforms. This figure doesn't account for the Mātauranga Māori consultancy services skills that will be required.

¹ Presentation to the joint Water New Zealand and IPWEA Water Asset Management Forum, November 2021.

154. Water NZ highlight again that iwi/Māori must be resourced to participate in the new system. Government must ensure that iwi/Māori have the capacity to participate in the new system in the manner that is envisaged.
155. **Recommendation:** Government funding is urgently needed to resource mana whenua to be active partners in the new systems that are being created. This is broader than that required to implement the three waters reform programme. This will enable mana whenua to increase their capacity and capability to resource increasing co-governance, co-management, co-design and co-delivery expectations.
156. We question how Government will hold entities to account when there is non-compliance with or conflict between having to give effect to Te Tiriti o Waitangi/the Treaty of Waitangi and Te Mana o Te Wai statements, and having to meet commercial goals and objectives.
157. **Recommendation:** Clarity is need as to who ultimately regulates and upholds Te Mana o Te Wai, Taumata Arowai or the Economic Regulator.
158. In addition, there is differences in wording throughout the different legislative regimes:
- i. The WSL bill refers to mana whenua
 - ii. The RMA generally refers to the term tangata whenua.
 - iii. The Local Government Act 2002 generally uses the term Māori.
 - iv. In the Auckland Council legislation the terms mana whenua and matawaaka are used.

Each WSE should be required to produce Climate Change Management Plan

159. Water, wastewater and stormwater infrastructure is already vulnerable to a broad range of climate change impacts. The long life of water infrastructure means it's imperative that operational policy and design responses are informed and adaptive to climate hazards and risk exposure.
160. Analysis provided by the Water Industry Commission for Scotland (WICS) has identified that between \$120-\$180b of investment is required over the next 30 years to improve the New Zealand water system to meet existing standards. This will result in a significant contribution of greenhouse gasses unless direct action is taken to understand and reduce emissions. Transitioning to low carbon approaches requires progressive policy direction and funding models, new investment in processes and infrastructure, the inception and growth of new markets for recycled materials, community behavior change and regional collaboration.
161. The reporting of climate risks (both direct impacts and transitional risk) and their likely financial implications is to become mandatory for large organisations- which is likely to include the new water entities.
162. **Recommendation:** Each WSE should be required to produce Climate Change Management Plan that includes:
- i. Emissions and the transition to a low carbon circular economy –.
 - ii. Impacts, risk & resilience – aligned with the proposed regional spatial plans and proposed Climate Adaptation Act.

- iii. Climate related financial disclosures –
 - Annual Greenhouse Gas Emission reporting by source.
 - Reporting using the Task Force on Climate Related Financial Disclosures framework.
 - Other climate related reporting required under other mechanisms relating to boards.

163. **Recommendation:** include new clause in Part 9 Service Provider and Assessment Obligations requiring the implications of climate impacts and carbon emissions on proposed infrastructure lifecycle asset management decisions and a long-term approach to service delivery be taken in all WSE Asset Management Plans, Infrastructure Strategies, Funding & Pricing Plans

Provide a structured, supported pathway for innovation

- 164. An enabling environment for education, research and innovation is a key opportunity of the water reforms that is unrealised in legislation as currently proposed.
- 165. We welcome the expanded WSE functions to include (m) to facilitate, promote, and support research, education, and training relating to water services. Water NZ believe that through this Bill, and WSEEC Bill, there is opportunity to provide a structured, supported pathway within the WSE for innovation with the appropriate governance and specialised support.
- 166. Existing research funding does not support the needs of the water sector. It is extremely limited, competitive, and concentrated on investigator-led fundamental research. While funding provision for the “last mile” between research innovation and practical application is practically non-existent. Institutional and funding support is needed to support innovations moving from the academic sphere to implementation. This would include innovations that include new treatment methods, non-asset solutions to water delivery, and digital innovation.
- 167. An WSE levy could be used to trial new technologies, support collaboration between the research community, product developers and the water sector.
- 168. Part 4 of the Water Services Act enables fees and levies to be regulated and section 201 provides specifically for the levy powers available to Taumata Arowai. These would enable Taumata Arowai to recover costs laid out during the performance of its duties. Fees and Levies can be recovered by Taumata Arowai in court, as a debt due on behalf of the Crown.
- 169. **Recommendation:** Amend the bill to include a levy provision Water Services Act Fees and Levies one.

CONCLUSION

- 170. Water NZ thanks the Committee for the opportunity to provide comments on the Bill and wishes to be heard in support of its submission.
- 171. Water NZ welcomes any opportunity to answer questions arising from this submission or to otherwise engage in the development of the Bill.

Gillian Blythe
Chief Executive

DRAFT FOR COMMENT



Taituarā
Local Government Professionals Aotearoa

**Submission of Taituarā
to the
Finance and Expenditure Select Committee
regarding the
*Water Services Legislation Bill***

What is Taituarā?

Taituarā — Local Government Professionals Aotearoa (Taituarā) thanks the Finance and Expenditure Select Committee (the Committee) regarding the Water Services Legislation Bill (the Bill).

Taituarā is an incorporated society of approximately 1000 members drawn from local government Chief Executives, senior managers, and council staff with significant policy or operational responsibilities. We are an apolitical organisation. Our contribution lies in our wealth of knowledge of the local government sector and of the technical, practical, and managerial implications of legislation.

Our vision is:

Professional local government management, leading staff and enabling communities to shape their future.

Our role is to help local authorities perform their roles and responsibilities effectively and efficiently. We have an interest in all aspects of the management of local authorities from the provision of advice to elected members, to service planning and delivery, to supporting activities such as elections and the collection of rates.

We offer the perspectives of a critical adviser.

Taituarā is a managerial organisation as opposed to a political one. Our role therefore is to advise on consequence, and to assist policymakers to design a policy that can be implemented effectively. We participated (and continue to participate) in the reform process to provide these perspectives.

As with our work in this area, our submission takes the perspective of a 'critical adviser' in the reform process – supportive of the need for affordable, sustainable three waters services, while wanting to ensure the reforms work effectively.

This, primarily technical Bill, provides the entities with the detailed powers necessary to operate successfully together with limitations and accountabilities on their use. The Bill has done this relatively well, the bulk of our comments are either matters of clarification or in some cases identifying what appear to be glitches in drafting, as opposed to challenges or reservations about the headline policy.

Draft for discussion not Taituara policy

Relations with Other Infrastructure Providers

Our consideration of the provisions around the relationship with road-controlling authorities has led us to consider what the Bill says about relationships between the WSEs and other infrastructure providers. Collaboration between infrastructure providers is an enabler of the range of outcomes that the Bill wants to enable, and that we expect of all infrastructure providers.

We were there a little surprised that the (now very exhaustive) list of functions of WSSs set out in clause 7 of the Bill says nothing about collaboration with agencies outside the water sector (the equivalent of the proposed new section 13(j)). It seems to us that getting the WSEs working collaboratively with road controllers, telecommunications and energy providers is every bit as important as collaboration with overseas water agencies (as per the proposed new section 13(k) sets out.

Recommendations

- x. **That clause 7 be amended by adding collaboration with other infrastructure providers to promote social, environmental and economic wellbeing to the list of functions of water services entities.**

Government Policy Statement: Water Services

Our submission in regards the Water Services Entities Act expressed several concerns about the Government Policy Statement: Water Services (GPS:Water). These concerns included:

1. the scope of the GPS:Water and its potential to provide central government with substantial powers to exert operational control over the WSEs
2. the lack of Government support for implementation of the GPS:Water – including funding support and guidance
3. the lack of a mandatory regulatory/impact analysis on requirements of the GPS:Water.

The present Bill further extends the scope of the GPS:Water to empower the Government to set policy expectations with regard to:

- geographic averaging of residential water supply and residential wastewater service prices across each water services area and
- redressing historic service inequities to communities.

We observe that the first of these additional matters provides the Government with what is effectively a power to direct entities to average the pricing of residential services, and the second matter provides Government with some ability to direct where investment is directed.

The first of these items, the geographic averaging, goes to the stated rationale for reforms, i.e. ensuring that the cost of water services is affordable for all users over time. The Cabinet paper, *Pricing and charging for three water services*, suggests that the historic inequities relate primarily to actual or potential breaches of Article III of te Tiriti.

We submit that the extension of the role of the GPS provides further support for our earlier submissions that the GPS allows a future Minister to impose set of priorities upon the WSEs that might, for example, override the policy positions of an RRG and the constituent territorial authorities. The Minister can set expectations as per clause 130(3) that will significantly direct investment decisions and the associated spending with very little by way of 'skin in the game'. That is to say, the Minister will exercise significant influence over WSE spending decisions yet need not make any financial contribution (or provide other support) to the achievement of their own objectives.

We renew our recommendation that the Minister should be required to publicly state what support the Government intends to provide those agencies that are required to give effect to the GPS: Water to implement it. That would include funding but would not be limited to funding support alone.

For example, the Government might support the development of the water workforce by loosening immigration restrictions; amend other government policy statements to address areas of conflict and so on.

Recommendation

- x. **That the Committee amend clause 130(2) by adding a clause that requires the Government to explicitly state how the Government intends to support other agencies to implement the GPS: Water or explain its reasons for not providing support.**

A regulatory case

We further renew our comments that the power to adopt a GPS: Water is an almost unfettered power. We submit that the 'all care, no responsibility' nature of these powers could be ameliorated somewhat if there were some more formal analytical requirements for the statement to meet. While the Cabinet processes supporting adoption of a regulatory impact statement provide some comfort, they are non-statutory and can be overridden by a Minister as they wish.

We submit a stronger, statute backed test that requires Ministers to identify the costs and benefits of the policy positions that they expect the WSEs to give effect to. There are precedents for this elsewhere in legislation – for example, in the Resource Management Act.

Recommendation

- x. **That the Committee amend clause 130(2) by adding a clause that requires the Minister to undertake an analysis of the costs and benefits of the objectives in the GPS: Water.**

Controlled Drinking Water Catchments

Part seven provides WSEs with powers to designate controlled drinking water catchment areas and prepare catchment management plans. Taituarā generally supports this part, noting that enhanced source protection was one of the key findings out of the Inquiry into the Havelock North Contamination Incident. We raise **xx** matters of clarification.

It is unclear how WSEs give notice of a controlled drinking water area.

A WSE establishes a controlled drinking water catchment area by giving notice. The notice is important as it is the means for communicating the affected area or affected catchment to the public. However, it's not clear what is required when the WSE Board gives notice as there is no definition or specified process in this Part, the Bill or in the primary legislation.

We suspect that the Government's intent was most probably that notice for this purpose would be akin to giving *public* notice (emphasis supplied). This term is defined in the Interpretation Act 2019 as a notice published -

- (a) in the *Gazette*; or
- (b) in 1 or more newspapers circulating in the area to which the act, matter, or thing relates or in which it arises; or
- (c) on an Internet site that is administered by or on behalf of the person who must or may publish the notice, and that is publicly available as far as practicable and free of charge.¹

In a similar vein, the Bill should clearly set out how a compliance notice (as per clause 233) is given. As failure to comply with a direction is a prosecutable offence, a clear evidential chain would be necessary – any direction should be in writing.

Recommendations

- x. That the Select Committee amend clause 231(1) to require the establishment of a controlled drinking water catchment area by public notice.**
- x. That the Select Committee amend clause 233 by requiring any compliance notice be provided in writing.**

¹ Section 13, Interpretation Act 2019

The term 'long-term control' needs definition.

WSEs can only establish a controlled drinking water area with permission of the landowner or on land that the WSE owns or has long-term control over. The term 'long-term control' is clearly quite critical to whether and where controlled areas can be established.

There is no definition of what constitutes long-term control. The dictionary definition of control is 'the power to influence behaviour or the course of events' and appears to rule out most other forms of land tenure (such as a lease). It's also not clear what long-term means – is it three years, five, ten, fifty etc. This is an issue that may well come up if anyone is issued with a compliance direction as per clause 233, or prosecuted for not meeting the terms of such a direction.

Recommendation

- x. **That the Select Committee amend clause 231(2) to clarify what constitutes long-term control for the purposes of establishing a controlled drinking water catchment area.**

Stormwater

Part nine of the Bill contains provisions relating to the management of stormwater including requirements to prepare a stormwater management plan and the powers to make stormwater network rules. Assuming that stormwater services are indeed to transfer to the WSEs, then both of these requirements appear sensible. Again the points we raise in this section are more matters of clarification regarding the plan.

The purpose of stormwater management plans is unclear.

Clause 254 sets out the purpose of stormwater management plans. Purpose clauses are a critical part of any legislative provision in that they provide the users of legislation and the Courts with a statement of Parliament's intent, especially in the event that other aspects of the legislation is unclear.

Aspects of clause 254 are far from clear. Specifically the wording of 254(a) "(to provide a water services entity with) *a strategic framework for stormwater network management*". In particular, the term 'strategic framework' has little practical meaning outside the policy community (i.e. those who might write a plan as opposed to those who might want to use one), its not a term imbued with any particular legal significance or meaning.

A stormwater management plan is meant to be long-term and provide the basis for managing stormwater services. Parliament should say just that.

Recommendation

- x. **That clause 254(a) be deleted and replaced with a new (a) that reads 'a long-term direction for its stormwater network management'.**

Responsibilities in developing stormwater network management plans are unclear.

A stormwater network management plan is an important document for the WSE, local authorities and wider community. We therefore support the obligation as per clause 257(1).

Clause 257(2) places local authorities and transport corridor managers under an obligation to work with the WSE to develop the plan. It is not clear what 'working with' the WSE involves, for example is this simply a provision that is intended to require the sharing of information (such as the location of stormwater catchments, treatment methods). To what extent is it envisaged that 'working with' the WSEs also comes with some participation in the decision-making process. The Bill should either clarify what the obligation is expected to 'work with' the WSE involves.

Also in clause 257 extends only to local authorities and transport corridor managers. Government departments and defence force installations may also have substantial interests in the stormwater network management plan. It seems to us that these bodies should also be working with the WSEs and others, and that the terms public entity or public stormwater network operator might be more appropriately applied to the entirety of Part 9, subpart 2.

Recommendations

That the Select Committee:

- x. clarify what the obligation to work with the WSEs on development of the stormwater network management plans**
- x. that the obligations of clause 257 be extended to all public stormwater network operators.**

Technical amendments are needed to the provisions governing content of stormwater plans

We generally support the proposed contents of a stormwater management plan. These should provide the WSEs with the necessary understanding of what their stormwater networks are intended to achieve (and why) and provide the community with an overview of the issues, challenges, and requirements with the management of stormwater.

We have several recommendations for minor technical amendments:

Under clause 256(1)(a) – a good plan of any sort should set out the means for measuring progress against the plan, for example a set of performance measures or indicators. The actual reporting against these measures should be taking place in some kind of 'mirror' requirement (such as in the annual reports the WSEs prepare). The committee might add some specific requirements to report on this in the WSE's annual report.

We note that clause 251(1)(d) requires the WSEs to set out any statutory requirements. We agree with this as statute can be a key determinant of levels of service, but we add that regulatory requirements have equivalent effects. Resource consent requirements are an example of this, but not the only such requirements (the requirements set by Taumata Arowai for example).

Clause 254(1)(h) requires inclusion of an overview of the maintenance and operations of each stormwater network. The clause further develops this by mentioning monitoring, maintenance, operational procedures. Each of these is not a strategic issue, they are more operational matters and not appropriate for inclusion in the plan.

Recommendations

That the Select Committee amend clause 254 by

- x. deleting the word “monitor” from clause 254(1)(a) and replacing it with the words “the means for monitoring”**
- x. adding the words “and regulatory” before the word “requirements” in clause 254(1)(d)**
- x. deleting section 254(1)(h).**

Service Agreements

Customer agreements are a key aspect of the reform. The Cabinet paper *Policy proposals for three waters service delivery legislative settings* suggests that these agreements are necessary to create a legal relationship between WSEs and their customers. This is a necessary step to the removal of bylaw-making powers envisaged elsewhere in the Bill. The intent was that the agreements would extend to all domestic customers and anyone billed for stormwater.

A key element of the Government policy decisions appears to be missing.

One of the important aspects of the policy proposals that in *Policy proposals for three waters service delivery legislative settings* was that:

"These agreements would be 'deemed' or 'implied' in the sense that individual customers would not need to agree to them, though it would be possible for the default agreements to be replaced by bespoke agreements or contracts (if both parties agree".

²

Deeming is an important practical step. WSEs will serve hundreds of thousands of customers whom it will acquire from local authorities on 1 July 2024.

Unlike an energy or telecommunications network provider, the overwhelming majority of users are already connected to (or benefit from the protection provided by three water services). The WSEs won't have the option of discontinuing supply of the customer doesn't agree (and even if they did there would be public health and safety considerations), self-supply is not always practicable (or desirable from a public health standpoint). It is logistically impractical for the WSEs to obtain this number of individual agreements.

This Committee has previously considered what is now the Water Services Entities Act. Having received submissions the Committee will be aware that there is public opposition to three waters reform. If agreements are not deemed, there is a risk, that those opposed to reform might exercise a right of protest by choosing not to agree to the terms of service agreements. That might extend further to, for example, a decision to meter water consumption or in more misguided ways oppose treatments such as fluoridation.

² Minister of Local Government (2021), Cabinet Paper: Policy proposals for three waters services delivery legislative settings, page 26 (para 124).

The Bill as it stands has not given effect to the intended deemed nature of the agreements. The general requirements are that an agreement must be in place, certain requirements around content, processes for consultation and for publication of the final agreement. There's no reference to the deemed nature of the agreements.

Consumers do get the opportunity to engage on the customer service agreements with the consultation process as per clause 281 and publication as per clause 282. IF the Committee agrees that agreements should be deemed we suspect that there should be additional provisions around the first customer services agreements to reflect that this isn't an agreement in the typical sense.

That first agreement may in fact be the first intimation that some users have that their supplier has changed (from the council to the WSE) and is even more likely to be among the first communications from the WSE. There should be requirements on the WSE to write to all those who are liable to pay charges advising:

- that the WSE will assume responsibility for delivery of three water services on and from the establishment date
- that the WSE has prepared, and is engaging on a customer agreement (including where the user can locate a copy of the proposed agreement and how and where the user might make their views known to the WSE)
- of the terms of the legislation including, but not limited to, that the final agreements are deemed.

Publication of the first agreement should also come with an obligation to communicate with all users advising where the published agreement can be found.

Recommendations

That the Committee:

- x. amend clause 279 to clarify that service agreements are deemed or implied and do not require the signature of both parties**
- x. amend the Bill by adding further requirements for communication during engagement on the first/transitional service agreements with those who will be liable to pay WSE charges**
- x. amend the Bill to by adding a requirement to notify in writing those who will become liable to pay WSE charges as to where they can find the first/transitional service agreement**

Funding and Pricing

Links with the funding and pricing plan

Taituarā submitted in favour of provisions in the Water Services Entities Act that requires the WSEs to prepare and adopt a funding and pricing plan. The apparent intent of the plan is to provide a greater level of predictability and certainty for users of water services as to funding sources and levels.

It mirrors the financial management requirements that local authorities are placed under with financial strategies and revenue and financing policies. Unlike local authorities however, there is no obligation on a WSE to set charges in accordance with the funding and pricing plan.

Water services are an enabler of a wide variety of economic, social and environmental outcomes. The way services are charged for sends an economic signal about the true cost of providing the services that influences decisions as diverse as opening a business reliant on water supply (such as a food processor or hairdresser), or investments in water efficient technologies (e.g. half flush options on toilets, grey water for washing trucks etc).

With this in mind the Committee should consider whether there should be a stronger link between the setting of charges and the funding and pricing plan.

Recommendation

- xx. **That the Select Committee add a provision which requires water services entities to set charges in a manner consistent with the current funding and pricing plan.**

The interim funding arrangements impede the objectives of water reform

The Bill confirms the speculation that local authorities will (or at least could) be asked to collect WSE charges for up to five years after establishment date (i.e. up to 1 July 2029).

The Cabinet Paper, *Pricing and charging for three water services* contains the rationale (such as it is) for the transitional collection arrangements. Paragraph 88 comments thus:

“The National Transition Unit is working towards water services entities being able to charge for three water services from day one (1 July 2024). However, if this cannot be set up in time, the entities may need to use territorial authority billing systems for billing in the short-term.”

In short, it's a matter of convenience and intended to be a short-term measure. Neither the Cabinet paper, nor any since, has made any case that the arrangements cannot be made in time – Cabinet made the decision 'just in case'. To date there have been no discussions with either ourselves, LGNZ, or the sector as to what the WSEs need to do their own charging, and where this sits relative to other priorities such as the transfer of assets and revenues.

In our submission on the Water Services Entities Act we asserted that the WSEs were created to have scale and financial capability and will have an asset base and financial capacity that many entities in NZ could only dream of. Further, the balancing of transitional matters and the design of funding systems is a matter that the WSE Boards should be taking accountability for, from 'day one'.

As we write this, there are around eighteen months left to the intended establishment date for the WSEs. In that time the WSE board will have been expected to develop a first funding and pricing plan. Why then would they not be expected to have a system for billing and collection in place at the same time, and to have done the necessary communication and other work to communicate with their consumers.

The bill creates a set of entities that are intended to have direct relationships with their consumers, with many of the drivers of a commercial provider of network utilities. The interpolation of a third party into something as fundamental as the billing and collection of water charges blurs the accountability of the WSE to the end user/consumer

Taituarā submits that the Select Committee needs to send the WSEs a clear message in this Bill that they will be expected to stand on their own feet on establishment. And if there is merit in local authorities acting as the collection agents for the entities then legislation needs to clarify that the assessment and invoicing of WSE charges must be on a separate document and clearly distinguished as coming from the WSE.

The Bill allows for the Chief Executive of the WSE and the relevant local authorities to agree upon a collection agreement. The costs might include postal and mailhouse costs, salaries of those answering queries or other administration such as reading meters. Where agreement cannot be reached then clause 336 requires that matter must be referred to the Minister for a binding decision within 28 days.

The provision/provisions most likely to give rise to such a dispute will be those around a fee for collection. The Bill should explicitly provide for an agreement on collection costs, and a requirement that any Ministerial determination provide for collection costs.

Recommendation

- xx. That the Select Committee include a provision in the Bill ensuring that WSE charges are assessed and invoiced on a separate document .**
- xx. That clause 336(4) be amended to require the Minister to make a determination as to the amount of collection of costs where this is one of the matters referred to the Minister.**

A partial rating exemption for the WSEs is unjustified

The Cabinet paper Pricing and funding for three water services (at paragraph 160) notes *"the intention of the reforms is that water services are fully funded."* We entirely agree with this sentiment – as economists tell us if an activity doesn't meet its true cost we get an economically inefficient outcome (overproduction).

But the Bill does not live up to this expectation. Clause 342 establishes that the WSEs are not liable for rates in respect of any reticulation that run through property the WSE does not own, and any assets on land the WSE does not own..

This is quite a different treatment from energy and telecommunications providers where the network elements of the assets (such as power lines, gas pipes, cellphone towers etc) are all fully rateable.

The Committee might also note, that the assets exempted from rates are still rating units (i.e. property for rating purposes) and must be valued and placed on the DVR. In short, local authorities will be required to value assets they don't rate.

Recommendation

- xx. That clause 342 be deleted, making all three water assets fully rateable.**

The cost of preparing rating information should be shared

Regardless of the position the Committee takes on the WSEs collecting their own charges, the WSEs will require (or at least benefit from) the information in the District Valuation Roll (DVR). As it stands, the Bill requires local authorities to subsidise the operating costs of the WSEs by providing tax information *free of charge*.

WSEs will be drawing on DVRs from up to 21 different local authorities, in each WSE area that will cover more than a million properties in most entities and costs millions of dollars. WSEs will be making major use of the information – in most cases the WSE will be collecting more revenue using the DVR than regional councils. Yet unlike regional councils, the WSEs are not currently required to contribute to the preparation of the DVR.

There is a statutory formula for sharing the cost of preparing the DVR where the different parties are unable to agree on an alternative. Section 43 of the Rating Valuations Act 1998 provides for the division of the costs of preparing the DVR based on the proportion of revenue collected using the information.

Recommendations

- xx. That a further provision be added to clause 319 that both requires the water services entities to contribute to the cost of preparing district valuation rolls, and provides a formula for apportioning costs where parties cannot agree and is based on section 43 of the Rating Valuations Act 1998.**

Should powers to waive debt be completely unfettered?

Clause 326 allows a WSE Chief Executive to waive payment of any charges that any user faces. Of course, this is a sensible operational power that mirrors the rates remission and postponement local authorities enjoy. To take an example, a water user paying a volumetric charge on a property where a leak has occurred might have some of that charge waived if they can demonstrate there was a leak and they've taken steps to fix it. Waivers might be considered in cases of hardship.

As it stands its completely open to the Chief Executive. We submit that the WSEs are publicly accountable, and are using powers that in some instances are close to a coercive tax (particularly stormwater charging). An unfettered power also leaves the WSE, and the Chief Executive open to 'special pleading' (e.g. I/we are a special case because).

We submit that the WSEs should be required to prepare a formal policy on the waiver of debt, and publish this in a similar manner to the funding and pricing plan. This might be modelled on the revision and postponement policy provisions that apply to rates and are set out in sections 109 and 110 of the Local Government Act 2002.

Recommendation

- xx. That the Select Committee amend clause 326 by adding the words "subject to any operative policy that the entity has on the waiver of debt."**
- xx. That waiver policies must be published on an internet site maintained by the local authority.**

The Crown's exempting itself from infrastructure connection charges is an unwelcome subsidy from the water user

LGNZ had noted that:

"Under clause 348, the Crown is exempt from paying water infrastructure contribution charges. This is a concern, as Crown agencies are often major developers and can exacerbate issues that are the responsibility of the WSE (or local council). Such an exemption should be something that the Crown applies for and needs to justify. This application should reference the benefits derived for a particular community from such a Crown project – and those benefits need to be sufficient to justify the associated water services-related costs that will be borne by all consumers across the WSE service area."

We agree.

Recommendation

- xx. That clause 348 be deleted i.e. that the Crown be liable for infrastructure connection charges.**

Transfers of Water Services Undertakings

The transfer process is critical to the overall success of the reform process. The transfer of assets revenue and debts will determine the long-run service and financial sustainability of the WSEs, and of the legacy the reform process leaves local authorities. To take one example, the National Transition Unit is currently considering a number of different options for the transfer of debt, prior to entering discussions with each local authority.

Transfers of staff will go to whether the WSEs have the capability to deliver on the objectives of reform, and whether and where local authorities have capability gaps.

The Bill affords the Minister too great a level of discretion in making amendments to the allocation schedules.

The WSE Chief Executives are charged with the responsibility of developing an allocation schedule (a list of what will transfer to the WSE). The current Bill adds two further obligations when preparing a schedule.

The first is that the establishment CE must consult with local authority and other local government organisation (such as Wellington Water) when developing the schedule, including the supply of a draft. Obviously we support that provision as making explicit what a prudent CE would be doing anyway.

We are unconvinced of the necessity for the second, which is essentially that the Minister has to approve each allocation schedule. The Minister appears to have quite broad discretion in making approval, including the power to amend the schedule as they see fit. The only constraints are the limitations contained elsewhere in the schedule – for example, the definition of a mixed-use asset.

There's also no requirement as to any obligation to engage with the WSE or the constituent local authorities when making the decision. The allocation schedule is a fundamental for the WSEs and local authorities. With debts particularly, a Ministerial judgement now might create a long-term fiscal problem for local authorities. If a Minister intends to impose their own judgement on what gives effect to reforms and what's equitable they should be exposing that judgement to the local authorities and giving them a chance to comment.

Recommendation

- xx. That the Select Committee amend clause 40(2), schedule 1 to require that any Ministerial amendments to the allocation schedules submitted under clause 40(1), schedule 1 be forwarded to local authorities for comment within 14 days of receipt.**

Has water legislation inadvertently captured non-water services organisations?

The Bill adds six provisions that specifically relate to the transfer of assets owned by local government organisations. In the context of water legislation the definition of local government organisation includes any local authority, council-controlled organisation (or subsidiary of a council controlled organisation).

Closely reading the new transfer provisions (clauses 41 to 47, schedule 1 of the Bill) has raised an issue for us. There are a number of council-controlled organisations that operate in the civil construction business.³ While often these are the historical legacy of roading reforms in the 1980s and are for the most part, operate as road construction and maintenance businesses, it is common for them also to provide reticulation services such as renewals.

As council-controlled organisations there appears to be a prima facie case that these entities have been captured in the definition of local government organisation. We suspect that the intent that it was the ownership of water services and the management of these services, and not the actual construction and maintenance activities. That would be consistent with Government policy in other spheres (such as transport) that support some degree of separation between the policy and management of infrastructure from the physical delivery of work programmes.

The definition of local government organisation was, in our view, intended to capture the asset managing and asset owning organisations (for example, Watercare and Wellington water) and not those delivering civil construction services.

³ Some examples include Citycare (owned by Christchurch Cty Council) and Whitestone Contracting (owned by Waitaki District Council).

Recommendation

- xx. That the Select Committee seek advice as to whether the term local government organisation includes council-controlled organisations providing civil construction services.

Draft for discussion not Taituara policy

Long-term Plans

And to finish, some practical but critical point about three waters and the long-term planning processes of council.

A drafting glitch in primary legislation appears to require removal of three waters services from any amendments to 2021 LTPs.

The Water Services Entities Act inserted new provisions into the LGA that requires local authorities to exclude any content relating to three waters services from their long-term plans (LTPs) during the transition period (i.e. up to 1 July 2024). This includes information such as asset management, funding arrangements and the like.

The primary intent of that provision is to clarify that when local authorities begin preparing their 2024/34 LTPs, they will be preparing those plans on the assumption that three waters no longer sit within the local authority. Most local authorities will start their 2024/34 plans once they've prepared draft 2023/24 annual plans (this coming March or April). From that standpoint then we support what the legislation does.

However, we have been made aware that LGNZ have received advice that LTP amendments are included within the scope of these provisions. The LTP amendment mechanism is a statutory recognition that circumstances change, and therefore that local authorities need the flexibility to change plans where needed (subject to some disciplines). In effect, any local authority that wants to amend their current (i.e. 2021/31) LTPs will need to remove the three water services from that LTP.

It is not uncommon for local authorities to amend LTPs in the year after a local government election to reflect changes in direction or policy commitments made in or after elections. For example, substantial changes in rating policy, a change to a level of service or a decision to/start or stop an activity. As part of an amendment includes a revised set of forecast financial statements, any amendment in the next 18 months will need to prepare that information without three waters services.

However, as we've just seen, critical financial parameters (in particular debt) relating to the transfer of three waters undertakings are currently unknown and could remain unknown for some time yet. In a similar vein, the schedules of assets will not be finalised for some time. This may be a subject of some debate between local authorities and the Department – particularly with stormwater assets where there will be some degree of case by case discussion of what does and doesn't transfer.

Those local authorities that want to (or need to) amend their 2021/31 LTPs are then faced with a requirement that they could meet only by making assumptions about what does and doesn't transfer. This places an additional barrier or constraint around the negotiation and asset transfer process.

The Select Committee should also remember that local authorities retain the policy and operational responsibility for three waters services up to 1 July 2024. That includes the delivery of maintenance, renewal and replacement programmes in the asset management plans in the interim. This means local authorities will need to rate for three waters services in the 2023/24 financial year, and show that in the financial information for the year. This creates a disconnect with the relevant LTP information.

Recommendation

xx. That clause 27, schedule six of the Local Government Act be amended to exclude amendments to the 2021/31 long-term plans.

We repeat recommendations from our earlier submission about the removal of water services and aspects of the 2024 LTPs.

The Bill has provided some clarification of the schedule 10 Local Government Act disclosure requirements for LTPs. In essence, the Bill amends the LGA definition of network infrastructure by removing the three references to drinking water, wastewater and stormwater; and flows through into other parts of the LGA.

These come as no surprise as they are, more or less, what we would have done had minimum change been the goal (we thank the Department for the two discussions and the opportunity to provide a more detailed commentary on what Taituarā would do).

We consider that there is an opportunity to do a little more place legislative "patches" on these provisions. Indeed the removal of three waters services calls the value of the infrastructure strategy into serious question, and has the risk of turning the financial strategy into a 'tick box' exercise. The Committee should remember that its community that meets the cost of preparing these documents, and further that those who want to respond to an LTP in a robust way need an understanding of the issues in these documents.

Rather than repeat the discussion in toto, we refer the committee back to the recommendations 55, 56 and 57 that call for wider amendments to the content of financial and infrastructure strategies, and to the complete removal of powers to set non-financial performance measures for roads and flood protection.

Three water services are firmly embedded in the legislative provisions governing long-term plans (LTPs). At the time of writing the 'due date' for the next long-term plans is a little less than two years away. But the bulk of the work preparing a long-term plan actually happens between twelve and eighteen months from the 'due date', this is a case of 'the sooner, the better' for changing the law.

Local authorities are required to separately disclose information relating to drinking water, sewage treatment and disposal, and stormwater drainage in their LTPs. We have independently undertaken a 'find and replace' on the use of these terms in the accountability provisions of Part Six and Schedule 10 of the Local Government Act

Recommendation

- xx. That the Committee enact recommendations 55 to 57 of the Taituarā submission on the Water Services Entities Bill relating to the content of financial and infrastructure strategies and the repeal of powers to make non-financial performance measures.***