Whakatāne District Council Submission

Water Services Legislation Bill

15 February 2023

1. Introduction

Whakatāne District Council (WDC) are submitting on the draft Water Services Legislation Bill to ensure the requirements and needs of our local communities are clearly understood by the Crown, as they progress their decision making for the Three Waters Reform. This submission builds upon our previous feedback on this reform package throughout 2021 and 2022.

2. Background

WDC strongly supports the intent of the Three Waters Reform ensuring all New Zealanders can enjoy safe, affordable and sustainable drinking water, wastewater and stormwater services – now and in the future.

Initial concerns were identified for the Whakatāne district when initial reform details were made available in September 2021. Councillors, council staff, the Whakatāne community and iwi leaders inputs were collated to highlight our key concerns. Below is a snapshot of these high level concerns, updated with current information as at January 2023.

Initial Concern (Sept 21)	Current status of concern (Jan 23)
Wider process of reforms	WDC's main concern in relation to the wider process of reform, was to gain better understanding of how the various reforms (Three Waters, RMA and Future for Local Government) intersected A Planning Technical Working Group (PTWG) was established in 2022 and held seven hui's to guide policy development between the new water service entities and the wider planning system. An understanding how three waters reform will align with the Natural Built Environment and the Spatial planning bills are required. Each Water Serv ice Entity (WSE) will be delivering large capital programs across NZ, we will need to understand how this will be delivered in accordance with the climate change commitments. **Despite the establishment of this Group, there is still no clarity on how these reforms will align, and this is of deep concern.**
Governance	WDC has concerns around the structure, size, ownership and governance model of the proposed Entity B. WDC sought assurances that the needs of our growing communities will be met amongst the competing priorities of Councils across Entity B. WDC also raised

Initial Concern (Sept 21)	Current status of concern (Jan 23)
	concerns around the investment prioritization of stormwater and wastewater. WDC did however acknowledge that the status quo was no longer sustainable and that some type of reform was necessary. These concerns mainly relate to the 'Water Services Entities Act' which received royal assent on the 14th December 2022. Within this submission we highlight below the need for a clear relationship agreement between the WSE and councils and the need for transparency.
Service and cost to our communities	Significant affordability challenges ($120bn to $185bn investment required) have been highlighted as an underlying problem, which the Three Waters reform is aiming to address. Further clarity has been requested around the numbers (as stated above), and no further information has been made available that helps to clearly understand the future cost structure**. This remains a concern for WDC.**
Private water supplies	WDC raised concern that those residents on private water supplies would have a significant financial burden placed on them as a result of the increase in standards, including the requirement to register as a drinking water supplier– where drinking water is being supplied to more than one standalone domestic dwelling. WDC's concern (as raised) has largely been addressed through better understanding of the requirements through Taumata Arowai. As recommended by the Rural Supplies Technical Working Group Taumata Arowai and DIA need to provide clear communications for rural water supply providers as they progress to ensure there are no surprises.
Impacts on whānau, hapū, iwi	As part of our submission in September 2021, we reached out to local Iwi Chairs for their feedback on the Three Waters Reform package, as outlined then. At the time there were concerns raised around the link to the Treaty settlement process being unclear, and a missed opportunity around how Māori rights can be better integrated with Central and Local Government statutory responsibilities. Since September 2021 there have been key recommendations were incorporated into the bill, such as : • Ensuring mana whenua have input in the delivery of water services through equal representation on the Regional Representative Group • Recognising and embracing Te Mana o te Wai as a korowai that applies across the water services framework To ensure ongoing partnership with whānau, hapū, iwi, we encourage DIA and the water service entities to increase engagement and fund and resourced appropriately to ensure mana whenua's critical role in delivering this reform is not impacted by a lack of funding

Initial Concern (Sept 21)	Current status of concern (Jan 23)

3. Whakatane DC Submission points on Water Services Legislation (WSL) Bill

Whakatane District Council has assessed various draft submissions from Local Government NZ, Taituara and Water NZ. Alongside this councils of Entity B commissioned Simpson Grierson to review the proposed legislation and provide legal advice on the this to support councils with the preparation of each of our submissions. The Appendices provide details around the Whakatane DC position in regard to the comments raised from this advice and other submissions.

Within this section, Whakatane DC details the key submission points for consideration by the select committee.

3.1 Relationship between Council and WSE

Comments: -

- Within the WSL bill there is a requirement for WSE's to 'partner and engage' with councils, however it is unclear what this will mean in practice
- 'Relationship agreements' are required between WSE's and councils, it is unclear what 'status' a relationship agreement and currently this is not enforceable.
- The format of this relationship may alter over time, as regional planning committees are established through RM reforms
- The relationship between WSE's and council need to focus on outcomes for our local communities
- Some water services functions will remain with council, it is key that there is clear roles and responsibilities for these functions and appropriate funding streams.

Specific changes requested of the Bill: -

- Clause 7, ADD further detail on 'partner and engage' so it is more explicit how this will work in practice
- **Section 13 Amend functions to fully reflect partnership, by requiring that WSEs involve territorial authority owners in decision-making.** Thus ensuring an effective partnership.
- **Section 14 Amend operating principles to expand "open and transparent" requirement to all decision-making.** Thus ensuring an effective partnership.
- Clause 461, Make it clear that there must be engagement with councils (territorial authorities) and mana whenua
- Clause 462, Incorporate feedback loop in principles, so that open / transparent decision-making is achieved.
- New provision - Consider introducing new principles for engagement with mana whenua and local government to reflect s13 "partnering" function

- New provision - Amend s70 to allow the RRG to direct the board appointment committee to remove board members where there is just cause; and add breach of the WSE's duty under section 140 to give effect to the statement of strategic and performance expectations to the definition of "just cause" for removal of a director under section 70(4). This will increase accountability of WSE to territorial authority owners
- Clause 468, Include specific reference to cooperation over IC charges information and processes as mandatory subject matter of a relationship agreement.
- ADD Clause 468c (vi) Clear roles and responsibilities for water service functions
- REMOVE Clause 469 (2) 'A relationship agreement is not enforceable…..'
- ADD Clause 469 (x) Relationship agreements should support local community outcomes

3.2 Council collecting charges for water services

Comments: -

- The bill says that a WSE will be able to insist that a council collect charges on its behalf (in exchange for a 'reasonable payment for providing the service') until 1 July 2029.
- WDC oppose being compelled to collect revenue for a service we will no longer control and deliver, partly because of the potential public confusion this will generate about who is accountable
- WDC 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

Specific changes requested of the Bill: -

- Page 4 REMOVE 'pass-through billing arrangements, with territorial authorities collecting charges on behalf of the water services entities, in exchange for the reasonable cost of providing the service, up until 1 July 2029.'
- Page 13 REMOVE 'enable the chief executive of a water services entity to authorise the local authority (or local authorities) in its service area to collect charges on behalf of the water services entity:
- REMOVE Clauses 336 – 338 'Pass through billing'

3.3 Transparency & unfettered powers

Comments: -

- Geographic averaging : A WSE board may charge geographically averaged water prices for different service types and consumer groups (clause 334). The explanatory note to the Bill presents averaging as a tool for protecting vulnerable consumers by helping to smooth prices and share costs – so that consumers in similar circumstances across the WSE service area pay the same price for an equivalent service.
- Geographic Averaging : The Bill does not direct how, when or where geographically averaged prices should be applied by the WSEs. Instead it leaves this up to a WSE board, which will need to

act consistently with the general charging principles (clause 331), including Commerce Commission input methodologies and determinations (which will not be in place on 1 July 2024).

- Government Policy Statement : the scope of the GPS and its potential to provide central government with substantial powers to exert operational control over the WSEs. The present Bill further extends the scope of the GPS to empower the Government to set policy expectations around geographic averaging and redressing historic service inequalities
- Controlled Drinking Water Catchments : Part seven provides WSEs with powers to designate controlled drinking water catchment areas and prepare catchment management plans. WDC 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. 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

Specific changes requested of the Bill: -

- Geographic Averaging : ADD Clause 334 (4) Details and rationale for geographic averaging will be publicly reported by the WSE
- Government Policy statement : REMOVE Clause 13 Governments expectations in relation to geographic averaging and redressing historic service inequities
- Controlled Drinking Water Catchments : amend clause 231(1) to require the establishment of a controlled drinking water catchment area by public notice
- Controlled Drinking Water Catchments : amend clause 233 by requiring any compliance notice be provided in writing
- Section 330 Add new subsection" (3) A charge set by the board must be consistent with its funding and pricing plan. (4): Before setting a charge the board of a water services entity must engage with the regional representative group.
-

3.4 Crown and Entity exemptions without rationale

Comments: -

- Crown IC Charges : 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

- WSE Rates on Pipes : WSEs will not pay rates on pipes through land they do not own, nor on assets located on land they do not own. However, other utilities (such as electricity line companies and telecommunications companies) contribute their share of rates related to land and assets they benefit from.
- WSE Rates on Pipes : Whether water services entities should be approached in the same way as other utilities depends on the nature of the relationship between councils and their WSE. A

partnering relationship of an overall system for the benefit of local communities is quite a different scenario from the relationship that exists between councils and existing utility providers.

- WSE Rates on Pipes : However, if councils will be active collaborators with their WSE in performing their respective roles in the most cost- and process- efficient way, then councils need to be funded to do that. Collecting a share of rates from WSEs is one way of creating a revenue source to fund that. Alternatively, councils will require some other source of funding.

Specific changes requested of the Bill: -

- Crown IC Charges : REMOVE Clause 348 i.e. that the Crown be liable for infrastructure connection charges.
- WSE Rates on Pipes : REMOVE Clause 342 OR specify how the partnering approach for delivering community benefits will be applied in this instance and how WSE will fund councils to support this.
- Clause 137 - Delete

3.5 Stormwater complexity and roles

Comments: -

- There is significant complexity associated with urban stormwater networks transferring to the WSE but not the 'transport stormwater system' or those aspects which are mixed use.
- WSEs will be required to produce 'stormwater management plans'. When producing these plans, the WSE must engage with councils. According to the Bill, councils must work with the WSE to develop the plan. But clarification is needed around how WSEs and councils will work together to develop and implement these plans.
- Clause 254 sets out the purpose of stormwater management plans. 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.
- Bill lacks clear statement of water services functions that remain with council (stormwater outside urban areas / transport stormwater systems / agricultural water / regulation of private drainage / land drainage & flood control)
- Definition of transport stormwater system and interfaces with WSEs stormwater network are problematic, greater clarity needed as to demarcation between transport stormwater system and WSE stormwater system
- Overland Flow Path (OFP) and green WS infrastructure for part of stormwater and transport stormwater system

Specific changes requested of the Bill: -

- **clarify what the obligation to work with the WSEs on development of the stormwater network management plans are for councils**

- **Update clause 254 to either remove 'strategic framework' or provide more clarity around this wording.**
- **Clause 5, Section 6 'definition of Transport Stormwater system' replace part (a) as follows "means the infrastructure owned or operated by, or the processes used by, a transport corridor manager to collect, treat, drain, store, reuse, convey or discharge stormwater ~~affecting~~ in a transport corridor; and"**
- **Clause 99, amendment to section 146(b)(iv) of the LGA02 as follows "stormwater drainage, including transport stormwater systems, provided by the territorial authority"**
- **Clause 103(1), amendment to section 181(1) of the LGA02 to include "(b) stormwater drainage, including transport stormwater systems".** This is necessary for section 181 powers to extend to all residual council stormwater infrastructure.
- **Clause 106, new definition of network infrastructure in section 197(2) LGA02 as follows " Network infrastructure means the provision of roads and other transport (~~including transport stormwater systems),~~ agricultural water supply, and stormwater collection and management (including transport stormwater systems).** Necessary for DC powers to extend to all residual council stormwater infrastructure

Recommendations for the Select committee: -

- Throughout the concerns raised in this submission, and the draft submissions of others the complexity associated with stormwater seems problematic. WDC believes that the reform offers a golden opportunity to standardise the various interface arrangements that exist today. A simple and effective approach would be to transfer urban transport stormwater systems with 'stormwater networks' so that discrete or connected systems are managed as one. We welcome further input to help refine the stormwater transfer principles so that Council teams are not left to manage stormwater assets they neither have the skills, resources or systems to do.
- There is a lack of understanding how elements of stormwater (managed by the WSE) and remaining stormwater functions (managed by Councils) and flood protection assets (managed by regional councils) will work together to deliver community outcomes. A significant amount of detail is required, alongside clear functions for delivery, performance standards, roles & responsibilities, interface agreements and funding.

3.6 Appropriate bylaws and ability for WSE to effectively deliver

Comments: -

- WSE board has power to adopt existing bylaws relating to water services & no engagement is required if application and effect is the same. There is however no clear ability to adopt resolutions made under bylaws – could lead to ineffective regulation
- Health bylaws may need to continue
- Definition of 'spent water services bylaw' refers to s146, complex if bylaw deals with mixed s145/146 matters. Needs clarification.
- WSE powers are similar to other utilities, WSE must obtain approval from court (landowner having right of appeal), landowners may require WSE to move infrastructure, model likely to cause more delays compared to current LGA powers

Specific changes requested of the Bill: -

- **Clause 56 Add a requirement for consultation with councils on all instruments that adopt bylaw provisions, to confirm any modifications and that an instrument has the same material effect as the bylaw.**
- **Clause 56 Add a provision for the WSE board to also adopt resolutions under section 151(2) made in relation to any existing bylaw.**
- **Amend clause 66(3) to cover bylaws relating to water services made under the Health Act 1956.**
- **Consider whether clause 66(3) should also refer to bylaws made under section 145 of the LGA02**
- **Clause 66 : Ensure that trade waste bylaws are clearly covered as a spent water services bylaw**
- **Sections 200(2), 210, 202, 203, Replace with process modelled on LGA02 section 181 and Schedule 12. In particular, put onus on the landowner to challenge proposed works/conditions in the District Court, not on WSE to obtain District Court approval.** The current proposal significantly limits WSE performance.

- **Section 200(5)(a) – Delete.** Excluding Crown land as site of potential works unduly limits WSE's ability to choose best location

- **Section 226 to 230, Delete appeal rights to High Court, Court of Appeal, Supreme Court and Maori Appellate Court in sections 227, 228 and 230. Provide instead that decisions on applications or appeals to District Court or Maori Land Court are final.** The District Court and Maori Land Court well equipped to decide issues.

Recommendations for the Select committee: -

- We think it would be beneficial to clearly map out the LGA content pre-and post-impact of this Bill, taken together with the WSE Act 2022 (this should include what stays, goes, changes and where there is a clear need to manage an interface between council and water services entities' powers

3.7 LTP Assumptions & ability to change

Comments: -

- 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).
- Provisions are intended to exempt 2024 LTPs from having to include three waters
- Assumption is that water service assets will have transferred by 1 July 2024

Specific changes requested of the Bill: -

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

Recommendations for the Select committee: -

- As councils are progressing LTP 2024-34 process now, there needs to be a clear set of assumptions for all councils to work with.
- If last minute calls are made by DIA / Entities that change these assumptions – may leave councils in a difficult situation with their LTP

3.8 Proposed regime strays into Land use planning, and Alignment between WSE / Council purpose and planning documents

Comments: -

- Lack of shared purpose will create tension between WSEs and councils'. Under LGA 2002 councils are required to promote social, economic, environmental and cultural wellbeing of communities. WSE do not share that purpose.
- Definition of ' urban area' is expansive – could capture future development areas and place pressure on council to release land
- Ensuring good linkages between WSE and council documents such as : District Plan development rules, parks & recreation facilities, transport corridors
- Bill should include a clear statement that WSE's are "plan takers", as opposed to "plan makers"
- Bill should make it clear that WSEs are required to comply with any applicable regional plan and district plan rules
- Bill lacks an integrated relationship with either the Resource Management Act 1991 or the proposed Natural and Built Environment Bill and Spatial Planning Bill

Specific changes requested of the Bill: -

- **Section 6 (b) delete "or intended to be"** so as to exclude future urban zoned land from the definition of "urban area".
- **Sections 13/14, add function and or operating principles "that WSE's must observe and adhere to existing RMA planning rules and strategies"** for consistency
- **Section 231 Add purpose statement for controlled drinking water catchment areas** to provide additional clarity.
- **Section 231 Relabel designation to 'declaration', and include a requirement to provide reasons for making a designation.** This will reduce litigation risk.
- **Amend s232(5) to add the underlined wording:** "(5) When developing a controlled drinking water catchment plan, the board of the water services entity must engage with the territorial authorities, regional councils, mana whenua, consumers, and communities in **(and where appropriate outside)** the service area of the entity in accordance with section 461." This clarifies the position where assets are outside WSE service area
- **Section 256 Amend this section to establish a relationship between SWMPs and local government planning processes and include a requirement that they be consistent with these plans**
- **Section 260 Add a purpose statement for stormwater network rules.** This provides clarity and will improve operational aspects.

Recommendations for the Select committee: -

- It is unclear what the process is if there is a disconnect between these purposes. For example if a WSE considers climate change or natural hazard risk mean a higher level of investment is uneconomic?
- Select Committee should reconsider the extent to which WSEs are empowered to develop and adopt plans, strategies and rules that overlap with land use planning and regulation, which is properly the function of councils

3.9 Trade Waste

Comments: -

- Trade waste provisions intended to be 'fit for purpose' instead of replacing LGA02 provisions
- Requirement for trade waste discharges to be authorised by permit (cl 270) imposes unnecessary compliance costs
- Trade waste plan should be able to allow discharges (with or without restrictions) or prohibit discharges
- Permits generally needed for trade waste discharges where specific conditions are required

Specific changes requested of the Bill: -

- **Clause 5, definition of compliance requirement, amend (c) as follows "A trade waste plan, trade waste permit or trade waste agreement".** This will provide improved enforceability by including all sources of possible trade waste obligations.
- **Section 268** of the WSEA, amend "Persons may discharge trade waste into wastewater networks only if complying with **trade waste plan** and trade waste permits". Improves efficiency.
- Section 268, amend "A person may discharge trade waste into a wastewater network only if the person complies with every requirement, condition, and limit specified in **the relevant trade waste plan and any** relevant trade waste permit." Improves efficiency.
- **New Section following 273 "A water services entity may enter into a trade waste agreement with any person who may apply for a trade waste permit under section 266. A trade waste agreement prevails over any inconsistent provision of a trade waste plan."** The bill needs to take into account trade waste agreements.
- Section 321 (3) replace with the following, as fairer targeting of trade waste charges :

  The person liable to pay trade waste charges in respect of a property is:

  - **the holder of the trade waste permit, if there is one;**
  - **if there is no trade waste permit, the occupier.**
- Section 397 Amend heading "**Discharging trade ~~waste without trade waste permit~~ contrary to trade waste plan"**
- Section 397 (1) Amend "a person commits an offence if the person discharges trade waste into a wastewater network **contrary to a trade waste plan (including** without a trade waste permit issued under section 267 **when the plan requires such a permit**).
- New clause 70A of Schedule 1**. Add a clause which continues any trade waste agreement in force immediately before the establishment date.**

Recommendations for the Select committee: -

- Some smaller councils have companies that have large amounts of trade waste & they are big employers for the area. Understand how this will be considered.
- Trade waste is dependent on the treatment system applied, needs to be flexibility for local rules to apply.

3.10 Climate change

Comments: -

- Each WSE should be required to produce climate change management plans that include:
    - Emissions and the effect of a transition to a low carbon circular economy
    - Adaptation, risk and resilience
    - Climate related financial disclosures (e.g. Annual greenhouse gas emissions report by source; reporting using the task force on climate related financial disclosures framework; other climate change reporting required under other mechanisms relating to boards)

Recommendations for the Select committee: -

- Require stronger legislation as part of the bill to support climate change outcomes for New Zealand

Appendix 1 : LGNZ Submission

The draft LGNZ submission was provided through to Whakatāne District Council, the format of the themes provided useful framework for commenting on the bill, see below an extract of the LGNZ draft submission and the LGNZ position. We have captured our WDC position in relation to this and highlighted key points within the LGNZ submission for ease of reading.

Theme	LGNZ Position	WDC Position
General relationship between councils and WSEs	• The WSL Bill will give WSEs a number of new 'functions' (in addition to those included in the WSE Act 2022). We support the requirement to 'partner and engage' with councils. However it is **unclear what 'partner and engage' with councils will mean in practice**, including how it will connect with councils' placemaking and community functions. • Communities should expect councils and WSE's to work hand in glove for their benefit. While the WSL Bill signals the need and opportunity for operational/planning integration and partnering, it does little to actually direct or mandate it.	Strongly Support – **Further clarity required on WSE / council partnership**
Absent alignment of 'purpose' between councils and WSE's	• **Lack of shared purpose will create tension between WSEs and councils'**. Under LGA 2002 councils are required to promote social, economic, environmental and cultural wellbeing of communities. WSE do not share that purpose. • It is unclear what the process is if there is a disconnect between these purposes. For example if a WSE considers climate change or natural hazard risk mean a higher level of investment is uneconomic?	Strongly Support – **The bill should define process if there is a disconnect**

Political accountability	• In reality, councils (and their elected members) will attract a level of political responsibility for the three waters system. They remain obligated to look out for community interests
	• **Given an element of political accountability is inescapable, we think the model should be changed** in one or more of the following ways:
	  ○ Councils be given a louder voice that WSEs must listen to on key topics (for example, around place-making and 'master planning'
	  ○ Subject to a suitable threshold, councils be expressly empowered to challenge (and seek reconsideration) of WSE decisions that the council reasonably considers will negatively impact the delivery of a key element of an approved Long Term Plan.
		Strongly Support – **Public accountability risk to be addressed**

Theme	LGNZ Position	WDC Position

Relationship agreements	• We think agreements with individual councils (as opposed to agreements with multiple councils) are the best way to ensure individual council needs are met. However, we think some elements of these relationship agreements should be 'standard form'.
	• **It is unclear what 'status' a relationship agreement will have, and what 'binding effect' it will have.** If such an agreement will not be legally enforceable, then the Bill should do more to frame up the context of the special role and nature of the relationship agreement between a WSE and a council.
	• Relationship agreements should be used to provide for the interface between three waters and council planning systems. In time, relationship agreements should be established with the regional planning committees that will be established through RM reforms.
	• We think some of the planning interface arrangements used in the Scottish Water model could be adopted in water services legislation, for example:
	  ○ WSEs should contribute to the writing of 'main issues reports' (which are front-runners to local development plans);
	  ○ WSEs should contribute to the writing of any proposed local development plans;
	  ○ WSEs should contribute to the writing of an 'action programme', which supports delivery of local development plans; and
	  ○ WSEs should comment on all outlines or full planning applications referred to by local authorities.
		Strongly Support - **Further clarity required on WSE / council relationship agreement**

Purpose and content of the Government Policy Statement	• The areas of influence under the Government Policy Statement have been expanded to include statements in relation to geographic averaging, redressing inequities in servicing of maori and redressing historic service inequities • Consistent with our previous recommendations, we see this as adding to an unfunded mandate for local government. **If central government is to have influence and control like this, it needs to go hand-in-hand with a commitment to funding.**	Strongly Support – **Government should be funding due to the level of control**
Rural supplies	• Local government-owned mixed-use rural water supplies that provide both drinking water (to 1000 or fewer non-farmland dwellings) and water for	Support – Noting Rangitaiki plains is 75-80% agricultural

Theme	LGNZ Position	WDC Position
	farming-related purposes (where 85% or more of the water supplied goes to agriculture/horticulture) will transfer to the WSEs. These supplies can subsequently be transferred to an alternative operator (for example, the local community served by the supply). However, these transfer provisions are different from the recommendation of the Rural Supplies Working Group, which promoted a regime where the local/affected community could 'opt out' from the initial transfer.	supply & therefore NA
Charging provisions – collecting charges	• We are **concerned about the provisions relating to councils collecting water charges on behalf of WSEs. Councils oppose being compelled to collect revenue for a service they will no longer control and deliver,** partly because of the potential public confusion this will generate about who is accountable. • The bill says that a WSE will be able to insist that a council collect charges on its behalf (in exchange for a 'reasonable payment for providing the service') until 1 July 2029. To facilitate this, a WSE will enter into a 'charges collection agreement' with the council. But is a charging agreement is not agreed upon, the Minister has powers to impose terms. • Preference that council are not responsible for collecting charges, if council do perform that service for the WSE – councils are insulated from any risk	Strongly support – **Councils should not be involved – only confuse ratepayers**
Charging provisions – geographic averaging	• A WSE board may **charge geographically averaged water prices for different service types and consumer groups** (clause 334). The explanatory note to the Bill presents averaging as a tool for protecting vulnerable consumers by helping to smooth prices and share costs – so that consumers in similar circumstances across the WSE service area pay the same price for an equivalent service. • The Bill does not direct how, when or where geographically averaged prices should be applied by the WSEs. Instead **it leaves this up to a WSE board,** which will need to act consistently with the general charging principles (clause 331), including Commerce Commission input methodologies and	Strongly Support – **The bill should be more specific about geographic averaging & transparency**

Theme	LGNZ Position	WDC Position
	determinations (which will not be in place on 1 July 2024). • There is a view that the Bill does not go far enough to enshrine this, leaving a lot of decision-making responsibility to the Commerce Commission and the WSE boards	
Charging provisions – Water Infrastructure contribution charges	• WSEs will have the power to set water infrastructure contribution charges. These can be used if new development or increased commercial demand mean the WSE must provide additional or new water services assets. • 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.	Strongly Support – **The crown should not be exempt unless there is a good reason**
Combined cost to ratepayers	• The reform assumes that, all other things being equal, the **combined costs of water bills and rates bills should not change when the water services entities stand up**. We have some concerns with this view. • To date, councils have taken a long-term, portfolio view of their finances and activities. At times, this has been for political reasons. Taking this approach means there may be current levels of under-rating or cross-subsidising. Without three waters services, councils may need to increase their general rates to cover the real costs associated with their remaining functions.	Strongly Support – **The total household cost should not change, a lot of details to work through on this**
Rating WSE assets	• WSEs will not pay rates on pipes through land they do not own, nor on assets located on land they do not own. However, other utilities (such as electricity line companies and telecommunications companies) contribute their share of rates related to land and assets they benefit from. • Whether water services entities should be approached in the same way as other utilities depends on the nature of the relationship between councils and their WSE. A partnering relationship of an overall system for the benefit of local communities is quite a different scenario from the relationship that exists between councils and existing utility providers. • However, if councils will be active collaborators with their WSE in performing their respective roles	Strongly Support – **Councils need to collect revenue to support collaboration**

Theme	LGNZ Position	WDC Position
	in the most cost- and process- efficient way, then councils need to be funded to do that. Collecting a share of rates from WSEs is one way of creating a revenue source to fund that. Alternatively, councils will require some other source of funding.	
Stormwater	• Our points made in response to the Water Services Entities Bill around a phased transition are still relevant and of concern. Our core position is that there is significant complexity associated with urban stormwater networks transferring to the WSE but not the 'transport stormwater system' or those aspects which are mixed use. • WSEs will be required to produce 'stormwater management plans'. When producing these plans, the WSE must engage with councils. According to the Bill, councils must work with the WSE to develop the plan. **But clarification is needed around how WSEs and councils will work together to develop and implement these plans.** • **A WSE may charge a council for stormwater services between 1 July 2024 and 1 July 2027 if the WSE is not charging system users directly**. WSEs cannot charge directly until the earlier of 1 July 2027 and when the Commission has put in place input methodologies for determining the total recoverable cost of delivering stormwater services	Strongly Support – **Further clarity on roles/responsibilities for preparing the plan.** Strongly support – **why should councils be charging for stormwater when it is not responsible.**
Interface with councils' roles and functions	• WSEs will have the power to construct or place water infrastructure on or under land owned by councils. The WSE only need to provide 15 days notice where it intends to carry out work. • The Act will require local authorities to share rating information kept and maintained under the Local Government (Rating) Act 2002.	Support – **Need to understand if 15d is appropriate or not.** Strongly support – **If councils are sharing information, they need to be funded to do so.**
Councils' three waters debt	• We are concerned about the process for determining councils' three waters debts. The Bill says the assessment of the total debt amount will be made by the DIA Chief Executive. There is no recourse to the Minister if there is a disagreement on the amount. **The council only gets a chance to agree date and manner of payment (not amount).** We believe this needs to be viewed in conjunction with the 'no worse off' commitments made by Ministers under the Heads of Agreement between	Strongly Support – **This fundamental transfer of debt needs to be transparent**

Theme	LGNZ Position	WDC Position
	the Crown and LGNZ (these are referenced in cl26A of sched 1 Part 1, subpart 6 of WSE Act).	
WSE subsidiaries	• The addition of provisions based on the CCO provisions of the Local Government Act 2002 is a materially different from existing understandings of what Three Waters Reform would look like. This **introduces flexibility but creates a whole new layer of operational activity below the board that is even more 'removed' from RRG oversight.** The careful disciplines that are wrapped around the WSE board do not flow down and into the subsidiaries. • Contemplating 'listed subsidiaries', a 'subsidiary of a subsidiary' and operating for profit all seems wholly out of place with the policy settings originally promoted by the Government. We are very concerned about these new details of the reform. • Any proposal to establish a subsidiary should be regulated by the WSE constitution and be subject to a process that involves the RRG. This process needs to take into account the rationale and purpose (and the risks and mitigations) involved in devolving matters from the direct control of the WSE board appointed by the RRG. • Even though significant water assets must remain with the WSE, it is expressly contemplated in the Bill that such a subsidiary may be formed by more than one WSE (possibly with other investors) to undertake borrowing or manage financial risks that involve a risk of loss, which the WSE may guarantee, indemnify or grant security for. • More detail is required from DIA about what is actually under contemplation here	Strongly Support – If **WSEs put in place subsidiaries there needs to be transparency**

Legal claims and liability	• We have **concerns around who will 'wear the liability' when things go wrong**, and what legal remedies will (and should) be available.
	  ○ What happens if water controlled by a WSE damages council assets?
	  ○ What will the consequences be if a council or WSE fails to act consistently with the terms of their relationship agreement? Should the non-defaulting party be granted statutory relief if this situation results in them failing to comply with a requirement?
		Strongly Support – **Liability process should be clearly defined within the bill**

Theme	LGNZ Position	WDC Position
General Comments	• Most of the detail around asset/contract transfers, and establishing the WSEs, has been adopted from previous statutory reorganisations. Generally, we think councils would benefit from: ○ Receiving some assurance from the Government that the lessons learned from those earlier reorganisations have been reflected in this legislation (i.e. that a 'best of breed' approach to reorganisation is being taken); and ○ Being provided with a guide to the legislation that clearly identifies the points of difference from current LGA positions (to assist councils with understanding and planning for the change management involved with implementing the reforms). • We think it would be beneficial **to clearly map out the LGA content pre-and post-impact of this Bill**, taken together with the WSE Act 2022 (this should include what stays, goes, changes and where there is a clear need to manage an interface between council and water services entities' powers). • Any engagement taking place between councils and DIA/NTU before 1 July 2024 will count as engagement or consultation for the purposes of the legislation. This should be qualified by the need for DIA/NTU to clearly identify and communicate when particular contact and content counts and for what particular purpose. This cannot be asserted after the event. Councils need to know when to bring their issues/concerns to the table with DIA/NTU.	Strongly Support – **Lessons learnt need to be incorporated.** Strongly support – **Changes to the LGA pre & post impact should be clearly articulated.**
Other Points	**Public Works Act:** • We think any council land transferred to a WSE that becomes 'surplus' should be returned to the original council owner, so it can be made available for alternative community use or sold and the proceeds made available for use in the particular local community. It should not be retained nor sold by the WSE for its own purposes or benefit. **Treaty/mana whenua arrangements:** • We think arrangements between mana whenua, councils and WSE should become tripartite agreements, where the entity and council need to work together to ensure mana whenua can easily engage with them	Strongly Support – **land has been purchased using ratepayers funds.**

Theme	LGNZ Position	WDC Position
	both. Mana whenua should not have to manage two separate relationships if they choose not to. **Councils as a road controlling authorities:** • The Bill says that if a council needs to move three waters assets to carry out other functions, it has to pay. The same applies to the WSEs in reverse. We think WSEs and councils should collaborate to reduce costs where either party has to undertake activities that interfere with the others assets. • Currently, councils can create efficiencies, as they own both sets of assets. We want to ensure these cost savings are not lost by a separation of function.	Strongly support – **If iwi choose to, this should be available.** Strongly support – **There needs to be an overall focus on cost reduction.**

Appendix 2 : Taituarā Submission

The draft Taituarā submission was provided through to Whakatāne District Council, Taituarā provided specific recommendations on the changes to the clauses within the bill, which has been extremely useful. See below an extract of the Taituarā draft submission and the Taituarā position. We have captured our WDC position in relation to this and highlighted key points within the Taituarā submission for ease of reading.

Area	Recommendation	WDC Position
Relations with Other Infrastructure Providers	**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.**	Support
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. **That the Committee amend clause 130(2) by adding a clause that requires the Government to explicitly state**	Strongly Support – **The GPS additional scope provides central government more powers,with no government funding & a lack of transparency**

Area	Recommendation	WDC Position
	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. **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.**	Strongly Support – **KEY CONCERN raised by WDC that the cost and benefits of this policy is not clearly defined**
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 some matters of clarification. 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. **That the Select Committee amend clause 231(1) to require the establishment of a controlled drinking water catchment area by public notice** **That the Select Committee amend clause 233 by requiring any compliance notice be provided in writing**	Support – **greater transparency for the public**

Area	Recommendation	WDC Position
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. **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.**	Support – **Long term to be clearly defined.**
Stormwater - General	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.	Support
Stormwater - 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. **That the select committee :** • **clarify what the obligation to work with the WSEs on development of the stormwater network management plans**	Support – **Clearer definition on roles & responsibilities & obligations for stormwater is required**

Area	Recommendation	WDC Position
	• **that the obligations of clause 257 be extended to all public stormwater network operator**	
Stormwater : ***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. **That the select committee amend clause 254 by** - **deleting the word "monitor" from clause 254(1)(a) and replacing it with the words "the means for monitoring"** - **adding the words "and regulatory" before the word "requirements" in clause 254(1)(d)**	Support – minor technical amendments. **DO NOT support changes to Clause 254. Understanding the whole of life cost of assets is fundamental to decision making & needs to be included in the bill**
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	Strongly support – **this also places an**

Area	Recommendation	WDC Position
	agreements are necessary to create a legal relationship between WSEs and their customers. 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). 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. 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. **That the Committee:** **- amend clause 279 to clarify that service agreements are deemed or implied and do not require the signature of both parties** **- 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** **- 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**	**additional burden on the WSE which will drive cost.**
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.	Strongly Support – **should also link with Total household cost**

Area	Recommendation	WDC Position
	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)y, 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. **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.**	
Funding and pricing : 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). 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. 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	Strongly support – **WSEs should be billing from 1 July 24, if councils are required to bill – it is on a separate bill for clarity.**

Area	Recommendation	WDC Position
	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 maulhouse 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. **That the Select Committee include a provision in the Bill ensuring that WSE charges are assessed and invoiced on a separate document .** **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.**	
Funding and pricing : 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).	Support

Area	Recommendation	WDC Position
	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, gap 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. **That clause 342 be deleted, making all three water assets fully rateable.**	
Funding and pricing : 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. **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**	Strongly agree – **WSEs need to contribute towards this**

Area	Recommendation	WDC Position
	parties cannot agree and is based on section 43 of the Rating Valuations Act 1998.	
Funding and pricing : 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 fic 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. **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."** **That waiver policies must be published on an internet site maintained by the local authority.**	Strongly Support – **this should be transparent**
Funding and pricing : 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	Support

Area	Recommendation	WDC Position
	will be borne by all consumers across the WSE service area." **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	Strongly support – **The minister should not have this level of power without due process**

Area	Recommendation	WDC Position
	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. **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.1 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 is 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	Support – Noting this does not impact WDC

[1] Some examples include Citycare (owned by Christchurch Cty Counncil) and Whitestone Contracting (owned by Waitaki District Council).

Area	Recommendation	WDC Position
	Wellington water) and not those delivering civil construction services. **That the Select Committee seek advice as to whether the term local government organisation includes council-controlled organisations providing civil construction services.**	
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	Strongly support – **TA's need to have this mandate up until 1 July 2024.**

Area	Recommendation	WDC Position
	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 addition 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. **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	Support – **55-57 recommendations refer to greater transparency of strategy information and better links between WSE & Councils finance strategies**

Area	Recommendation	WDC Position
	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 ser 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 **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.**	

Appendix 3 : Entity B – Simpson & Grierson legal advice

As part of the 22 council collaboration within Entity B, it was agreed that initial legal advice be sought to help support councils with their submission. Below is a an extract of the advice received & WDC's position in regard to this advice.

Entity B Simpson Grierson concerns raised	WDC Position
Water Services functions that remain with councils: - Bill lacks clear statement of water services functions that remain with council (stormwater outside urban areas / transport stormwater systems / agricultural water / regulation of private drainage / land drainage & flood control) - Definition of transport stormwater system and interfaces with WSEs stormwater network are problematic - Overland Flow Path (OFP) and green WS infrastructure for part of stormwater and transport stormwater system - Combined sewers unclear	Agree – **Within the relationship agreement the roles and responsibilities need to be clearly defined, alongside clear revenue streams for delivering service.** **Noting : Majority of these concerns relate to stormwater.**
Proposed regime strays into land use planning - Broad enablement – not clearly stated that WSE's must adhere to regional / district rules - Definition of ' urban area' is expansive – could capture future development areas and place pressure on council to release land - Other than 'partnership' – no clear statement that guides how the WSEs will be involved in urban growth / development - Potential that entity documents could alter or impact council plans / processes (Controlled drinking water catchments / stormwater mgmt. plans / water service assessments	**Further definition required around ' urban area', does this include current and future zoned land (if so – under what time period) ?** **Councils have spatial plans (50-100 years), how will the WSE planning align with this.** **Where WSE's prepare key documents – there needs to be clear impact statements prepared for councils work programmes.**
Powers for WSEs to carry out works - WSE powers are similar to other utilities - WSE must obtain approval from court (landowner having right of appeal) - Landowners may require WSE to move infrastructure - Model likely to cause more delays compared to current LGA powers	**Legislation (as proposed), puts a lot of power into the landowner, different from current LGA model. This could cause delivery issues for the WSE & drive up costs for all ratepayers. Needs to be reviewed.**

Entity B Simpson Grierson concerns raised	WDC Position
Water Services Charges - Information sharing – what does 'reasonable cost' mean ? - No consultation / engagement requirements - Given economic regulation by commerce commission – why are principles included ? - Misalignment between principles & charges - Geographic averaging / cross subsidisation - GPS – Too specific and directive ?	**Reasonable cost to be clearly defined – overall principle once roles / responsibilities defined – review the income sources.** **Ensure the principles (Bill 1) / plans (Bill 2) are aligned & if any disconnect between this & Commerce commission responsibilities.** **Geographic averaging / GPS – need more transparency**
Infrastructure contribution (IC) charges - IC is based on development contribution (DC) – is this the best model ? - Cl 343 incorrectly refers to basis on which IC charges may be set, as opposed to imposed case by case - IC charges policy must include much of the same information as DC policy, no requirement to specify period over which the capex will be incurred – Cl 346 - IC charges must be consistent with CC input methodology - No good reason for Crown exemption under cl348 - WSE can invoice IC charges when building/resource consent granted – requires liaison with council, but surely must still be demand - Is instalment regime (up to 50 years) too lenient?	Question of who pays – existing community or the growth needs to be considered. Within Auckland existing communities pay a component of the IC, could be a useful model, as there has been no litigation to date. Note : There needs some additional clarity in the bill around DC's that have been collected before 1 July 2024, especially if the asset is for agricultural water supply / stormwater outside urban areas / transport stormwater systems
Bylaws -WSE board has power to adopt existing bylaws relating to water services - No engagement required, if application and effect is the same	**Bylaws need to be assessed to ensure both WSE's and councils can perform their roles & have adequate protection.**

Entity B Simpson Grierson concerns raised	WDC Position
- No clear ability to adopt resolutions made under bylaws – could lead to ineffective regulation - Health bylaws may need to continue - Definition of 'spent water services bylaw' refers to s146, complex if bylaw deals with mixed s145/146 matters. Needs clarification.	
Trade Waste - Trade waste provisions intended to be 'fit for purpose' instead of replacing LGA02 provisions - Requirement for trade waste discharges to be authorised by permit (cl 270) imposes unnecessary compliance costs - Trade waste plan should be able to allow discharges (with or without restrictions) or prohibit discharges - Permits generally needed for trade waste discharges where specific conditions are required - Offence provisions (cl 397 & 398) need to be recast to recognise role of trade waste plan in permitting or prohibiting discharges	**Current trade wate permit process is risk based, with the provisions proposed risk is not considered & this could lead to unnecessary costs for businesses. Needs to be updated in the bill.** **Note : Trade waste is dependent on the treatment system applied, needs to be flexibility for local rules to apply.** **Note : Some smaller councils have companies that have large amounts of trade waste & they are big employers for the area. Understand how this will be considered.**

Engagement / involvement with local authorities
- Engagement, unclear what this engagement is & what the feedback loop is
- No additional requirement for many processes – councils are classed as same as other stakeholders
- Relationship agreements (cl 467 / 468)
  - Do not allow for transfer or delegations to Tas
  - Not enforceable (cl 469)
  - Potentially miss certain matters (i.e. customer response, community engagement, implementation of strategic planning, environmental monitoring)
  - No process steps, or dispute resolution
	Relationship between Entity and councils need further clarification & the relationship agreements need further definition

Transition / Allocation Schedule - No requirement for DIA to give reasons for not accepting LGO comments	**Unclear why the Minister has unfettered powers at that stage of the process ?**

Entity B Simpson Grierson concerns raised	WDC Position
- Ministers power to amend allocation schedule – too broad ? - Before power can be exercised, there should be a clear statement in the bill re: the functions and powers that remain with councils - Collecting debt – outward appearance is exactly same as status quo	**Needs to be clear statement on what functions will remain with council, so the allocation schedule can reflect this**
LTP Clarification - Provisions are intended to exempt 2024 LTPs from having to include three waters - Assumption is that water service assets will have transferred - Gaps however, in that LTP amendments are captured – which will require councils to make assumptions re what might transfer - Suggestion from Taituara : Exclude LTP amendments which will recognise that the assets will remain with councils through the establishment period	**As councils are progressing LTP 2024-34 process now, there needs to be a clear set of assumptions for all councils to work with.** **If last minute calls are made by DIA / Entities that change these assumptions – may leave councils in a difficult situation with their LTP**

Appendix 4 : Water NZ Submission

The Water NZ draft submission dated 8 February 2023 was reviewed. Water NZ has reviewed the bill from a technical delivery perspective of water services on behalf of the water industry and it's members.

Area	Water NZ Recommendations	WDC Position
Case of better co-ordination of Stormwater	- Further clarity on stormwater definitions - A nationally consistent approach to stormwater modelling, mapping, design standards, freeboard level and funding. - WSE take responsibility control of the water quality in all stormwater systems - Catchment management planning provisions are applicable to all agencies and carried through to the RM reforms policy and consenting clauses	Agree in part. WDC do not support WSE being responsible for water quality in all stormwater systems, as we do not understand practically how this will be achieved.
Nationally consistent frameworks would be useful	- Through the GPS provide national guidance / definition for o Geographic averaging pricing o Historic inequalities o Classes of consumers - CDEM groups and lifeline utilities roles and responsibilities in preparation, planning and response - Relationship agreements – their legal status of a relationship agreement, prepared in advance of the establishment date and allow for dispute resolution - Establishment of an industry levy on WSE to keep technical guidelines and national standards kept up to date - Reference to the utilities act and the national code of practice for utility operators access to road corridors – rather than recreate	Strongly support – nationally consistent frameworks
Workability and continuous improvement	- Access to three water assets situated on, or beneath private property - Commitment and prescription to funding for infrastructure strategies and spatial plans - More prescription for digitalisation of asset management and data standards - National water literacy education campaign supporting community behaviour change, consistent national messaging ad best practice resources	Strongly support

Area	Water NZ Recommendations	WDC Position

More clarity and certainty on timeframes	- Amend times including
	  ○ Draft stormwater management plan no later than 1 July 2028
	  ○ Charges for stormwater applies no later than 2027
	  ○ Local enabling acts not repealed until July 2024
	- Clarity on how the RM reform tranches aligns with the new WSE's
	- Re-instate the option for small mixed-use rural water services to opt out before transition to the WSE
		Strongly support – noting WDC do not have any small mixed use schemes in the district

Pricing and charging	- Do not support crown being exempt from paying infrastructure contribution charges - WSE should have flexibility to set charges - No 'pass through billing' council should not collect on behalf of WSE - Clauses should include WSE financial reporting obligations equivalent to those in the LG (financial reporting and prudence) regulations 2014	Strongly support
Integration between reforms is missing	- Ensure WSEECP regulatory requirements are 'hand in glove' with WSE act and WSL bill - Better integration of the WSL bill with other legislation including National Built Environment and Spatial Planning bills - Ask once, use thrice : The plans and policies required under all the reforms and acts should be used to inform the other statutory planning	Strongly support
Recognition of mana whenua	Water NZ supports the governments commitment to giving mana whenua a greater and more strategic role in the new system. Recommendations : - Recognise the ever increasing pressures being placed on mana whenua - Government funding – broader than that required to implement the three waters reform programme – is urgently needed to resource mana whenua to be active partners in the new systems that are being created - Clarity is needed as to who ultimately regulates and upholds TMOTW, and will hold entities to account when there is non-compliance with or conflict	Strongly support

Area	Water NZ Recommendations	WDC Position
Climate change is not recognised strongly enough	Each WSE should be required to produce Climate Change Management Plans that include: - Emissions and the effect of a transition to a low carbon circular economy - Adaptation, risk and resilience - Climate related financial disclosures (e.g. Annual greenhouse gas emissions report by source; reporting using the task force on climate related financial disclosures framework; other climate change reporting required under other mechanisms relating to boards)	Strongly Support

SIGNED:

Dr Victor Luca

Mayor

Whakatane District Council