



Item not on the Council Agenda 23 June 2022

THAT the Council:

1. Considers the following report at its meeting on 23 June 2022:
Report 22-145 Water Services Entity Bill – Submission Content
 - The report was not available at the time the agenda was compiled.
2. Recommends that Item 1 be accepted as a late item.

A handwritten signature in blue ink, appearing to read "H. Kohn".

Heather Kohn
Democracy & Support Services Manager

Title: 22-145 Water Services Entity Bill - Submission Content
Section: Chief Executive's Office
Prepared by: Yvette Kinsella - Special Projects Manager
Meeting Date: Thursday 23 June 2022

Legal: No

Financial: No

Significance: **High**

Report to COUNCIL for decision

PURPOSE

The purpose of this report is to:

- summarise the key elements proposed in the Water Services Entities Bill 2022 (the Bill); and
- identify the key areas Councillors may wish to make a submission on to the Finance and Expenditure Select Committee.

SUMMARY

The Bill will create four dedicated water service entities (WSEs) to deliver drinking water, wastewater and stormwater services. Government suggests that these entities will have the size and scale to deliver safer, more reliable and efficient water services, to increase investment in infrastructure and to meet the new regulatory standards.

The Bill outlines the key ownership, governance and accountability aspects of the WSEs including:

- asset ownership to remain with councils through a body corporate structure
- a Regional Representative Group co-governed by councils and mana whenua to provide strategic direction and monitor WSE performance
- a Board to provide corporate governance of each WSE and make decisions on priorities, asset management and operations.

It also outlines the arrangements that will support the transition of service delivery to the WSEs.

We recommend Council make a submission to the Finance and Expenditure select committee to raise issues around:

- local representation and accountability to communities
- interface between water services provision and resource management
- transition arrangements
- revised costs of the new arrangements.

Submissions close 22 July 2022.

The decisions or matters in this report are considered to be of **High** significance in accordance with the Council's Significance and Engagement Policy.

RECOMMENDATIONS

That the Council:

- 1. Directs the Chief Executive to prepare a submission on the Water Services Entities Bill to the Finance and Expenditure select committee.**

Authorised by:

Nedine Thatcher Swann - Chief Executive

Keywords: three waters, three waters reform, water infrastructure, Water Services Entities Bill, water services entities

BACKGROUND

Three Waters reform programme

1. In 2017, the Minister of Local Government (the Minister) announced a review of three waters services (the review) in response to the findings of its Inquiry into Havelock North Drinking Water.
2. The review found widespread issues across several aspects of three waters from system stewardship down to on-the-ground service delivery. In 2019, government embarked on its Three Waters Reform Programme with four key outcomes:
 - safe, reliable drinking water
 - better environmental performance of wastewater and stormwater services
 - efficient, sustainable, resilient and accountable water and sewage services
 - making it affordable for future generations.
3. Government continues to make steady progress on the reforms. It has reached the next major milestone – to enact legislation establishing super-regional Water Services Entities (WSEs) to manage the delivery of three waters services.

2017

Havelock North Drinking Water Inquiry identifies strategic issues with drinking water provision. Cabinet launches full review of three waters.

2018

Cabinet initiates cross-agency work to scope issues and opportunities around three waters system with a focus on funding, capability, and regulatory performance.

2019

Cabinet agrees three waters reform plan focused on regulatory reform.

2020

Water services regulation legislation passes establishing Taumata Arowai as sole, stand-alone regulator of drinking water in NZ (active March 2021).

2021

Government releases proposed approach to delivering water services. Working Groups established to provide sector/iwi input into entity design.

2022

Water services entities bill released for consultation with select committee report due in November 2022 and possible enactment shortly after.

Sector engagement

4. A draft Exposure Bill for the establishment of WSEs was released by government for sector input in 2021. In March 2022, a Working Group, comprised of councils and iwi, presented 47 recommendations to government to strengthen governance, representation and accountability for local communities **(see Report 22-83)**.
5. The key Working Group recommendations were around:
 - protecting public ownership of three waters assets
 - strengthening representation and accountability for strategic three waters decisions.
6. Government agreed in principle with the majority of the Working Group's recommendations.

KEY CONTENT OF THE BILL

7. The Bill had its first reading in the House of Representatives on 9 June and has been referred to the Finance and Expenditure Select Committee. Submissions close on 22 July 2022. The Select Committee report is due out 11 November 2022 with enactment probable by the end of 2022.
8. The Bill has incorporated most of the recommendations of the Working Group.

Purpose

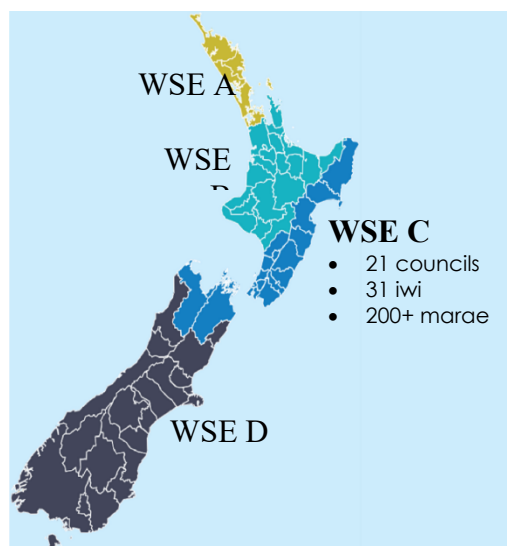
9. The purpose of the Bill is to:
 - establish the ownership, governance and accountability arrangements for water service entities (WSEs); and
 - provide for the transition arrangements during the establishment period so that WSEs can commence service delivery from 1 July 2024.
10. Further legislation will be introduced in the second half of 2022 to transfer assets and liabilities from local authorities and to establish the specific powers and functions of WSEs re the provision of water services. This further legislation will also integrate the WSEs into other regulatory systems, such as the resource management and economic regulatory regimes.

Ownership of WSEs

11. Each WSE will be a body corporate co-owned by the territorial authorities (district and city councils) within the WSE area. Shares in the body corporate will be allocated at a rate of 1 per 50,000 head of population rounded up so that every council has at least one share. Gisborne District Council will have two shares in the body corporate based on the most recent population count of 51,500.
12. For water services and/or significant water infrastructure to be divested, there must be a 100% consensus of the territorial authority owners, and at least 75% support from the Regional Representative Group, and at least 75% of votes cast in a poll of electors in the service area.
13. 'Significant' assets are defined as those water assets the WSE owns that are critical to the WSE achieving its objectives and carrying out its functions.

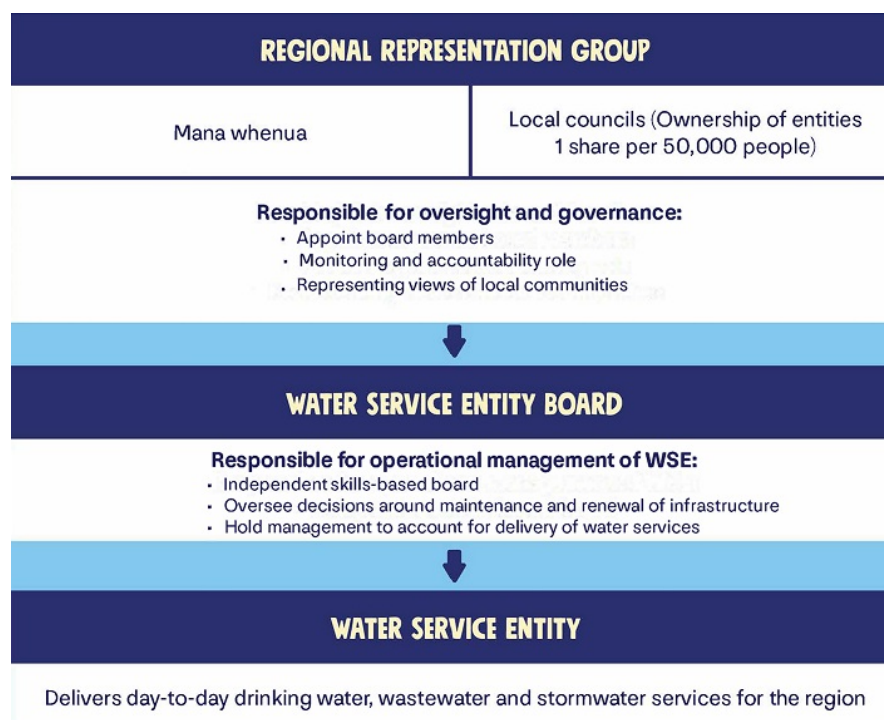
Governance arrangements

14. There will be four 'super-regional' WSEs created as per the map below.



15. It is proposed that Gisborne District Council will sit within the Eastern-Central WSE (previously called Entity C) along with 20 other councils and 30+ iwi (with over 200 hapū/marae).
16. The general functions of a WSE are to provide safe, reliable, and efficient water services in their service areas.
17. The WSEs will share objectives to:
- deliver water services and infrastructure in an efficient and financially sustainable way
 - protect and promote public health and the environment
 - support and enable housing and urban development
 - operate in accordance with best commercial and business practices
 - act in the best interests of present and future consumer and communities
 - deliver water services in a sustainable and resilient manner that seeks to mitigate the effects of climate change and natural hazards.
18. The WSE operational principles include being open and transparent, partnering early with Māori and councils, and sharing expertise and capability with other WSEs.
19. WSEs will also share some basic structural arrangements enshrined in legislation. There will be a two-tiered governance arrangement in each WSE comprised of:
- a Regional Representative Group (RRG)
 - an independent, competency-based, professional board (Board).

20. The diagram below shows the basic structural arrangements.



Regional Representative Groups

21. Each RRG will be comprised of 12-14 members, with a 50:50 split between representatives of the territorial authority owners and mana whenua representatives. Territorial authority representatives must be elected members, chief executives or senior members of staff with appropriate expertise.
22. The RRG will be responsible for:
 - appointing and removing the WSE Board members
 - providing an annual Statement of Strategic Performance Expectations to the WSE Board that states the RRG's strategic objectives and priorities for water services and that guides Board decision-making
 - participating in setting the WSE's key strategic documents
 - reviewing the performance of the WSE
 - reflecting the long-term aspirations of their communities.
23. A sub-committee of the RRG will appoint/remove/replace members of the Board of the WSE.
24. An RRG can elect to establish one or more **Regional Advisory Panels** (RAPs) to provide advice about communities and water services in a particular geographic area. Membership of RAPs is to be a 50:50 split between territorial authority members and mana whenua members.

WSE Boards

25. Each Board will be comprised of 6-10 members who, collectively, have expertise in performance monitoring and governance, network infrastructure, the principles of te Tiriti o Waitangi, and perspectives of mana whenua, mātauranga, tikanga, and te ao Māori.
26. The Boards will oversee the operational management of WSEs with a focus on the maintenance, renewal, and development of water infrastructure.
27. The Board will prepare an annual Statement of Intent with three parts:
 - strategic elements that identify the outcomes the WSE is aiming to achieve and how the WSE intends to deliver its objectives and the performance expectations of the RRG and government policy statements (must be approved by RRG)
 - operational elements detailing the nature and scope of work, significant work, responses to Te Mana o Te Wai statements, approach to consumer and community engagement and levels of service (RRG can provide input)
 - financial elements showing forecast of expenditure to meet demand, improve service delivery and replace assets (RRG can provide input).
28. The Board will also prepare an asset management plan, funding and pricing plan and infrastructure strategy. It is required to engage with territorial authority owners, consumers and communities in the preparation of drafts of these documents before presenting them to the RRG for comment. It must consider the RRG comments and formally respond to them.

WSE Constitutions

29. Each WSE constitution must include:
 - composition of the RRG including procedures for appointing representatives
 - other procedures of the RRG including meeting arrangements
 - composition and procedures of RAPs if there are any
 - remuneration of RRG and RAP members
 - composition and procedures of the WSE Board.
30. Constitutions may also include additional matters provided they are not inconsistent with the Act, for instance, skills and qualifications of representatives and Board members, additional monitoring and reporting, and review requirements.
31. The first constitution for WSEs will be set out in regulations. RRGs can replace the constitution at any time. Any replacement needs to be approved by the Minister.

Consumer fora

32. The Chief Executive of a WSE must establish at least one consumer forum to support the WSE with effective and meaningful consumer and community engagement. These fora can be for specific geographical areas or targeted interests but must reflect and represent the interests and diversity of consumers across the entity's region.
33. A WSE must prepare an annual consumer engagement stocktake to capture community and consumer feedback on services and performance and how the WSE will respond.

Transition (establishment period)

Governance and policy

34. The transitional provisions in Schedule 1 of the Bill have several key provisions related to the period before 1 July 2024.
35. The Chief Executive of a WSE must prepare an allocation schedule for their WSE that specifies assets, liabilities, and other matters that relate to the provision of water services and other services by relevant local government organisations.
36. The Chief Executive of the Department of Internal Affairs (DIA) may prepare an establishment water services plan for a WSE that outlines guidance for identifying the functions, staff, assets and liabilities to be transferred to the entity, and the proposed timing for the transfer.
37. The Chief Executive of DIA will provide comment on the first asset management plan and funding and pricing plan in lieu of the RRGs.
38. Local authorities must comply with reasonable requests from DIA to second staff to the WSE during the establishment period.

Staff employment

39. The chief executive of a WSE must offer existing council water staff a position of the same or a similar nature in the new WSE if the employee primarily undertakes functions that will transfer to the WSE, and the employee is not in a senior management role.
40. The positions offered must be no less favourable than the existing terms and within the same general locality.

DIA oversight

41. The DIA will have oversight of council decisions about or that may impact on the delivery of water services. This includes Long Term Plans and Annual Plans, other relevant policies, purchase or disposal of assets, and borrowing and service contracts that extend beyond a date specified by the Chief Executive of DIA.
42. During the establishment period, councils must provide DIA with information about an intended decision. The Chief Executive of the DIA may review any decision made during the establishment period.
43. Councils cannot implement a decision that might significantly prejudice the reforms or constrain their WSE from carrying out its duties without the written permission of the DIA.

POTENTIAL AREAS FOR SUBMISSION

44. As the Bill has only recently been released, there has been insufficient time to consider fully the response and craft a submission for Council endorsement. In lieu of this, we are highlighting the key areas where you may wish to make a submission.

Representation and accountability

45. The Bill offers solid protection from privatisation in establishing council ownership of WSEs as body corporates.
46. The Bill has limited mechanisms for local voice in water services delivery and does not guarantee Te Tairāwhiti (or any other region) a seat at the RRG table or the WSE board table.
47. The Regional Advisory Panels may provide opportunities for local voice, however, there is no accountability back to these groups.
48. There is a significant risk of population-based decisions where smaller and more isolated communities may not be well-served. Tairāwhiti already has experience of this with the way that our transport infrastructure has been funded and how in recent years government has had to make targeted investment in our roads to bring them to a first world standard.
49. Due to the limited representation of both councils and mana whenua interests at decision tables, there remains a lack of certainty around how local desired outcomes for urban development, land use change, climate change response, and other environmental factors will inform the strategic direction and operational activities of WSEs.

Interface with resource management functions

50. The Bill is quiet on how the planning roles and functions of regional and district councils will interact with the roles and functions of the WSEs around matters such as:
- regional growth and development
 - freshwater planning particularly water allocation.
51. This is expected to come through more in the second Bill due out later in 2022. However, there is an opportunity to raise concerns around this now to assist government which may support the drafting of the second Bill.

Transition arrangements

52. The transition process to date has had some key issues most notably that there have been insufficient opportunities to co-design the transition with councils. This fails to recognise the accountabilities councils have to their communities through and after the reforms.
53. The change process needs to have meaningful co-design of how change will occur in practice, so we understand our role in this, ensuring it is practical and that this is sufficiently resourced. The provisions in the Bill do not provide reassurances of this, and appear to further entrench the approach of the reforms being something that councils are takers of rather than partners in.

ASSESSMENT of SIGNIFICANCE

Consideration of consistency with and impact on the Regional Land Transport Plan and its implementation

Overall Process: Low Significance

This Report: Low Significance

Impacts on Council's delivery of its Financial Strategy and Long Term Plan

Overall Process: High Significance

This Report: Medium Significance

Inconsistency with Council's current strategy and policy

Overall Process: High Significance

This Report: High Significance

The effects on all or a large part of the Gisborne district

Overall Process: High Significance

This Report: High Significance

The effects on individuals or specific communities

Overall Process: High Significance

This Report: High Significance

The level or history of public interest in the matter or issue

Overall Process: High Significance

This Report: High Significance

54. The decisions or matters in this process overall are considered to be of High significance in accordance with Council's Significance and Engagement Policy.
55. The reforms will transform the structural arrangements for water services delivery. While the government has a key objective to minimise disruption to water services delivery, they also have a tight timeframe for operationalising the WSEs of 1 July 2024. There are likely to be some teething issues.
56. The reforms signal a pulling away from local decision-making to more centralised control that may raise a range of opinions and stimulate debate.
57. There remains significant uncertainty around the implications for Council's continued delivery of remaining services post-transition, particularly the scale of stranded costs and subsequent impacts on rates of the diseconomies of scope.

TANGATA WHENUA/MĀORI ENGAGEMENT

58. Tangata whenua are engaging directly with government on the policy aspects of the reforms through iwi channels.

COMMUNITY ENGAGEMENT

59. There has been no further community engagement since the community poll carried out in 2021.
60. Any individual or group can make a submission to select committee directly.

POLICY and PLANNING IMPLICATIONS

61. The second Bill, due for release later in 2022, will provide details on how three waters arrangements will interact with resource management reforms.

NEXT STEPS

Date	Action/Milestone	Comments
22 July 2022	Submission to Finance and Expenditure select committee	